

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

In the Matter of	)	
	)	
Price Cap Business Data Services	)	WC Docket No. 21-17
	)	
Regulation of Business Data Services for Rate-of-	)	WC Docket No. 17-144
Return Local Exchange Carriers	)	

NOTICE OF PROPOSED RULEMAKING,  
THIRD FURTHER NOTICE OF PROPOSED RULEMAKING, AND ORDER

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Comment Date: [30 days after publication in the Federal Register]  
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By the Commission: Chairman Carr issuing a statement.

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## I. INTRODUCTION

1. Today, we continue to promote competition and economic growth by proposing to further streamline and eliminate outdated, unnecessary, burdensome regulations in the provision of legacy business data services (BDS) offered by telephone companies. The Commission has long recognized the importance of BDS to businesses, schools and libraries, non-profit organizations, and state and local governments.<sup>1</sup> Because local telephone companies (incumbent local exchange carriers) held local monopolies on circuit-switched telephone service, historically the Commission relied on dominant carrier regulation under Title II of the Communications Act of 1934, as amended (the Act), to ensure that the rates, terms, and conditions of service were just and reasonable and not unreasonably discriminatory. In response to the growth of competition in the provision of BDS, the Commission has, in recent years, streamlined its regulation of these services to forbear from unnecessary regulatory burdens on legacy circuit-based services and to promote long-term innovation and investment in modern packet-based Internet Protocol (IP) services.<sup>2</sup>

2. In this *Notice of Proposed Rulemaking (Notice)* and *Third Further Notice of Proposed Rulemaking*, we build on the Commission's earlier efforts by seeking comment on further deregulating BDS in light of marketplace and technological changes and consistent with recent Executive Orders<sup>3</sup> and other Commission efforts.<sup>4</sup> We seek comment on eliminating ex ante pricing regulation and tariffing obligations for end user channel termination services provided by incumbent local exchange carriers (LECs or carriers).<sup>5</sup> We also seek comment on deregulating and detariffing rates charged for transport services provided by rate-of-return carriers.<sup>6</sup> In the alternative, we seek comment on updates to the Commission's regulatory framework and competitive market tests to better align those tests with current market conditions based on current data.<sup>7</sup>

3. The Commission previously directed the Wireline Competition Bureau (Bureau) to update competitive market test results every three years under sections 61.50(j)(2) and 69.803(c) of the Commission's rules.<sup>8</sup> The next triennial update is due in January 2026. Because we seek comment on

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<sup>1</sup> See, e.g., *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., 32 FCC Rcd 3459, 3463, para. 6 (2017) (*Price Cap BDS Order*), remanded in part sub nom., *Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F. 3d 991 (8th Cir. 2018) (*Citizens Telecomms. v. FCC*).

<sup>2</sup> See, e.g., *Price Cap BDS Order*, 32 FCC Rcd at 3461, para. 1 (highlighting the "dynamic competitive realities" in the BDS marketplace); *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, 10409-10, para. 16 (2018) (*Rate-of-Return BDS Order* or *Rate-of-Return BDS Notice*).

<sup>3</sup> See, e.g., Exec. Order 14192 of January 31, 2025, 90 Fed. Reg. 9065 (Feb. 6, 2025). See also Exec. Order 14219 of February 19, 2025, 90 Fed. Reg. 10583 (Feb. 25, 2025).

<sup>4</sup> *In re: Delete, Delete, Delete*, GN Docket No. 25-133, Public Notice, DA 25-219, 2025 WL 820901 (Mar. 12, 2025) (*Delete Public Notice*).

<sup>5</sup> Specifically, we seek comment on eliminating ex ante pricing regulation and tariffing obligations for price cap carriers' lower-capacity (DS3 and below) legacy circuit-based end user channel termination services and rate-of-return carriers' packet-based and legacy circuit-based end user channel termination services. We use the term "carrier" to refer to incumbent local exchange carriers, not including competitive local exchange carriers. Competitive local exchange carriers were required to detariff their BDS by 2020. See 47 CFR § 61.203.

<sup>6</sup> Specifically, we seek comment on eliminating ex ante pricing regulation and tariffing obligations for rate-of-return carriers' packet-based and legacy circuit-based transport services.

<sup>7</sup> 47 CFR §§ 61.50(j), 69.803(c); *Establishing the Digital Opportunity Data Collection et al.*, WC Docket No. 19-195 et al., Order, 37 FCC Rcd 14957, 14960, para. 10 (2022) (*Form 477 Sunset Order*).

<sup>8</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104; 47 CFR §§ 61.50(j)(2), 69.803(c).

fundamentally altering the Commission's regulatory framework and on whether the competitive market tests are still needed, we also adopt, on our own motion, an *Order* temporarily waiving sections 61.50(j)(2) and 69.803(c) of the Commission's rules until the Commission directs the Bureau to update the competitive market test results.

## II. BACKGROUND

### A. Business Data Services

4. "Business data services" (BDS) refers to the dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high capacity connections to support applications that require symmetrical bandwidth, substantial reliability, security, and connected service to more than one location.<sup>9</sup> Businesses, non-profit organizations, and government institutions rely on BDS to enable the secure and reliable transfer of data, for example, as a means of connecting to the Internet or the cloud, and to create private or virtual private networks.<sup>10</sup>

5. BDS fall into two technology categories: circuit-based and packet-based. Circuit-based BDS utilize the Time Division Multiplexing (TDM) protocol, which sends communications over a single circuit-switched channel by dividing the channel into dedicated time slots.<sup>11</sup> TDM is considered a legacy technology, and TDM-based services consist primarily of DS1 and DS3 circuits with symmetrical capacities of 1.5 Mbps and 45 Mbps, respectively.<sup>12</sup> Packet-based BDS, on the other hand, relies on the modern IP in which data are sent using packets, and can generally offer much higher capacities.<sup>13</sup> The Commission generally has historically imposed dominant carrier regulation on carriers' legacy TDM-based BDS and abstained from regulating packet-based BDS.

6. The Commission has traditionally viewed legacy TDM-based BDS in two distinct segments: end user channel termination and dedicated transport.<sup>14</sup> Channel termination refers to the last-mile, local loop, transmission links to end user locations, i.e., laterals.<sup>15</sup> Transport involves higher-capacity connections between network aggregation points, i.e., middle-mile connections or feeder plant.<sup>16</sup> In the BDS context, the Commission referred to "transport" as interoffice facilities and channel terminations between an incumbent LEC's serving wire center and an interexchange carrier.<sup>17</sup>

### B. The Commission's Regulation of Business Data Services

7. The Commission has traditionally relied on sections 201 and 202 of the Act, to impose BDS pricing regulation to ensure that "charges, practices, classifications, and regulations" for interstate communication service provided by common carriers are "just and reasonable," and free of "unjust or unreasonable discrimination."<sup>18</sup> Under existing rules, incumbent LECs must therefore file tariff schedules

<sup>9</sup> 47 CFR § 69.801(a); *Price Cap BDS Order*, 32 FCC Rcd at 3463, para. 6.

<sup>10</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3463, para. 6. See *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, 4754, para. 70 (2016) (*Price Cap BDS FNPRM*) (noting three main categories of retail BDS customers: end users, competitive LECs, and mobile wireless providers).

<sup>11</sup> *Price Cap BDS FNPRM*, 31 FCC Rcd at 4743, para. 45.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4743, para. 46.

<sup>14</sup> *Id.* at 4729, para. 15.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10405, para. 3 n.4; *Price Cap BDS Order*, 32 FCC Rcd 3496, para. 79 n.258; 47 CFR § 69.709(a)(4).

specifying the rates, terms, and conditions governing their interstate service offerings.<sup>19</sup> Section 204 prescribes procedures for filing streamlined tariffs with the Commission subject to Commission review and, if necessary, potential suspension and investigation should the LECs' rates be found to violate the requirements of sections 201 and 202.<sup>20</sup> After full opportunity for hearing upon a complaint or an order for investigation and hearing, section 205 authorizes the Commission to determine and prescribe just and reasonable charges.<sup>21</sup>

8. *Rate-of-Return and Price Cap Regulation.* The Commission traditionally has used two forms of rate regulation to ensure that the rates, charges, and practices of incumbent LECs in connection with the provision of BDS are "just and reasonable" under sections 201 and 202 of the Act: rate-of-return and price cap regulation.<sup>22</sup> Under rate-of-return regulation, a carrier's rates are set at levels allowing recovery of operating costs plus an authorized rate of return (currently 9.75%) on the regulated rate base.<sup>23</sup> Under price cap regulation, a carrier's rates are set at levels based on indices that are adjusted downward based on an industry-wide productivity factor "intended to capture the amount by which incumbent LECs could be expected to outperform economy-wide productivity gains and to pass those gains on to consumers in the form of lower prices."<sup>24</sup> Carriers' service areas are divided into study areas designated as price cap or rate-of-return, depending on the applicable form of rate regulation. Price cap study areas include urban areas and densely-populated areas, while rate-of-return study areas are predominantly rural and less-densely populated than price cap study areas.<sup>25</sup>

9. Currently, in all price cap study areas and a little over a third of rate-of-return study areas, there are no rate regulation and tariffing obligations on incumbent LECs' packet-based and higher-capacity (above DS3) TDM-based BDS (i.e., end user channel termination service and transport service and other special access services).<sup>26</sup> For lower-capacity end user channel termination services provided by price cap carriers and certain electing rate-of-return carriers, the Commission preserved rate regulation and tariffing obligations and adopted a competitive market test to identify areas with sufficient competition warranting deregulation and detariffing of those services.<sup>27</sup> Lower-capacity TDM-based

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<sup>18</sup> 47 U.S.C. §§ 201(b), 202(a); *see Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans*, WC Docket No. 15-247, Order Initiating Investigation and Designating Issues for Investigation, 30 FCC Rcd 11417, 11428, para. 22 (2015) (*Tariff Investigation Designation Order*).

<sup>19</sup> 47 U.S.C. § 203; 47 CFR Part 61; *see Tariff Investigation Designation Order*, 30 FCC Rcd at 11428, para. 22.

<sup>20</sup> 47 U.S.C. § 204.

<sup>21</sup> 47 U.S.C. § 205.

<sup>22</sup> *Price Cap BDS FNPRM*, 31 FCC Rcd at 4729, para. 16.

<sup>23</sup> *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3171, para. 226 (2016).

<sup>24</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10427, para. 62; *see Price Cap BDS Order*, 32 FCC Rcd at 3544, para. 198.

<sup>25</sup> *See Rate-of-Return BDS Order*, 33 FCC Rcd at 4279, para. 3, n.4 (noting that when the Commission created the price cap regulatory framework "[m]ost rural and small LECs elected to remain subject to rate-of-return regulation"); *id.* at 4284, para. 14 (noting that A-CAM carriers typically serve "less dense, more rural areas.")

<sup>26</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3499, 3502, paras. 86, 94. The Commission also eliminated ex ante pricing regulation and tariffing obligations for TDM-based transport services provided by price cap carriers, however, on appeal, the Eight Circuit Court of Appeals, remanded the issue back to the Commission. *See Citizens Telecomms. v. FCC*, 901 F.3d at 1015. On remand, the Commission eliminated ex ante pricing regulation and tariffing obligations for price cap carriers' TDM-based transport services. *Business Data Services in an Internet Protocol Environment et al.*, Report and Order on Remand and Memorandum Opinion and Order, WC Docket No. 16-143 et al., *Price Cap BDS Order*, 34 FCC Rcd 5767, 5775, para. 15 (2019) (*UNE Transport Order*).

transport offered in rate-of-return study areas is also subject to rate regulation and tariffing requirements.<sup>28</sup> In a little over two-thirds of rate-of-return study areas, rate regulation and tariffing obligations still apply to end user channel termination services and rate-of-return carriers may tariff certain packet-based BDS.

10. *Competitive Market Tests.* The competitive market tests are used to identify areas subject to potential or actual competition that warranted eliminating rate regulation and tariffing obligations.<sup>29</sup> Results of the competitive market test are updated every three years to determine whether any additional regulated counties or study areas meet the competitive threshold.<sup>30</sup> The Bureau released updated test results in 2020 and 2023, and the next update is due January 31, 2026.<sup>31</sup>

11. *Forbearance.* An integral element of the “pro-competitive, de-regulatory national policy framework” adopted in the Telecommunications Act of 1996 (the 1996 Act) is the Commission’s forbearance authority under section 10.<sup>32</sup> Section 10 of the Act, as amended by the 1996 Act, requires the Commission to forbear from applying the Act or its rules to a telecommunications carrier or a telecommunications service if the Commission determines that: (1) enforcement “is not necessary to ensure that the charges, practices, classifications, or regulations . . . are just and reasonable and are not unjustly or unreasonably discriminatory,” (2) enforcement “is not necessary for the protection of consumers,” and (3) “forbearance from applying such provision or regulation is consistent with the public interest.”<sup>33</sup> In making the public interest determination, the Commission must also consider, pursuant to

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<sup>27</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10415, para. 31.

<sup>28</sup> *See id.* at 10457-58, paras. 157-162.

<sup>29</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3599-3527, paras. 86-144; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10432-39, paras. 78-102. In counties deemed competitive, the Commission eliminated price cap carriers’ rate regulation and tariffing obligations for their lower-capacity end user channel termination services. *Price Cap BDS Order*, 32 FCC Rcd at 3499, para. 86 (treating a county as competitive if 75% of the census blocks in the county have a cable provider present). And, in competitive study areas, the Commission eliminated ex ante pricing regulation and tariffing obligations for electing rate-of-return carriers’ lower-capacity end user channel termination services. *Rate-of-Return BDS Order*, 33 FCC Rcd at 10432, para. 78; *id.* at 10445, para. 120 (treating a “study area as competitive if a cable operator offers a minimum of 10/1 Mbps broadband service in 75% of census blocks” in the study area).

<sup>30</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151; *see id.* at 3527-28, paras. 145-52. Given the unlikelihood that competitive locations would become non-competitive, only non-competitive regulated counties or study areas could be re-tested. Thus, once an area is deemed competitive, it will not be retested. *Id.* at 3529, para. 152.

<sup>31</sup> *Wireline Competition Bureau Releases Supplemental Lists of Counties Service by Price Cap Carriers and Rate-of-Return Study Areas Newly Deemed Competitive Pursuant to Competitive Market Tests for Business Data Services*, WC Docket No. 17-144 et al., Public Notice, 35 FCC Rcd 131 (WCB 2020) (2020 Triennial Update PN); *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, 17-144, Public Notice, 38 FCC Rcd 457 (WCB 2023) (2023 Triennial Update PN). The Commission’s rules require the Bureau to release the results of the triennial updates no later than three years following the effective date of the previous test. *See* 47 CFR §§ 61.50(j)(2), 69.803(c)(2). As discussed below, in light of today’s *Notice*, which, among other things, seeks comment on the continued use of the competitive market tests, we temporarily waive sections 61.50(j)(2) and 69.803(c) of the Commission’s rules.

<sup>32</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace et al.*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20731-32, para. 1 n.2 (1996); 47 U.S.C. § 160.

<sup>33</sup> 47 U.S.C. § 160(a). *Cellular Telecomms. & Internet Ass’n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong); 47 U.S.C. § 160(d).

section 10(b) of the Act, “whether forbearance from enforcing the provision or regulation will promote competitive market conditions.”<sup>34</sup> Forbearance is required only if all three criteria are satisfied.<sup>35</sup>

12. The Commission has a long history of granting price cap and rate-of-return carriers forbearance from section 203 tariffing requirements for various of their BDS offerings. More than a decade ago, the Commission granted forbearance from section 203 tariffing obligations to price cap carriers for their packet-switched and optical transmission BDS.<sup>36</sup> In 2017 and 2018, the Commission granted price cap and electing rate-of-return carriers forbearance from section 203 tariffing obligations in the provision of packet-based and higher-capacity TDM-based BDS, and lower speed end user channel termination services in counties deemed competitive.<sup>37</sup> In 2019, the Commission granted price cap carriers forbearance from section 203 tariffing obligations for TDM-based transport.<sup>38</sup>

13. *Current State.* To date, almost two-thirds of counties served by price cap carriers (1,970 out of 3,234) have been deemed competitive or were grandfathered and subject to mandatory deregulation and detariffing for their lower-capacity end user channel termination services.<sup>39</sup> In total, 1,265 counties served by price cap carriers are subject to ex ante pricing regulation and tariffing for their lower-capacity TDM-based end user channel termination services. A little over one-third of active rate-of-return carriers elected incentive regulation (346 out of 1,107) and are thus subject to incentive regulation for their BDS offerings.<sup>40</sup> Of these 346 study areas, 17 have been deemed competitive and subject to complete rate deregulation and detariffing for their BDS.<sup>41</sup> In total, 761 rate-of-return carriers remain subject to ex ante

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<sup>34</sup> 47 U.S.C. § 160(b).

<sup>35</sup> 47 U.S.C. § 160(a).

<sup>36</sup> See, e.g., *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services et al.*, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18705-07, paras. 1-2 (2007), *aff’d sub nom. Ad Hoc v. FCC*, 572 F.3d 903 (D.C. Cir. 2009); *UNE Transport Order*, 34 FCC Rcd at 5787, para. 43 & n.150 (citing orders granting forbearance to individual price cap carriers for certain BDS).

<sup>37</sup> *UNE Transport Order*, 34 FCC Rcd at 5775, 5787, paras. 15, 42; *Price Cap BDS Order*, 32 FCC Rcd at 3529-31, paras. 153-159; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10445-47, paras. 120-24; see also *id.* at 10447-51, paras. 125-37 (forbearing from cost assignment rules); 47 CFR §§ 61.50(k)(3), 61.201(a)(3). Electing rate-of-return carriers are those receiving universal service payments pursuant to the Alternative-Connect America Cost Model (A-CAM), rate-of-return carriers receiving fixed support that are affiliated with price cap carriers, Alaska Plan carriers, and rate-of-return carriers that accept future offers of A-CAM support or otherwise transition away from legacy support mechanisms. *Rate-of-Return BDS Order*, 33 FCC Rcd at 10410-11, para. 19; 47 CFR § 61.50(b).

<sup>38</sup> *UNE Transport Order*, 34 FCC Rcd at 5787-89, paras. 42-46; 47 CFR § 69.807(a).

<sup>39</sup> FCC staff calculation based on counties where lower speed TDM-based BDS provided by price cap carriers are deemed competitive, non-competitive, or grandfathered in 2017, 2020 and 2023. *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 (WCB 2017); *2020 Triennial Update PN*, 35 FCC Rcd at 131; *2023 Triennial Update PN*, 38 FCC Rcd at 457. The number of counties is based on 2020 U.S. Census Bureau figures. See U.S. Census Bureau, *2020 Census Tallies* (2020 Census Tallies), <https://www.census.gov/geographies/reference-files/time-series/geo/tallies.html> (last visited Jul. 8, 2025).

<sup>40</sup> There were 352 study areas that elected incentive regulation, however, 6 study areas are no longer active. See *Wireline Competition Bureau Announces Additional 120 Rate-of-Return Carrier Study Areas Electing Incentive Regulation for their Business Data Services*, WC Docket No. 17-144, Public Notice, 39 FCC Rcd 7098 (WCB 2024) (2024 BDS Elections PN); *Wireline Competition Bureau Announces Additional 4 Rate-of-Return Carrier Study Areas Electing Incentive Regulation for their Business Data Services*, WC Docket No. 17-144, Public Notice, DA 25-617 (WCB July 14, 2025) (2025 BDS Elections PN). See Federal-State Joint Board on Universal Service, 2024 Universal Service Monitoring Report, Updated 2024 High-Cost Claims (rel. Jan. 15, 2025) (2024 Monitoring Report), <https://docs.fcc.gov/public/attachments/DOC-410558A1.xlsx> (last visited July 9, 2025).

pricing regulation and tariffing obligations for their lower- and higher-capacity TDM-based BDS as of 2024.<sup>42</sup>

### C. Broader Deregulatory Efforts

14. This year, the President issued a series of Executive Orders calling on administrative agencies to alleviate unnecessary regulatory burdens.<sup>43</sup> Consistent with this direction, in March, the Commission’s Office of General Counsel issued a *Public Notice* initiating a proceeding broadly seeking public comment on “deregulatory initiatives that would facilitate and encourage American firms’ investment in modernizing their networks, developing infrastructure, and offering innovative and advanced capabilities.”<sup>44</sup> The *Public Notice*, among other things, broadly sought comment on Commission rules for which the costs exceed the benefits and whether the rule produces the predicted benefits or is unnecessary or inappropriate, whether rules are unnecessary or inappropriate based on marketplace and technological changes, whether the rules pose a barrier to entry, whether the changes in the broader regulatory context render the rules unnecessary or inappropriate, and, finally, whether there are any other considerations relevant to identifying rules that are unnecessary or inappropriate.<sup>45</sup>

15. Commenters identified part 61 tariff requirements and part 69 access charge rules as ripe for further deregulation and streamlining. The International Center for Law and Economics (ICLE), for example, argues that tariff requirements, “thanks to competition . . . are now largely obsolete” and “[f]urther simplification would reduce administrative burdens and align with market-driven pricing.”<sup>46</sup> The Digital Progress Institute argues that the Commission should “fully detariff all remaining TDM services, abolishing parts 61 and 69, and allow carriers to reflect their actual costs.”<sup>47</sup> In support, the Digital Progress Institute contends that “arbitrary caps and tariffs stimulate artificial demand for” legacy TDM-based services, the part 61 and 69 rules “divert investment from new infrastructure towards reams of paperwork,” and “tariffing is unnecessary” as “[c]ompetition in the voice market is so replete.”<sup>48</sup> USTelecom—The Broadband Association identifies part 61 tariffing requirements to “streamline or eliminate unnecessary or obsolete rules in order to simplify processes without making significant

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<sup>41</sup> *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); *2020 Triennial Update PN*, 35 FCC Rcd at 131; *2023 Triennial Update PN*, 38 FCC Rcd at 457.

<sup>42</sup> More specifically, 329 active electing rate-of-return carriers’ lower-capacity end user channel termination services provided in non-competitive areas and lower-capacity transport are subject to ex ante pricing regulation and tariffing. There are 444 rate-of return carriers receiving model-based or fixed universal service support or price cap affiliates that were eligible did not elect incentive regulation as of 2025 and 313 rate-of-return carriers receiving legacy universal service support were ineligible to elect incentive regulation. *See* 2024 Monitoring Report, *supra* note 40.

<sup>43</sup> *See, e.g.*, Exec. Order No. 14192 of January 31, 2025, 90 Fed. Reg. 9065 (Feb. 6, 2025). *See also* Exec. Order No. 14219 of February 19, 2025, 90 Fed. Reg. 10583 (Feb. 25, 2025).

<sup>44</sup> *Delete Public Notice* at 1.

<sup>45</sup> *Id.* at 2-5.

<sup>46</sup> Comments of International Center for Law & Economics, GN Docket No. 25-133, at 18-19 (rec. Apr. 11, 2025) (ICLE Comments). *But see, e.g.*, Reply Comments of Irregulars, GN Docket No. 25-133, at 14 (rec. Apr. 27, 2025) (arguing that deregulation caused harms); Comments of INCOMPAS, WC Docket No. 17-144 et al., at 6-7 (rec. May 9, 2019) (arguing that deregulation caused harms increasing prices for BDS transport); *see also Price Cap BDS Order*, 32 FCC Rcd at 3505-06, para. 102 & n. 307 (recognizing commenters raising concerns with price increases in deregulated areas).

<sup>47</sup> Comments of the Digital Progress Institute, GN Docket No. 25-133, at 5-6 (rec. Apr. 11, 2025).

<sup>48</sup> *Id.* at 5-6.

substantive changes.”<sup>49</sup> Commenters also identified part 65, which governs rate-of-return prescription, as ripe for deregulation. For example, ICLE argues that rate-of-return regulation is “largely obsolete, as the FCC has transitioned most carriers to incentive-based frameworks (e.g., price caps)” and that “[p]art 65 perpetuates inefficiencies by tying investment decisions to artificial returns, rather than market signals, thus discouraging modernization.”<sup>50</sup>

### III. NOTICE OF PROPOSED RULEMAKING AND THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

16. The Commission has long expressed its preference to rely on competition rather than incentive-distorting regulation to ensure that rates, terms, and conditions of telecommunications service are “just and reasonable.”<sup>51</sup> Accordingly, we propose to end ex ante pricing regulation and tariffing obligations for end user channel termination services provided by price cap and rate-of-return carriers, and transport services provided by rate-of-return carriers.<sup>52</sup> To effectuate deregulation, we propose to grant incumbent LECs forbearance, pursuant to section 10 of the Act, from section 203 tariffing and other requirements for these deregulated services. We believe that technological and marketplace developments have rendered ex ante regulation and tariffing requirements unnecessary and seek comment on these views. Finally, we alternatively seek comment on the efficacy and continued viability of the incentive regulation framework for rate-of-return carriers and the competitive market tests.

#### A. Business Data Services Marketplace Developments

17. In this section, we seek comment on broader developments in the BDS marketplace, particularly on competitors’ service deployment, competitive conditions, and technological advancements, that would support further deregulation.

18. The Commission has recognized the dramatic transformation of the communications marketplace since Congress passed the 1996 Act.<sup>53</sup> At the time, incumbent LECs controlled 99.7% of the local telephone service market.<sup>54</sup> Today, incumbent LECs’ wireline voice subscriptions using switched access lines account for 19.5% (16.5 million connections) of all wireline voice retail subscriptions and 16.1% (8.4 million connections) of all wireline voice retail business connections.<sup>55</sup> Between December 2019 and December 2023, residential connections to copper (including DSL) provided by telephone companies decreased by almost 40% from 17.6 million to 10.6 million.<sup>56</sup> As of June 30, 2024, copper

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<sup>49</sup> Comments of USTelecom—The Broadband Association, GN Docket No. 25-133, at 17 (rec. Apr. 11, 2025).

<sup>50</sup> ICLE Comments at 19.

<sup>51</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3499, para. 86; *see Rate-of-Return BDS Order*, 33 FCC Rcd at 10442, para. 112.

<sup>52</sup> These proposals would apply to rate-of-return carriers whether or not they elected incentive regulation or are receiving model-based or fixed universal service support.

<sup>53</sup> *See Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services*, WC Docket No. 19-308, Report and Order, 35 FCC Rcd 12425, 12434, para. 22 (2020).

<sup>54</sup> *Id.*

<sup>55</sup> FCC, Industry Analysis Division, Office of Economics and Analytics, Voice Telephone Services: Status as of June 30, 2024, at 3 (May 2025), <https://www.fcc.gov/document/voice-telephone-services-status-june-30-2024>.

<sup>56</sup> *Communications Marketplace Report*, GN Docket No. 24-119, 2024 Communications Marketplace Report, FCC 24-119, 2024 WL 5330303, at \*10, para. 14, Fig. 11.A.5 (Dec. 31, 2024) (*2024 Communications Marketplace Report*); *Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3001, para. 86, Fig. II.B.1 (2020) (*2020 Communications Marketplace Report*).



wire technology only accounted for 8.0% of the fixed connections used to deliver internet access service to end users.<sup>57</sup>

19. When the Commission eliminated ex ante pricing regulation for certain BDS provided by price cap carriers in 2017, it recognized that higher bandwidth packet-based services, including Ethernet services, “already ma[d]e up a large part of the business data services marketplace” and circuit-based DS1s and DS3s were becoming obsolete.<sup>58</sup> The Commission predicted that the shift from circuit-based to packet-based services would continue at a “rapid pace.”<sup>59</sup> Factoring in intermodal competition, the Commission concluded that the enterprise market was subject to “intense competition,” finding that 95% of census blocks within Metropolitan Statistical Areas served by price cap carriers with BDS demand (constituting 99% of all businesses) had at least one competitive alternative to the incumbent LEC.<sup>60</sup>

20. We seek updated information and data on the shift from circuit-based to packet-based BDS in the years since 2017. We invite commenters to submit or identify data that would justify further pricing deregulation and detariffing.<sup>61</sup> Acknowledging that a large data collection could be burdensome and that our preference is to rely on data either already in the Commission’s possession or relevant data provided by commenters, we seek comment on whether a data collection would ultimately be necessary or beneficial in supporting the actions we propose today.<sup>62</sup> To what extent has the transition from TDM-based to IP-based BDS rendered ex ante rate regulation and tariffing of lower-capacity BDS and other regulated BDS unnecessary? To what extent does rate regulation of BDS distort market incentives? Commenters have previously suggested that “as a result of more substitutes in the market, incumbent LECs face declining sales in TDM-based services, notably DS1s and DS3s, including customer loss to cable operators and other providers.”<sup>63</sup> Have sales of TDM-based BDS declined? If so, by how much? Do commenters attribute this decline to the availability of higher bandwidth services? Are TDM-based services declining in rate-of-return study areas at a rate similar to the decline in price cap areas? We urge commenters to be as specific and detailed as possible in describing trends in the BDS marketplace and the availability of substitute services for TDM-based BDS.

21. Why do some users continue to purchase TDM-based BDS? Do any industry standard practices or regulatory requirements encourage or mandate the purchase of TDM-based services? We seek specific comment on any regulations that require or encourage the purchase of TDM-based BDS. Commenters should identify the public interest purpose of those rules. In the absence of such a showing, we tentatively conclude that any such rules should be eliminated to accelerate the IP Transition.

22. We also seek comment on how the competitive landscape has changed given entry by cable operators. Prior reductions in ex ante pricing regulation were premised in part on the Commission’s predictive judgment that dynamic and growing competition in the BDS market, driven increasingly by the emergence of cable competition, would allow reliance on competition rather than regulation to ensure just and reasonable rates for BDS.<sup>64</sup> At the time, the Commission acknowledged that BDS provided by cable

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<sup>57</sup> FCC, Industry Analysis Division, Office of Economics and Analytics, Internet Access Services: Status as of June 30, 2024, at 7, Fig. 4 (May 2025), <https://www.fcc.gov/internet-access-services-reports>.

<sup>58</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3461-62, para. 3.

<sup>59</sup> *Id.*

<sup>60</sup> *See id.* at 3481, para. 42.

<sup>61</sup> In its 2017 and 2018 reforms, the Commission based its marketplace analysis in large part on the 2015 data collection. *See Price Cap BDS Order*, 32 FCC Rcd at 3468, para. 17; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10433, para. 83.

<sup>62</sup> *See Rate-of-Return BDS Order*, 33 FCC Rcd at 10458, para. 162.

<sup>63</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3490-91, para. 68.

operators was growing at a rate of 20% annually over the past several years.<sup>65</sup> Between December 2019 and 2023, residential connections to cable (DOCSIS 3.1) services increased from 67.1 million to 73.4 million, an increase of over 9%.<sup>66</sup> As of December 31, 2023, residential cable broadband was deployed to approximately 86.7% of U.S. households and adopted in 66.4% of households.<sup>67</sup> As of June 30, 2024, coaxial cable technology accounted for 59.0% of the fixed connections used to deliver internet access service to end users.<sup>68</sup> How has market entry by cable providers changed in the years since 2017? Have cable operators continued to deploy into counties and study areas served by legacy TDM-based BDS? If so, can commenters quantify the scope of such entry in terms of market share, revenues, and other factors? In counties and study areas deemed competitive and deregulated under the Commission's competitive market tests, what impact has this deregulation had on end user channel termination services and transport services?

23. We also seek comment on the existence and effect of other market entrants regardless of the technology, including competing providers using fiber, fixed wireless, satellite, and other technologies to offer services that compete with incumbent LECs' TDM-based BDS. Between December 2019 and December 2023, residential connections to fiber increased 67.7% (from 16.7 to 28.0 million), to terrestrial fixed wireless broadband increased 453.3% (from 1.5 to 6.8 million), and to satellite increased 11.1% (from 1.8 to 2.0 million).<sup>69</sup> Have the growth trends been similar for non-residential BDS? Have competing providers been using fixed wireless, satellite or other technologies to offer BDS? Has new entry for competing providers using any technology been greater in areas that have been deregulated under the competitive market test? What about other entrants such as non-cable competitive LECs?<sup>70</sup> What other services compete with or serve as substitutes for TDM-based BDS? Do alternative suppliers put competitive pressure on end user channel termination and transport services? If so, how?

#### **B. Deregulating End User Channel Termination and Transport Services in Remaining Regulated Counties and Study Areas**

24. Subject to a transition period, we propose to eliminate ex ante pricing regulation and tariffing obligations for end user channel termination services in all price cap study areas and rate-of-return study areas and transport services offered in rate-of-return study areas. We propose to deregulate these services in rate-of-return study areas regardless of whether those carriers elected and are subject to incentive regulation. Alternatively, we seek comment on eliminating rate regulation and tariffing obligations for all price cap carriers' lower-capacity TDM-based end user channel termination services and only electing rate-of-return carriers' lower-capacity TDM-based end user channel termination and transport services.

(Continued from previous page)

<sup>64</sup> See *id.* at 3486, para. 55; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10434, para. 85 (finding it appropriate to use cable broadband in the census blocks that comprise the electing carrier's study area as a proxy or competition based on the Commission's findings in the *Price Cap BDS Order*); *UNE Transport Order*, 34 FCC Rcd at 5769, para. 5 ("Competition has grown even more markedly in recent years as cable operators increasingly compete for all aspects of BDS, including TDM transport.").

<sup>65</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3488, para. 62.

<sup>66</sup> *2024 Communications Marketplace Report* at \*10, para. 14, Fig. 11.A.5; *2020 Communications Marketplace Report*, 36 FCC Rcd at 3001, para. 86, Fig. II.B.1.

<sup>67</sup> *2024 Communications Marketplace Report* at \*10, para. 14, Fig. 11.A.5.

<sup>68</sup> FCC, Industry Analysis Division, Office of Economics and Analytics, Internet Access Services: Status as of June 30, 2024, at 7, Fig. 4 (May 2025), <https://www.fcc.gov/internet-access-services-reports>.

<sup>69</sup> *2024 Communications Marketplace Report* at \*10, para. 14, Fig. 11.A.5; *2020 Communications Marketplace Report*, 36 FCC Rcd at 3001, para. 86, Fig. II.B.1.

<sup>70</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3488, para. 63 (explaining that such carriers "continue to invest and expand their network reach").

25. Does the fact that nearly two-thirds of counties served by price cap carriers are no longer subject to ex ante pricing regulation or tariffing obligations<sup>71</sup> suggest that competition is sufficiently ubiquitous in price cap areas to obviate the need to update the competitive market test results? As previously noted, there are 329 active electing rate-of-return study areas that still tariff lower-capacity end user channel termination services, and 761 active rate-of-return study areas that still tariff end user channel termination and transport services subject to rate-of-return regulation, and thus have obligations to prepare cost studies, and file tariffs with the Commission.<sup>72</sup> What effect would deregulating the remaining regulated counties and study areas have? What data could be used to estimate the costs and benefits of deregulating the remaining counties and study areas?

26. *End User Channel Termination Services.* We propose to end ex ante pricing regulation and tariffing of end user channel termination services provided by price cap and rate-of-return carriers. We propose revisions to section 61.201 of the Commission's rules that would require price cap carriers to detariff lower-capacity end user channel termination services subject to a 24-month transition.<sup>73</sup> We propose revisions to our part 61 rules that would require all rate-of-return carriers to detariff all end user channel termination services subject to a 24-month transition. We also propose revisions to section 61.50(k) of the Commission's rules that would require electing rate-of-return carriers to detariff their lower-capacity TDM-based end user channel termination services.<sup>74</sup>

27. Is the market for the end user channel termination services provided by price cap and rate-of-return carriers likely to be sufficiently competitive going forward such that the harms of ex ante pricing regulation would be greater than the harms that might occur were we to not regulate? If the Commission eliminated regulations associated with the provision of end user channel termination services, lower-capacity TDM-based services in particular, what effect would this have on prices and service availability and competition? To what extent do differences in the price cap and rate-of-return marketplaces justify different regulatory treatment for end user channel termination services? If we deregulate rates charged by rate-of-return carriers that did not elect incentive regulation, what effect would this have on BDS prices and service availability and competition in those study areas?

28. *Transport Services.* We also propose to end ex ante pricing regulation for rate-of-return carriers' transport services.<sup>75</sup> We propose revisions to our part 61 rules that would require rate-of-return carriers that are not subject to incentive regulation to detariff lower- and higher-capacity TDM-based transport services subject to a 24-month transition. We also propose revisions to section 61.50(k) of the Commission's rules that would require electing rate-of-return carriers to detariff their lower-capacity TDM-based transport services.<sup>76</sup>

29. Do the costs and burdens of continuing to regulate transport services offered by rate-of-return carriers outweigh the benefits? Why or why not? Should the Commission treat TDM-based

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<sup>71</sup> *Supra* para. 13; *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 (WCB 2017) (2017 Price Cap CMT Results PN); 2020 Triennial Update PN, 35 FCC Rcd at 131; 2023 Triennial Update PN, 38 FCC Rcd at 457; 2020 Census Bureau Tallies, *supra* note 39.

<sup>72</sup> *Supra* para. 13 and note 42.

<sup>73</sup> 47 CFR § 61.201; Appx. A.

<sup>74</sup> 47 CFR § 61.50(k); Appx. A.

<sup>75</sup> In 2018, two commenters supported nationwide relief from ex ante pricing regulation for rate-of-return carriers' TDM-based transport services. See ITTA—The Voice of America's Broadband Providers and USTelecom—The Broadband Association Comments, WC Docket Nos. 17-144, 16-143, and 05-25, at 6-13 (rec. Feb. 8, 2019) (ITTA and USTelecom Comments).

<sup>76</sup> 47 CFR § 61.50(k); Appx. A.

transport provided by rate-of-return carriers that continue to receive cost-based legacy universal service support differently? Why or why not? Do the costs and burdens of continuing to regulate lower-capacity TDM-based transport provided by electing rate-of-return carriers outweigh the benefits? Why or why not? Does the analysis support treating price cap carriers' transport services and rate-of-return carriers' transport services equally?

30. *Market Efficiencies.* What benefits have commenters observed resulting from deregulation of end user channel termination and transport services? What benefits have commenters observed resulting from deregulation in areas deemed competitive under the competitive market tests? Are there any harms commenters have observed in deregulated areas? Some commenters have suggested that there has been an increase in prices for DS1s and DS3s and/or discontinuance of those services without offering alternatives such as IP-based services.<sup>77</sup> To the extent these claims are valid, are the markets for these services sufficiently competitive such that the harms of ex ante pricing regulation outweigh the harms from deregulation and detariffing these services?

31. Are these markets sufficiently competitive to maintain just and reasonable rates, terms, and conditions for BDS? If the Commission deregulated, what effect would this have on prices, service availability, and competition? If we detariff and remove ex ante pricing regulation of end-user channel termination and transport services nationwide, would sections 201, 202, and 208 of the Act be sufficient to protect consumers from unjust and unreasonable rates, charges, and practices?<sup>78</sup> Commenters are encouraged to provide evidence and data to support their arguments.

32. *Electing Rate-of-Return Carriers.* As an alternative to the removal of ex ante pricing regulation for all rate-of-return carriers' BDS, should the Commission instead consider whether to subject electing rate-of-return carriers' lower-capacity TDM-based end-user channel termination and transport services to a competitive market test?<sup>79</sup> If so, should the Commission mirror the structure of the competitive market tests it adopted previously? Should the same test be used for both end-user channel termination services and transport services? Some commenters have argued that a competitive market test for TDM-based transport services "should be structured in a manner that is characterized by lower thresholds for electing rate-of-return carriers to demonstrate transport competition than the competitive market test the Commission adopted for end user channel termination services."<sup>80</sup> Do commenters agree? Why or why not? Should the Commission simply deregulate and detariff electing rate-of-return carriers' lower-capacity TDM-based BDS?

33. *Rate-of-Return Carriers Not Subject to Incentive Regulation.* As part of the Commission's deregulatory approach, we propose to eliminate ex ante rate regulation and tariffing obligations for rate-of-return carriers that are not subject to incentive regulation, including carriers receiving legacy cost-based universal service support.<sup>81</sup> What are the costs and benefits of this approach?

<sup>77</sup> See Letter from Tamar Finn, Counsel to Bandwidth, Inc., Cooley LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-17 et al., a 2 (filed Mar. 7, 2025) (noting "extreme price increases for DS1s/DS3s"); see also Letter from Tamar Finn, Counsel to Bandwidth, Inc., Cooley LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 25-45 (filed Feb. 28, 2025).

<sup>78</sup> After removing ex ante pricing regulation for packed-based and higher-capacity TDM-based BDS offerings previously, the Commission has continued to maintain oversight of those services pursuant to the Commission's authority under sections 201, 202, and 208 of the Act. See, e.g., *Price Cap BDS Order*, 32 FCC Rcd at 3500, 3502, paras. 89, 93; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10405, para. 6; 47 U.S.C. §§ 201, 202, 208.

<sup>79</sup> See *Rate-of-Return FNPRM*, 33 FCC Rcd at 10457-58, paras. 157-162.

<sup>80</sup> Comments of ITTA and USTelecom, WC Docket Nos. 17-144, 16-143, 05-25, at 14 (rec. Feb. 8, 2019).

<sup>81</sup> Rate-of-return carriers not electing to receive model-based or fixed support, and that are not affiliates of price cap carriers, may receive cost-based universal service support through two legacy universal service support mechanisms: Connect America Fund Broadband Loop Support (CAF BLS) and High-Cost Loop Support (HCLS). *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Report and Order, 38 FCC Rcd 12876, 12876-77, para. 2.

(continued....)

Do the costs of rate regulation and tariffing BDS offered by rate-of-return carriers receiving legacy universal service support outweigh the benefits? If the Commission deregulates BDS provided by rate-of-return carriers nationwide, does this obviate the need to have a voluntary incentive regulation framework under section 61.50 of the Commission's rules? Does eliminating ex ante rate regulation and tariffing obligations for rate-of-return carriers receiving legacy universal service support raise cost-shifting concerns? Are there measures the Commission could take to avoid any potential system-gaming opportunities if we deregulate and detariff BDS offerings provided by rate-of-return carriers receiving legacy universal service support? Are there other deregulatory approaches the Commission should consider with respect to end user channel termination and transport services offered by rate-of-return carriers receiving legacy universal service support? What are the costs and benefits of any proposed approaches? Are there BDS offerings provided by rate-of-return carriers beyond TDM-based end user channel termination and transport that the Commission should consider deregulating and detariffing and what are the costs and benefits of any proposals?

34. *Eliminating the Competitive Market Tests.* Our proposal above to deregulate and detariff BDS nationwide would obviate the need to conduct the competitive market tests, accordingly, we propose to eliminate the competitive market tests in sections 61.50(j) and 69.803 of the Commission's rules and seek comment on this approach. Is competition sufficiently pervasive and ubiquitous in price cap and rate-of-return study areas that it obviates the need for the competitive market tests? Do the costs of running the tests outweigh the benefits?

35. In 2017, the Commission concluded that price cap "incumbent LEC market power has been in many cases largely eliminated, and elsewhere is declining thanks to increased competition in business data services markets."<sup>82</sup> One of the Commission's rationales for proposing a competitive market test was to determine whether incumbent LEC market power continued to exist.<sup>83</sup> Does the competitive market test effectively measure market power? Is there evidence that suggests incumbent LECs exercise market power (i.e., the power to control price) in the provision of end user channel termination services, particularly lower-capacity services? Is there evidence that significant network deployment of BDS, particularly lower-capacity BDS at or below the level of a DS3, to end users is being leveraged in ways that prevent abuses by incumbent LECs of market power?<sup>84</sup>

36. When the Commission adopted the competitive market test for electing rate-of-return carriers, it recognized that "a relatively small percentage of electing carriers' study areas will be deemed competitive," which was "consistent with the rural nature and nascent deployment of cable in many eligible carriers' study areas."<sup>85</sup> Is this still true today in rate-of-return study areas nationwide? There are 28 total rate-of-return study areas (out of 1,107 study areas) that were deemed competitive under the competitive market test.<sup>86</sup> Is the relatively low number of competitive rate-of-return study areas indicative of a lack of competition in those study areas? Why or why not? Or does the low number suggest that the competitive market test has not functioned as the Commission anticipated? In regulated rate-of-return study areas, is there evidence that ex ante pricing regulation and tariffing distorts market

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See 47 CFR §§ 54.901-54.903 (CAF BLS), 54.1301-54.1310 (HCLS). Rate-of-return carriers also may receive Connect America Fund Intercarrier Compensation Replacement (CAF ICC) support which is not based on costs. See 47 CFR § 54.304.

<sup>82</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3499, para. 84.

<sup>83</sup> See *Price Cap BDS FNPRM*, 31 FCC Rcd at 4796-97, para. 269.

<sup>84</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3468, para. 15.

<sup>85</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10436-37, para. 93.

<sup>86</sup> Seventeen active rate-of-return study areas elected incentive regulation for their BDS and were deemed competitive under the competitive market test.

incentives and causes harms? For instance, has the maintenance of regulation on TDM-based BDS inhibited the deployment of more advanced IP-based services?

### C. Implementation

#### 1. Forbearance

37. To effectuate these proposed deregulatory actions, we propose to grant forbearance under section 10 of the Act from the application of section 203 tariffing requirements for price cap and rate-of-return carriers in their provision of end user channel termination services nationwide and for rate-of-return carriers in their provision of transport services nationwide.<sup>87</sup> We seek comment on this proposal.

38. Specifically, we propose to detariff price cap carriers' TDM-based lower-capacity (DS1 and DS3) end user channel termination services in the remaining regulated counties by granting forbearance from section 203 tariffing obligations. We propose to detariff electing rate-of-return carriers' TDM-based lower-capacity (DS1 and DS3) end user channel termination and transport services by granting forbearance from section 203 tariffing obligations. We also propose to grant rate-of-return carriers forbearance from section 203 tariffing requirements in the provision of end user channel termination services and transport services and other BDS on a nationwide basis.<sup>88</sup> Our proposed forbearance applies to rate-of-return carriers that did not elect, or were ineligible to elect, incentive regulation, including rate-of-return carriers receiving legacy universal service support. We seek comment on this proposal. The Commission granted electing rate-of-return carriers forbearance from tariffing obligations with respect to packet-based and higher-capacity TDM BDS and lower-capacity TDM-based end user channel termination services in study areas deemed competitive.<sup>89</sup> The Commission also granted forbearance from parts 32, 63, 64, 65, and 69 cost assignment rules,<sup>90</sup> part 36 separations rules,<sup>91</sup> and section 54.1305 reporting requirements for electing rate-of-return carriers' TDM-based end user channel termination and transport services.<sup>92</sup> We similarly propose to grant forbearance from these rules to rate-of-return carriers receiving model-based or fixed universal service support for their TDM-based end user channel termination and transport services and other BDS nationwide and we seek comment on this proposal.

39. Would forbearance for these services meet the statutory criteria set by section 10 of the Act?<sup>93</sup> Why or why not? Would forbearance promote competitive market conditions? Would detariffing

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<sup>87</sup> 47 U.S.C. § 160(a).

<sup>88</sup> By "other BDS," we include Ethernet, asynchronous transfer mode (ATM), frame relay, optical carrier, and other packet-based end user channel termination services and transport services currently subject to ex ante rate regulation and tariffed by rate-of-return carriers.

<sup>89</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10445, para. 120.

<sup>90</sup> *Id.* at 10447-51, paras. 125-37. The Commission defined the term "Cost Assignment Rules" to include various rules from Parts 32, 63, 64, 65, and 69 of the Commission's rules and section 220(a)(2) of the Act that "generally require carriers to assign costs to build and maintain the network and revenues from services provided to specific categories." *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, WC Docket No. 12-61 et al., Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7628, 7646, para. 31 (2013) (*USTelecom Forbearance Order*), *aff'd sub nom Verizon v. FCC*, 770 F.3d 961 (D.C. Cir. 2013). The rules the Commission included in the term "cost assignment rules" in the *Rate-of-Return BDS Order* are listed in Appendix B of the *USTelecom Forbearance Order*. See *id.* at 7747-48, Appx. B; see *Rate-of-Return BDS Order*, 33 FCC Rcd at 10447, para. 126 n.325.

<sup>91</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10409-10, para. 16; see *id.* at 10422-59, paras. 45-59.

<sup>92</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10450-51, paras. 136-137; 47 CFR § 54.1305.

<sup>93</sup> 47 U.S.C. § 160(a).

reduce compliance costs, increase regulatory flexibility, increase incentives to invest in innovative products and services, or otherwise be in the public interest? Why or why not? Are the tariffing requirements no longer necessary to ensure just and reasonable BDS rates? Are tariffing requirements no longer necessary to protect consumers in the BDS market? Are there other rules for which the Commission must or should grant forbearance in connection with our deregulatory proposals here? In the alternative, we seek comment on granting forbearance from tariffing obligations to electing rate-of-return carriers' lower-capacity TDM-based end user channel termination and transport services, or solely to lower-capacity TDM-based transport services.

40. Most rate-of-return carriers establish rates for BDS by participating in the National Exchange Carrier Association, Inc. (NECA) traffic-sensitive tariff and traffic-sensitive pool.<sup>94</sup> NECA sets BDS rates based on aggregate costs projected to earn the authorized rate-of-return.<sup>95</sup> In the *Rate-of-Return BDS Order*, the Commission required electing rate-of-return carriers participating in the NECA traffic-sensitive tariff pool for their BDS to remove these services from the pool since those services will be subject to incentive regulation.<sup>96</sup> We similarly propose to require these rate-of-return carriers participating in the NECA traffic-sensitive tariff pool to remove their BDS from the pool since they will no longer tariff these services. Consistent with the *Rate-of-Return BDS Order*, we propose to allow rate-of-return carriers exiting the NECA traffic-sensitive tariff pool to participate in NECA tariffs for services other than BDS.<sup>97</sup> We seek comment on the costs and benefits of this approach.

## 2. Transition Mechanism and Timing

41. We propose mandatory detariffing of remaining regulated end user channel termination and transport services after a 24-month transition, during which we will allow permissive tariffing.<sup>98</sup> This is a shorter period than the Commission provided in the *Price Cap BDS Order* and *Rate-of-Return BDS Order*, but we anticipate that it will provide incumbent LECs sufficient time to adapt their BDS operations to a detariffed regime, particularly since incumbent LECs have already undertaken some BDS detariffing.<sup>99</sup> We seek comment on this proposal. Under our proposal, during the transition period, the Commission would accept new tariffs and revisions to existing tariffs for affected services.<sup>100</sup> And, apart from the rate freeze discussed below, carriers would no longer be required to comply with ex ante pricing regulation for the affected services. At the conclusion of the transition period, no price cap carrier or rate-of-return carrier may file or maintain any interstate tariffs for the affected BDS.<sup>101</sup> We seek comment on these proposals.

42. We seek comment on whether 24 months is an appropriate length for the transition period. In the *Price Cap BDS Order*, the Commission established a 36-month transition period that began on the effective date of the order (60 days after Federal Register publication).<sup>102</sup> And in the *Rate-of-Return BDS Order*, the Commission established a 36-month transition that began on the date incentive

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<sup>94</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10416-17, para. 34.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* at 10414-15, para. 29.

<sup>97</sup> *See id.* at 10416-17, para. 34 n.92.

<sup>98</sup> *See Price Cap BDS Order*, 32 FCC Rcd at 3533, para. 166; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10452, para. 140.

<sup>99</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3533, para. 166; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10452, para. 140.

<sup>100</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3533, para. 169.

<sup>101</sup> *Id.*; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10452, para. 144.

<sup>102</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3533, para. 167.

regulation became effective for electing rate-of-return carriers, either July 1, 2019 or July 1, 2020 or after accepting future offers of A-CAM or other fixed support.<sup>103</sup> In that order, the Commission also established a 36-month transition for detariffing lower-capacity end user channel termination services in study areas that are newly deemed competitive.<sup>104</sup> The Commission also required price cap and rate-of-return carriers to freeze tariffed rates for BDS subject to detariffing for six months after the effective date of the *Price Cap BDS Order* and six months after the date the incentive regulation becomes effective, respectively.<sup>105</sup> The Commission structured the transition in this way “in light of the need for an adequate transition to ensure that small businesses will have time to adjust to the new regulatory conditions.”<sup>106</sup>

43. For the same reasons, we propose to adopt a similar 6-month rate freeze and seek comment on this proposal. Because a significant number of carriers already have detariffed most of their BDS,<sup>107</sup> we propose a slightly abbreviated transition period of 24-months instead of 36-months and seek comment on this approach. Should the Commission adopt a longer transition for rate-of-return carriers and, if so, how long would be an appropriate transition? Should we adopt a 24-month transition for rate-of-return carriers to exit the NECA traffic-sensitive pool for their BDS?<sup>108</sup> Why or why not? Should we continue a staged transition for rate-of-return carriers that need to exit the NECA traffic-sensitive pool for their BDS, such as requiring them to exit the pool within 12 months, subject to permissive detariffing, and mandatory detariffing after 24 months? What are the costs and benefits of this approach?

44. During this transition, should the Commission permit or require rate-of-return carriers receiving legacy universal service support to transition from rate-of-return to incentive regulation for their BDS under section 61.50 of the Commission’s rules? What are the costs and benefits of these approaches? Are these approaches feasible in light of the fact that those carriers still calculate universal service support based on costs? Are there potential cost-shifting concerns under this approach that would inflate legacy universal service support without network investments? Are there measures the Commission could take to avoid these cost-shifting concerns?

#### **D. Necessary Rule Changes**

45. In Appendix A, we propose rules that would effectuate the deregulation of price cap carriers’ and rate-of-return carriers’ end user channel termination services and rate-of-return carriers’ transport services proposed above. We seek comment on these proposed rules. We also seek comment on any other specific rule changes or new rules necessitated by the deregulation proposed today after consideration of the record. Any comments proposing new or amended rules should include, as part of the commenter’s submission, a draft rule or markup of an existing rule.

#### **E. Retaining Voluntary Incentive Regulation for Rate-of-Return Carriers**

46. Alternatively, we seek comment on the continuing role of the Commission’s voluntary incentive regulation framework for electing rate-of-return carriers. Incentive regulation is intended to replicate the beneficial incentives of competition, encouraging carriers to be more efficient by lowering costs to realize higher profits. Rate-of-return regulation, by contrast, incentivizes carriers to inflate their costs and rate base and make inefficiently high use of capital inputs<sup>109</sup> and imposes regulatory burdens on

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<sup>103</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10452, para. 141.

<sup>104</sup> *Id.* at 10465, Appx. A.

<sup>105</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3533, para. 167; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10452, para. 141.

<sup>106</sup> *Id.*

<sup>107</sup> See *2024 BDS Elections PN*, 39 FCC Rcd at 7099; *2017 Price Cap CMT Results PN*, 32 FCC Rcd at 3966; *2020 Triennial Update PN*, 35 FCC Rcd at 131; *2023 Triennial Update PN*, 38 FCC Rcd at 457.

<sup>108</sup> See *Rate-of-Return BDS Order*, 33 FCC Rcd at 10414-15, para. 29.



carriers requiring them to prepare cost studies accounting for their costs. Over the last three decades, the Commission has provided incentives to encourage incumbent LECs to move from inefficient rate-of-return regulation to more efficient incentive regulation.<sup>110</sup>

47. Should we maintain the Commission's incentive regulation framework? Should we require carriers receiving model-based or fixed universal service support to adopt incentive regulation for their BDS, particularly during a transition period to deregulation?<sup>111</sup> Should we require carriers that receive legacy universal service support and do not participate in the NECA traffic-sensitive pool to adopt incentive regulation for their BDS? Or should we require all rate-of-return carriers to exit the NECA traffic-sensitive pool and adopt incentive regulation for their BDS? Should we continue to make the election of incentive regulation voluntary as the Commission did in 2018<sup>112</sup> and allow additional opportunities for rate-of-return carriers receiving model-based or fixed universal service support to elect incentive regulation? We seek comment on the timing of such elections. For example, should we provide an annual opportunity or only at fixed times during the transition period?<sup>113</sup> What are the costs and benefits of the different approaches? Are there measures the Commission could take that would appropriately incentivize carriers and avoid the risk of system-gaming?

#### **F. Retaining the Competitive Market Tests**

48. In the alternative, we propose to update the competitive market tests to rely on Broadband Data Collection (BDC) program data if we determine, based on the record, that limited regulation of BDS remains necessary. In addition to seeking comment on the data transition, we seek comment on how to make the competitive market tests more effective in measuring competition.

49. *Measuring Competition.* Staff analysis in Appendix B suggests that the competitive market tests may be underreporting competition.<sup>114</sup> Based on a cable-only measure used in the current tests, approximately 7.6% (96 counties) of the remaining 1,264 regulated price cap counties and 1.5% (5 study areas) of the remaining 329 regulated study areas meet the competitive thresholds.<sup>115</sup> When the competitive market tests are expanded to include competition from cable, fiber, and DSL technologies, approximately 63.2% (800 counties) of regulated price cap counties and 40.2% (131 study areas) of regulated rate-of-return study areas meet the 75% competitive thresholds to be deemed competitive under

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<sup>109</sup> *Rate-of-Return BDS NPRM*, 33 FCC Rcd at 4279, para. 2. See Harvey Averch and Leland L. Johnson, *Behavior of the Firm Under Regulatory Constraint*, 52 Amer. Econ. Rev. 1052 (1962) (examining the effects of rate-of-return regulation).

<sup>110</sup> *Rate-of-Return BDS NPRM*, 33 FCC Rcd at 4278, para. 1. Under the Commission's incentive regulation framework for rate-of-return carriers, while maintaining rate regulation and tariffing obligations, the Commission granted carriers regulatory relief allowing carriers to offer volume or term discounts, contract tariffs, and the ability to file tariffs on one days' notice. See 47 CFR § 61.50(b).

<sup>111</sup> See *Rate-of-Return BDS NPRM*, 33 FCC Rcd at 4283, para. 10 (seeking comment on whether the Commission should make incentive regulation election mandatory for all A-CAM carriers).

<sup>112</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10411-12, para. 21 (noting that by making the election voluntary, the Commission would "ensure that only carriers that can achieve sufficient efficiencies are likely to elect incentive regulation").

<sup>113</sup> Previously when it adopted rate-of-return incentive regulation, the Commission rejected an annual election opportunity, in part because it would incentivize carriers "to increase their operating costs and rate base under rate-of-return regulation in order to raise rates prior to electing incentive regulation, then realize additional profits by cutting costs under incentive regulation at the expense of ratepayers." *Rate-of-Return BDS Order*, 33 FCC Rcd at 10412-13, paras. 23-24.

<sup>114</sup> See Appx. B.

<sup>115</sup> See *id.*

the existing tests.<sup>116</sup> This analysis indicates the competitive market tests may not sufficiently capture the extent of competition in a county or study area. Do commenters agree? Why or why not?

50. We seek comment on updates or other modifications to the competitive market tests if the Commission continues to use the tests. Have the Commission's competitive market tests advanced the Commission's policy objectives as originally intended? Why or why not? In light of marketplace and technological changes since the tests were adopted, what changes to the tests would commenters propose and why? Specifically, given the significant growth in broadband availability and services, should the Commission reevaluate the competitive thresholds adopted for the competitive market tests<sup>117</sup> or revise the tests to measure competitive effects from additional providers (e.g., fiber-to-the-premises, copper, and terrestrial fixed wireless providers)? What are the costs and benefits of such changes? Are there other updates to the competitive market tests the Commission should consider to modernize and improve the tests to ensure that the tests result in deregulation in areas where competition is likely to constrain rates to just and reasonable levels?

51. We also seek comment on ultimately pausing or waiving the competitive market test altogether. If, at the conclusion of this proceeding, after careful consideration of the record, the Commission decides to completely deregulate and detariff BDS then would it be necessary to permanently pause or waive the competitive market tests?

52. *Data Transition.* In the event the Commission retains the competitive market tests, it will be necessary to transition those tests to the use of the BDC data given the sunset of the Form 477 data.<sup>118</sup> We seek comment on how to facilitate that transition. In particular, we seek comment on revising sections 61.50(j)(2) (for rate-of-return carriers) and 69.803(c)(1) (for price cap carriers) of the Commission's rules to incorporate the use of BDC data in the competitive market tests.<sup>119</sup>

53. BDC data provide geographic locations within the Broadband Serviceable Location Fabric (Fabric) where fixed broadband service is or can be installed, specifying the technology and the maximum download and upload speeds.<sup>120</sup> We seek comment on conducting the triennial update to the competitive market tests using BDC broadband availability data on wireline or fixed wireless service. The Commission focused the competitive market tests on the competitive presence from cable operators offering broadband service regardless of the technology. Are there other broadband services and/or competing providers that we should consider when updating the results to the competitive market tests? BDC data measure fiber-to-the-premises (FTTP), copper (DSL), and terrestrial fixed wireless.<sup>121</sup> Should we deem census blocks competitive if they are served by providers offering FTTP, copper, terrestrial fixed wireless, or other broadband services?

54. We next seek comment on the appropriate speed capacity for the price cap competitive market test. While the Commission adopted a 10/1 Mbps capacity threshold for the competitive market test for areas served by electing rate-of-return carriers,<sup>122</sup> it did not specify a similar threshold for the price

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<sup>116</sup> See *id.*

<sup>117</sup> See, e.g., *Price Cap BDS Order*, 32 FCC Rcd at 3522, para. 137 (adopting a 75% threshold for the competitive market test).

<sup>118</sup> See *Form 477 Sunset Order*, 37 FCC Rcd at 14957, para. 1.

<sup>119</sup> *Id.* at 14962-63, para. 14; 47 CFR §§ 61.50, 69.803. The proposed rules are set forth in Appx. A.

<sup>120</sup> *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 22-270, 2024 Section 706 Report, 39 FCC Rcd 3247, 3275, para. 54 (2024) (2024 Section 706 Report).

<sup>121</sup> FCC, *Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data*, at 21-31, § 6 (Nov. 25, 2024) (BDC Specifications), <https://www.fcc.gov/sites/default/files/bdc-availability-data-specifications.pdf>.

cap competitive market test.<sup>123</sup> If we maintain the competitive market test, we would propose to revise section 69.803(c)(1) to adopt a 10/1 Mbps download/upload capacity threshold for the price cap competitive market test consistent with the rate-of-return competitive market test. We seek comment on this approach.

55. We also seek comment on whether to continue to treat as competitive census blocks that report business or residential BDC broadband availability. In the current tests, any cable presence, regardless of whether the cable operator was shown to be serving business or residential customers, is treated as competitive, given the high sunk costs of broadband network investment.<sup>124</sup> The BDC data show whether a particular service is residential-only, business-only, and mixed-use customers.<sup>125</sup> We seek comment on continuing to treat census blocks as competitive if BDC data indicate broadband availability from cable operators or other providers, regardless of customer type.<sup>126</sup>

56. Should we continue to measure presence of a competitive provider based on census blocks rather than locations even though BDC data capture locations?<sup>127</sup> Consistent with the existing approach, in areas served by price cap carriers, a county will be deemed competitive if BDC data demonstrate that 75% of the census blocks within the county have broadband service by a competing provider in at least one location, and in areas served by electing rate-of-return carriers, a study area will be deemed competitive if BDC data show that 75% of the census blocks within the study area have broadband service by a competing provider in at least one location. We also seek comment on excluding from the denominator of these calculations any census blocks without broadband serviceable locations because otherwise unpopulated areas without demand would distort the results and undercount competition.

57. Alternatively, should we update the competitive market tests based on location-level calculations? Should we treat a county or study area as competitive if a set threshold percentage of locations report BDC broadband connection availability offered by a competing provider? Or should we consider adopting a competitive threshold based on locations within a half-mile of BDS demand?<sup>128</sup> If so, should we apply the current 75% competitive threshold or another threshold?

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<sup>122</sup> 47 CFR § 61.50; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10436, para. 91.

<sup>123</sup> In the *Price Cap BDS Order*, however, the Commission recognized competitive pressure on incumbent LECs from cable companies offering “[e]thernet services with symmetrical speeds up to 10 Mbps over their within-footprint near ubiquitous DOCSIS 3.0 EoHFC networks.” *Price Cap BDS Order*, 32 FCC Rcd at 3485, para. 55.

<sup>124</sup> *Id.* at 3521, para. 133 (“Accordingly, we treat as competitive census blocks in price cap incumbent LEC study areas that the Form 477 data show have a cable presence—whether serving business or residential clients.”).

<sup>125</sup> See BDC Specifications, *supra* note 121, at 21-31, § 6. Further, the Fabric assigns each location to one of four building types: residential, business, mixed-use, or group quarters.

<sup>126</sup> See BDC Specifications, *supra* note 121, at 21-31, § 6.

<sup>127</sup> *2024 Section 706 Report*, 39 FCC Rcd at 3275, para. 54 (recognizing that “BDC is the most granular, detailed collection of broadband service availability data the FCC has ever gathered or released, depicting location-level information on fixed broadband Internet access service availability across the United States”). Measuring competition by census blocks, as opposed to locations, closely aligns with the careful balancing of the costs and benefits of pricing regulation when the Commission adopted the 75% competitive thresholds. See *Price Cap BDS Order*, 32 FCC Rcd at 3521, para. 133; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10434, para. 85.

<sup>128</sup> See *Price Cap BDS Order*, 32 FCC Rcd at 3479-82, paras. 40-45 (concluding that that relevant geographic market for purposes of the Commission’s market analysis of the BDS market is within a half mile of a location with BDS demand).

### G. Cost-Benefit Analysis

58. We seek comment on the benefits and costs of ending ex ante pricing regulation and tariffing obligations for BDS. How will the deregulation of rates charged for legacy TDM-based BDS in counties and study areas currently deemed non-competitive affect market prices for these services? Are there potential costs to deregulating legacy TDM-based BDS in these markets? We seek comment on whether ex ante pricing regulation remains effective or necessary to discipline provider prices in markets deemed non-competitive. Absent rate regulation, would incumbent LECs still wield market power such that deregulating these areas would lead to higher prices?

59. We also seek comment on the likely benefits of eliminating pricing regulation and tariffing obligations for incumbent LECs in currently non-competitive areas. What regulatory costs will incumbent LECs avoid as a result of such deregulation? For example, what are the likely savings in labor hours resulting from not having to file tariffs or comply with price regulation? Our preliminary analysis indicates that annual cost savings from reduced compliance and filings costs associated with detariffing will amount to approximately \$1 million.<sup>129</sup> We seek comment on this analysis and result.

60. In addition, what are the likely benefits to competition of relaxing these regulations for incumbent LECs? To what extent will incumbent LECs be better able to respond to competitive initiatives by cable companies and competing providers of BDS, and to what extent will consumers benefit as a result? Relatedly, to what extent might deregulation reduce possible price coordination facilitated by the incumbent LEC's tariffing obligations among broadband competitors in areas still subject to pricing and tariffing regulation?

61. We also seek comment on whether, and to what extent, the competitive market tests accurately measure the extent of competition in these markets. As discussed above, if our tests understate the extent of competition for both price cap and rate-of-return carriers, what are the relative costs and benefits of deregulation if the areas that are deregulated are effectively competitive already?

62. *Market for Legacy TDM-Based Services.* Appendix B reports the results of an initial staff analysis of BDS competition in currently non-competitive areas using BDC data as of June 30, 2024. The inclusion of competing cable, fiber, and DSL technologies increases the number of counties that would be deemed competitive. Based on the inclusion of these additional technologies, an additional approximate 63% (800 counties) of the remaining 1,264 regulated price cap counties and 40% (131 study areas) of the remaining 329 regulated study areas meet the competitive thresholds for deregulation.<sup>130</sup> The additional competitive pressure from providers utilizing these technologies suggests that prices would not be impacted significantly by deregulation in a large share of areas currently deemed non-competitive based on the previous iteration of the competitive market test. The few remaining non-competitive areas would still experience pricing pressure from fixed wireless and satellite, limiting any potential price increases

<sup>129</sup> Using the most recent tariff-related Paperwork Reduction Act burden estimates, we estimate that the total industry burden for reporting requirements related to interstate and intrastate tariff filings, as well as reporting requirements for supporting materials related to interstate and intrastate tariff filings and related certification requirements, is approximately \$12.4 million annually. Of this total, the burden estimate for interstate tariff filings, which would be directly impacted by the deregulatory actions proposed in this Notice, is approximately \$4.5 million. This includes not only tariffs related to legacy BDS but also switched access, common line, and other tariff filing categories. As such, we estimate that legacy BDS tariffs account for 25% of all remaining interstate tariff filings, and therefore 25% of the \$4.5 million annual burden. We conservatively round this estimate down to \$1 million. See National Exchange Carrier Association, Inc. F.C.C. No. 5, Transmittal No. 1748, Vol. 5, Exh. 9, workpaper 15 of 19 (filed June 16, 2025) (indicating the share of NECA total pool annual BDS revenues that is attributable to legacy TDM-based services is approximately 30%). Having no better estimate for the share of interstate tariff filings related to legacy BDS, we rely on NECA pooled revenues as an allocator of filing costs. Because interstate switched access tariffs are also included in the \$4.5 million annual interstate burden estimate, the share of total interstate tariff burden attributable to legacy BDS is lower than 30%.

<sup>130</sup> See Appx. B.

from deregulation. We seek comment on this analysis and this tentative conclusion. Do the original competitive market tests understate true competition such that our updated analysis is a necessary step to inform needed deregulatory action? As in our discussion above, we seek comment on any other necessary improvements or modifications to this analysis to measure competition for BDS.

63. We seek comment on the change in demand for legacy TDM-based BDS in recent years. How quickly, and to what extent, is demand for these legacy services shrinking relative to demand for packet-based services? For price cap and rate-of-return carriers currently under ex ante pricing regulation, how have these revenues changed vis-à-vis revenues for packet-based services over the past five years? We encourage commenters to submit any data and reports on the size of this market segment. Specifically, are there recent estimates of annual nationwide revenues for legacy TDM-based services? Are there data that capture the revenues of only the regulated services in areas where ex ante price regulation is still in effect? Do pricing dynamics differ between end user channel termination and transport services? That is, would we need separate approaches to understand the impact of deregulation on each service? If these services have become largely obsolete, would the economic impact of deregulation, even in areas where incumbent LECs exhibit market power, be limited?

64. *Additional Considerations.* In the absence of rate regulation and tariffing obligations, we seek comment on what proportion of legacy TDM-based BDS arrangements would likely shift to alternative commercial services offered by incumbent LECs or other competitors, and at what prices. If commenters expect that prices for commercial alternatives to lower capacity TDM-based BDS will be higher or lower than the current rates, we seek comment on why that would be so.

65. What are the expected impacts to investment of each proposal discussed above? If incumbent LECs increase their investment in fiber or next-generation services as a result of any relief, how should we account for such increased investment in any updated cost-benefit analysis? To the extent that the elimination of certain lower capacity TDM-based BDS would have economic effects on end users, we seek comment as to the magnitude of these effects and how we should quantify them. For example, how can we quantify the benefits of migrating users to next-generation services or higher speed networks? Should we confine our analysis to consumers that currently rely on lower capacity TDM-based BDS or take into account the network effects that migrations to new networks could have on all consumers?

66. We also seek comment on any other benefits and costs of our proposed actions. More generally, for each proposal discussed above, we seek comment on the respective costs and benefits of particular alternative rules or approaches as compared to retaining the current rate regulation and tariffing requirements.

#### IV. ORDER

67. On our own motion, we temporarily waive sections 61.50(j)(2) and 69.803(c) of the Commission's rules, which require the Bureau to update the competitive market test results for rate-of-return carriers electing incentive regulation and price cap carriers every three years until the Commission completes its review of the record developed in response to today's *Notice*.<sup>131</sup>

68. The Commission's rules require the Bureau to release the results of the triennial updates to the competitive market tests no later than three years following the effective date of the previous test.<sup>132</sup> The results of the last competitive market test were released on January 31, 2023.<sup>133</sup> In the *Form 477 Sunset Order*, the Commission directed the Bureau and the Office of Economics and Analytics (OEA) to update the competitive market test results using BDC data beginning with the 2026 update.<sup>134</sup>

<sup>131</sup> 47 CFR §§ 61.50(j)(2); 69.803(c).

<sup>132</sup> *Id.*

<sup>133</sup> 2023 *Triennial Update PN*, 38 FCC Red at 457.

Accordingly, absent waiver, the next competitive market test results must be released by January 31, 2026 and rely on BDC data.

69. We find good cause to temporarily waive sections 61.50(j)(2) and 69.803(c) of the Commission's rules.<sup>135</sup> Considering that the next competitive market tests must be based on a new dataset that the Commission has not used before, and the fact that we are proposing a wide range of deregulatory actions in today's *Notice*, including eliminating the competitive market tests, we find that special circumstances exist and the public interest would be best served by temporarily waiving the triennial updates to the competitive market tests to allow stakeholders to fully engage with today's *Notice* and to allow the Commission time to consider the record that develops. Taking into account hardship, equity, and effective implementation of overall policy, our good cause finding is bolstered by the fact that relatively few price cap counties and rate-of-return study areas have been deemed competitive in the last two triennial reviews suggesting the 2026 update might prove a futile exercise, and there will be minimal impact from waiting for completion of this proceeding.<sup>136</sup> On balance then, we find that the burdens of conducting the 2026 triennial update, as the Commission considers the continuing need for these updates, outweigh the benefits of doing so. Accordingly, we temporarily waive sections 61.50(j)(2) and 69.803(c) of the Commission's rules until we direct the Bureau and the OEA to conduct the next triennial updates to the competitive market tests.<sup>137</sup>

## V. PROCEDURAL MATTERS

70. *Deadlines and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document in **WC Docket Nos. 21-17 and 17-144**.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs/filings/standard>.<sup>138</sup>
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.
  - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050

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<sup>134</sup> *Form 477 Sunset Order*, 37 FCC Rcd at 14962-63, para. 14.

<sup>135</sup> Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. In evaluating whether good cause exists for waiver of its rules, the Commission considers whether the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The Commission may also take into account concerns of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore only appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

<sup>136</sup> *2020 Triennial Update PN*, 35 FCC Rcd at 135-36 (finding that an additional 7 price cap counties and 7 rate-of-return study areas were deemed competitive); *2023 Triennial Update PN*, 38 FCC Rcd at 460-61 (finding that an additional 15 price cap counties and an additional 5 rate-of-return study areas were deemed competitive).

<sup>137</sup> At that time, the Commission will also determine the appropriate vintage of BDC data to use.

<sup>138</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

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

72. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

73. *Ex Parte Requirements.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>139</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.

74. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>140</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>141</sup> Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential rule and policy changes contained in this Notice of Proposed Rulemaking and Third Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix C. The Commission invites the general public, particularly small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the Notice of Proposed Rulemaking and Third Further Notice of Proposed Rulemaking indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

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<sup>139</sup> 47 CFR § 1.1200 *et seq.*

<sup>140</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>141</sup> 5 U.S.C. § 605(b).



75. *Paperwork Reduction Act.* This document does not contain proposed new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.<sup>142</sup> In addition, therefore, it does not contain any proposed new or substantively modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.<sup>143</sup> This document may contain proposed nonsubstantive changes to information collection requirements that were previously reviewed and approved by the Office of Management and Budget (OMB) pursuant to the PRA.<sup>144</sup> Any such modifications to these information collections will be submitted to OMB pursuant to OMB's nonsubstantive modification process.<sup>145</sup>

76. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act of 2023, Public Law 118-9,<sup>146</sup> a brief plain-language summary of this Notice will be published on: <https://www.fcc.gov/proposed-rulemakings>.

## VI. ORDERING CLAUSES

77. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i)-(j), 10, 201(b), 202(a), 214, 303(r), 403, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i)-(j), 160, 201(b), 202(a), 214, 303(r), 403, 1302, this Notice of Proposed Rulemaking, Third Further Notice of Proposed Rulemaking, and Order IS ADOPTED.<sup>147</sup>

78. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i)-(j), 10, 201(b), 202(a), 214, and 303(r), of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i)-(j), 160, 201(b), 202(a), 214, 303(r), 1302, and section 1.3 of the Commission's rules, 47 CFR § 1.3, that sections 61.50(j)(2) and 69.803(c) of the Commission's rules, 47 CFR §§ 61.50(j)(2), 69.803(c), ARE WAIVED to the extent described above in the Order, and that the Order SHALL BE EFFECTIVE upon release pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1).

79. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking and Third Further Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

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<sup>142</sup> See 44 U.S.C. § 3501 *et seq.*

<sup>143</sup> See 44 U.S.C. § 3506(c)(4).

<sup>144</sup> See Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143 *et al.*, Report and Order, *et al.*, OMB Control No. 3060-0760; Part 61, Tariffs (Other than Tariff Review Plan), OMB Control No. 3060-0298; Part 61, Tariff Review Plans, OMB Control No. 3060-0400; Part 32, Uniform System of Accounts, OMB Control No. 3060-1247; Section 61.49, Price Cap Performance Review for Local Exchange Carriers, CC Docket 94-1, FCC 99-206 (New Services), OMB Control No. 3060-0770.

<sup>145</sup> See Office of Information and Regulatory Affairs, Flexibilities under the Paperwork Reduction Act for Compliance with Information Collection Requirements (July 22, 2016), [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/inforeg/inforeg/prs\\_flexibilities\\_memo\\_7\\_22\\_16\\_final.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/inforeg/inforeg/prs_flexibilities_memo_7_22_16_final.pdf); *see also* Empowering Broadband Consumers Through Transparency, CG Docket No. 22-2, Order, 38 FCC Rcd 6193, 6194-95, paras. 7-8 (CGB 2023).

<sup>146</sup> 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act of 2023, Pub. L. No. 118-9, 137 Stat. 55 (2023), amended section 553(b) of the Administrative Procedure Act.

<sup>147</sup> Pursuant to Executive Order 14215, 90 Fed. Reg. 10447 (Feb. 20, 2025), this regulatory action has been determined to be not significant under Executive Order 12866, 58 Fed. Reg. 68708 (Dec. 28, 1993).



80. IT IS FURTHER ORDERED that, pursuant to Section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(i), that notice be given to each state commission of the above rulemaking proceeding, and that the Wireline Competition Bureau shall serve a copy of this Notice of Proposed Rulemaking, Third Further Notice of Proposed Rulemaking, and Order on each state commission.

81. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

### PROPOSED RULES

#### PART 61 – TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201-205, 403, unless otherwise noted.

#### Subpart E – General Rules for Dominant Carriers

2. Section 61.50 is amended by removing and reserving paragraph (j), removing and reserving paragraph (k)(3)(ii), and adding paragraphs (k)(3)(iii) and (k)(4) to read as follows:

**§ 61.50 Regulation of business data services offered by rate-of-return carriers electing incentive regulation.**

\* \* \* \* \*

(j) [Removed and Reserved]

(k) \* \* \*

(3) \* \* \*

(i) \* \* \* \* \*

(ii) [Removed and Reserved]

(iii) all time division multiplexed end user channel termination business data services at or below a DS3 bandwidth and time division multiplexed transport business data services at or below a DS3 bandwidth within twenty-four months after [INSERT EFFECTIVE DATE FROM PUBLICATION IN FEDERAL REGISTER].

(4) Time division multiplexed end user channel termination business data services at or below a DS3 bandwidth and time division multiplexed transport business data services at or below a DS3 bandwidth detariffed in accordance with paragraph (k)(3)(iii) of this section shall not be subject to ex ante pricing regulation.

\* \* \* \* \*

#### Subpart K – Detariffing of Business Data Services

3. Section 61.201 is amended by adding paragraph (a)(6) and revising paragraph (b) to read as follows:

**§ 61.201 Detariffing of price cap local exchange carriers.**

\* \* \* \* \*

(a) \* \* \*

(6) all tariffed DS1 and DS3 end user channel terminations not yet deemed competitive as defined in § 69.801 of this chapter.

(b) The detariffing referenced in paragraph (a)(6) of this section must be completed twenty-four months after [INSERT EFFECTIVE DATE FROM PUBLICATION IN FEDERAL REGISTER], but detariffing can take place at any time before the twenty-four months is completed.

4. Section 61.205 is added to read as follows:

**§ 61.205 Detariffing of rate-of-return local exchange carriers.**

\* \* \* \* \*

(a) Rate-of-return local exchange carriers shall remove from their interstate tariffs:

- (1) End user channel terminations, and all other tariffed special access services; and
- (2) Any transport services as defined in § 69.801(j) of this chapter.

(b) Rate-of-return local exchange carriers shall remove their business data services from the NECA Traffic Sensitive Pool but may continue to participate in the NECA Traffic Sensitive Pool for access services other than business data services.

(c) The detariffing must be completed twenty-four months after [INSERT EFFECTIVE DATE FROM PUBLICATION IN FEDERAL REGISTER], but detariffing can take place at any time before the twenty-four months is completed.

**PART 69 – ACCESS CHARGES**

5. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 204, 218, 220, 254, 403.

**Subpart I – Business Data Services**

6. Section 69.801 is amended by removing and reserving paragraphs (b), (f), and (g) and amended by revising paragraph (e) to read as follows:

**69.801 Definitions.**

\* \* \* \* \*

(b) [Removed and Reserved]

\* \* \* \* \*

(e) *Grandfathered market.* A county for which a price cap local exchange carrier obtained Phase II relief pursuant to § 69.711(c).

(f) [Removed and Reserved]

(g) [Removed and Reserved]

\* \* \* \* \*

7. Remove and reserve section 69.803.

**§ 69.803** [Removed and Reserved].

8. Remove and reserve section 69.805.

**§ 69.805** [Removed and Reserved].

9. Section 69.807 is amended by removing and reserving paragraph (c) and revising paragraph (b) to read as follows:

**§ 69.807 Regulatory Relief.**

\* \* \* \* \*

(b) Price cap local exchange carrier end user channel terminations subject to detariffing in § 61.201(a)(6) and (c) of this chapter are granted the following regulatory relief:

- (1) Elimination of the rate structure requirements in subpart B of this part;
- (2) Elimination of price cap regulation; and

(3) Elimination of tariffing requirements as specified in § 61.201 of this chapter.

(c) [Removed and Reserved]

## APPENDIX B

### Updated Competitive Market Tests Results

1. In this appendix, we present preliminary results of the competitive market tests based on fixed broadband availability data collected through the BDC. We present several variations of the test for both, price cap and rate-of-return carriers.

2. Conducting the competitive market tests using Form 477 data was a three step process. First, we determined the number of census blocks in the relevant geographic area (counties for price cap carriers, study areas for rate-of-return carriers) where a provider reports making service available via coaxial cable. Second, we determined the total number of census blocks in the relevant geographic area. Finally, we divided the number of blocks with broadband availability by the total number of blocks in the geography. If the resulting ratio was at least 75%, that geography was deemed competitive and was no longer to be subject to rate regulation and tariffing obligations. If this ratio was below 75%, the geography was deemed non-competitive, remained subject to rate regulation and tariffing obligations, and would be eligible for testing in the next triennial update.

3. *Transitioning to BDC Data.* The BDC requires all facilities-based providers of fixed broadband to identify locations where they make service available and to report characteristics of the service including the technology used, the maximum advertised download speed, and the maximum advertised upload speed. These filings allow us to create a list of all locations in the United States where a provider reports to make broadband available using either coaxial cable or hybrid fiber-coaxial cable. For the competitive market test affecting rate-of-return carriers, we further restrict this list to those locations that receive a service of at least 10/1 Mbps delivered via coaxial cable or hybrid fiber-coaxial cable.

4. As part of the BDC, the Commission developed the Broadband Serviceable Location Fabric (Fabric) as a dataset of all locations where fixed broadband has been, or could be, installed.<sup>1</sup> The Fabric contains numerous characteristics of the locations including the latitude and longitude, street address, and census block. We use this information to assign each location to the relevant county or study area for use in the competitive market tests. This information is also used to determine which census blocks do not contain any locations and exclude them from our analyses.

5. To make the BDC data more comparable to the Form 477 data, we ignore the additional granularity offered by the BDC and aggregate the data from locations to census blocks. To do so, we assume that if at least one location in a census block is served, then we count the entire census block as being served. This is the same assumption that underpinned the Form 477 data collection without collecting the location-level data.

6. *Price Cap Carriers.* Of the 3,234 counties in the 2020 decennial census, 1,264 counties have not yet been deemed competitive and are currently subject to rate regulation and tariffing obligations. Table 1 identifies the number of counties that would be considered competitive or non-competitive when including a variety of technologies in the revised competitive market tests. The first option includes services delivered via coaxial cable which mirrors the prior competitive market tests, the second option adds services delivered via optical carrier, and the third option adds services delivered via copper wire.

7. Of the 1,264 counties that have not previously been deemed competitive and currently subject to rate regulation and tariffing obligations, only 96 (8%) of them would be deemed competitive using the methodology explained above. If the test also included fixed broadband services delivered via fiber, an additional 543 (43%) of counties would be deemed competitive. Including fixed broadband

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<sup>1</sup> 47 CFR § 1.7007.

services delivered via copper would allow an additional 257 counties, or 800 counties total, to be deemed competitive.

**Table 1 – Competitive Market Test Results for Price Cap Carriers**

<b>Technologies Included</b>	<b>Regulated Counties</b>	<b>Competitive</b>	<b>Non-Competitive</b>
Cable	1,264	96	1,168
Cable, Fiber	1,264	543	721
Cable, Fiber, Copper	1,264	800	464

8. *Rate-of-Return Carriers.* Currently, there are 346 active rate-of-return study areas that have elected incentive regulation. Of these, 17 were previously deemed competitive and are not subject to rate and tariffing obligations, while the remaining 329 study areas are regulated and should be tested as part of the 2026 triennial update. Our analysis shows that only 5 (1.5%) of these study areas would be deemed competitive. Similar to our analyses for price cap carriers, we report results for two additional tests that include services delivered via fiber and copper. Including these technologies would provide regulatory relief to an additional 89 and 126 study areas, respectively.

**Table 2 – Competitive Market Test Results for Rate-of-Return Carriers**

<b>Technologies Included</b>	<b>Regulated Study Areas</b>	<b>Competitive</b>	<b>Non-Competitive</b>
Cable	329	5	324
Cable, Fiber	329	94	235
Cable, Fiber, Copper	329	131	198

## APPENDIX C

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>149</sup> the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the *Notice of Proposed Rulemaking* and *Third Further Notice of Proposed Rulemaking (Notice)* assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>150</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>151</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. In response to the growth of competition for business data services (BDS), the Commission has, in recent years, streamlined its regulation of these services to promote long-term innovation and investment in response to the growth of competition for these services.<sup>152</sup> In 2017, the Commission reduced ex ante pricing regulation for some BDS provided by price cap incumbent local exchange carriers (LECs or carriers), concluding that reducing government intervention and allowing market forces to continue working would spur entry, innovation, and competition in the markets served by price cap carriers.<sup>153</sup> In 2018, the Commission took similar deregulatory actions to relieve some BDS provided by rate-of-return carriers receiving Alternative Connect America Cost Model (A-CAM) support or other forms of fixed universal service fund support (electing rate-of-return carriers) fixed high-cost universal service support from ex ante pricing regulation.<sup>154</sup> In both cases, the Commission adopted a regulatory framework governing BDS that would apply ex ante pricing regulation only where competition is expected to materially fail to ensure just and reasonable rates measured by competitive market tests.<sup>155</sup>

3. In today's *Notice*, the Commission continues its efforts to streamline its regulation of BDS to promote investment and competition. Specifically, we propose to end ex ante pricing regulation and tariffing for end user channel termination services and transport services provided by incumbent local exchange carriers. Alternatively, we propose to end ex ante pricing regulation for Time Division Multiplexing (TDM)-based DS1 and DS3 end user channel termination services provided by price cap and electing rate-of-return carriers in areas that, to date, have not yet been deemed competitive under the competitive market tests. We also propose to take the same actions with regard to TDM-based DS1 and DS3 transport services provided by electing rate-of-return carriers. In doing so, we seek comment on the

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<sup>149</sup> 5 U.S.C. §§ 601 *et seq.*, as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

<sup>150</sup> *Id.* § 603(a).

<sup>151</sup> *Id.*

<sup>152</sup> See, e.g., *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., 32 FCC Rcd 3459, 3461, para. 1 (2017) (*Price Cap BDS Order*), remanded in part *sub nom.*, *Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F. 3d 991 (8th Cir. 2019) (highlighting the “dynamic competitive realities” in the business data services marketplace); *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. 103-04 (2018) (*Rate-of-Return BDS Order*).

<sup>153</sup> *Price Cap BDS Order*, 32 FCC Rcd at 3462, para. 5.

<sup>154</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10405, para. 3.

<sup>155</sup> 47 CFR §§ 61.50(j), 69.803(c).

efficacy of the competitive market tests in measuring competition. As an alternative to removing ex ante regulation, we seek comment on possible changes to the competitive market tests to better align those tests with current market conditions and on transitioning the competitive market tests from using Form 477 data to using Broadband Data Collection (BDC) data to update the results of the competitive market tests as required by sections 61.50 and 69.803 of the Commission's rules resulting from the sunset of the collection of broadband deployment data through Form 477 in December 2022.<sup>156</sup>

## **B. Legal Basis**

4. The proposed action is authorized pursuant to sections 1, 4(i)-(j), 10, 201(b), 202(a), 214, 303(r), 403, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i)-(j), 160, 201(b), 202(a), 214, 303(r), 1302.

## **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>157</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>158</sup> The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.<sup>159</sup>

6. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe three broad groups of small entities that could be directly affected by our actions.<sup>160</sup> In general, a small business is an independent business having fewer than 500 employees.<sup>161</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses.<sup>162</sup> Next, "small organizations" are not-for-profit enterprises that are independently owned and operated and not dominant their field.<sup>163</sup> While we do not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees.<sup>164</sup> Finally, "small governmental jurisdictions" are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand.<sup>165</sup> Based on the 2022 U.S.

<sup>156</sup> 47 CFR §§ 61.50(j), 69.803(c); *Establishing the Digital Opportunity Data Collection et al.*, WC Docket No. 19-195 et al., Order, 37 FCC Rcd 14957, 14960, para. 10 (2022) (*Form 477 Sunset Order*).

<sup>157</sup> 5 U.S.C. § 603(b)(3).

<sup>158</sup> *Id.* § 601(6).

<sup>159</sup> 13 CFR 121.903.

<sup>160</sup> 5 U.S.C. § 601(3)-(6).

<sup>161</sup> See SBA, Office of Advocacy, *Frequently Asked Questions About Small Business* (July 23, 2024), [https://advocacy.sba.gov/wp-content/uploads/2024/12/Frequently-Asked-Questions-About-Small-Business\\_2024-508.pdf](https://advocacy.sba.gov/wp-content/uploads/2024/12/Frequently-Asked-Questions-About-Small-Business_2024-508.pdf).

<sup>162</sup> *Id.*

<sup>163</sup> 5 U.S.C. § 601(4).

<sup>164</sup> See SBA, Office of Advocacy, *Small Business Facts, Spotlight on Nonprofits* (July 2019), <https://advocacy.sba.gov/2019/07/25/small-business-facts-spotlight-on-nonprofits/>.

<sup>165</sup> 5 U.S.C. § 601(5).



Census of Governments data, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.<sup>166</sup>

7. The rules proposed in the Further Notice will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System<sup>167</sup> codes and corresponding SBA size standard.<sup>168</sup>

Regulated Industry	NAICS Code	SBA Size Standard	Total Firms <sup>169</sup>	Small Firms <sup>170</sup>	% Small Firms in Industry
All Other Telecommunications <sup>171</sup>	517810	\$40 million	1,079	1,039	96.29
Telecommunications Resellers <sup>172</sup>	517121	1500 Employees	1,386	1,375	99.21
Wired Telecommunications Carriers <sup>173</sup>	517111	1,500 employees	3,054	2,964	97.05
Wireless Telecommunications Carriers (except Satellite) <sup>174 175</sup>	517112	1,500 employees	2,893	2,837	98.06

8. Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, we conclude that the adopted rules will impact a substantial number of small entities. Where available, we provide additional information regarding the number of potentially affected entities in the above identified industries, and information for other affected entities, as follows.

<sup>166</sup> See U.S. Census Bureau, 2022 Census of Governments, Organization Tables, Tbls. 1-11, <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html> (last visited July 15, 2025).

<sup>167</sup> The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. See [www.census.gov/NAICS](https://www.census.gov/NAICS) for further details regarding the NAICS codes identified in this chart.

<sup>168</sup> The size standards in this chart are set forth in 13 CFR 121.201, by six digit North American Industrial Classification System (NAICS) code.

<sup>169</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, and *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVfirm.

<sup>170</sup> *Id.*

<sup>171</sup> Affected Entities in this industry include Internet Service Providers (Non-Broadband).

<sup>172</sup> Affected Entities in this industry include Local Resellers, Toll Resellers, and Wireless Resellers.

<sup>173</sup> Affected Entities in this industry include Competitive Local Exchange Carriers (CLECs), Incumbent Local Exchange Carriers (Incumbent LECs), Interexchange Carriers (IXCs), Local Exchange Carriers (LECs), Other Toll Carriers, and Wired Broadband Internet Access Service Providers.

<sup>174</sup> Affected Entities in this industry include Wireless Broadband Internet Access Service Providers, Wireless Carriers and Service Providers, Wireless Communications Service, and Wireless Telephony.

<sup>175</sup> Affected Entities in this industry that also have a Commission small business size standard involving eligibility for bidding credits and installment payments in the auction of licenses codified in the Commission's rules include: Wireless Communications Services (47 CFR §§ 27.201 – 27.1601).

2024 Universal Service Monitoring Report Telecommunications Service Provider Data <sup>176</sup>  (Data as of December 2023)	SBA Size Standard (1500 Employees)		
	Affected Entity	Total # FCC Form 499A Filers	Small Firms  % Small Entities
	Competitive Local Exchange Carriers (CLECs)	3,729	3,576 95.90
	Incumbent Local Exchange Carriers (Incumbent LECs)	1,175	917 78.04
	Interexchange Carriers (IXCs)	113	95 84.07
	Local Exchange Carriers (LECs).	4,904	4,493 91.62
	Local Resellers	222	217 97.75
	Other Toll Carriers	74	71 95.95
	Toll Resellers	411	398 96.84
	Telecommunications Resellers	633	615 97.16
	Wired Telecommunications Carriers	4,682	4,276 91.33
	Wireless Telecommunications Carriers (except Satellite)	585	498 85.13
	Wireless Telephony	326	247 75.77

9. *Wired Broadband Internet Access Service Providers (Wired ISPs).*<sup>177</sup> According to Commission data on Internet access services as of June 30, 2024, nationwide there were approximately 2,204 providers of connections over 200 kbps in at least one direction using various wireline technologies.<sup>178</sup>

10. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*<sup>179</sup> According to Commission data on Internet access services as of June 30, 2024, nationwide there were approximately 1,157 fixed wireless and 52 mobile wireless providers of connections over 200 kbps in at least one direction.<sup>180</sup>

<sup>176</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2024), <https://docs.fcc.gov/public/attachments/DOC-408848A1.pdf>.

<sup>177</sup> Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

<sup>178</sup> See Federal Communications Commission, Internet Access Services: Status as of June 30, 2024 at 40, Fig. 41 (*IAS Status 2024*), Industry Analysis Division, Office of Economics & Analytics (May 2025). As of June 30, 2022, FCC Form 477 classifies all fixed wired connections into three mutually exclusive technology categories: (1) Copper Wire, (2) Coaxial Cable (hybrid fiber-coaxial), and (3) Optical Carrier (fiber to the premises). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports..>

<sup>179</sup> Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

<sup>180</sup> See *IAS Status 2024*, Fig. 41.

11. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.<sup>181</sup> Based on industry data, there are about 420 cable companies in the U.S.<sup>182</sup> Of these, only seven have more than 400,000 subscribers.<sup>183</sup> In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>184</sup> Based on industry data, there are about 4,139 cable systems (headends) in the U.S.<sup>185</sup> Of these, about 639 have more than 15,000 subscribers.<sup>186</sup> Accordingly, the Commission estimates that the majority of cable companies and cable systems are small under this size standard.

12. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."<sup>187</sup> For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator.<sup>188</sup> Based on industry data, only six cable system operators have more than 498,000 subscribers.<sup>189</sup> Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard.

**D. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

13. The RFA directs agencies to describe the economic impact of proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.<sup>190</sup>

14. In the *Notice*, the Commission seeks comment on proposals to reduce its regulation of BDS. In particular, the Commission seeks comment on ending ex ante pricing regulation for end user channel termination services provided by price cap and rate-of-return carriers. We also propose to take the same actions with regard to transport services provided by rate-of-return carriers. To effectuate these

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<sup>181</sup> 47 CFR § 76.901(d).

<sup>182</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>183</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

<sup>184</sup> 47 CFR § 76.901(c).

<sup>185</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

<sup>186</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

<sup>187</sup> 47 U.S.C. § 543(m)(2).

<sup>188</sup> *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB 2023) (2023 *Subscriber Threshold PN*). In this Public Notice, the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* This threshold will remain in effect until the Commission issues a superseding Public Notice. See 47 CFR § 76.901(e)(1).

<sup>189</sup> S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 06/23Q* (last visited Sept. 27, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

<sup>190</sup> 5 U.S.C. § 603(b)(4).

proposals, the Commission proposes to grant forbearance from tariffing and other requirements, and require mandatory detariffing of the affected BDS following a transition. As an alternative, we seek comment on modernizing the competitive market tests and transitioning those tests to using BDC data. The *Notice* proposes mandatory detariffing of remaining end user channel termination and transport services after a 24-month transition to allow incumbent LECs sufficient time to adapt their BDS operations to a detariffing regime. This would be similar to previous detariffing actions, however with less time to comply because many carriers have already detariffed their BDS. In proposing these reforms, the Commission seeks comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens. Because we propose to streamline our regulation of BDS, the Commission estimates that any compliance costs for small entities will be minimal.

15. It is possible that compliance with mandatory detariffing, if adopted, may impact some small entities and may include new or reduced administrative processes, which the Commission does not expect will require small entities to hire professionals to comply. For small carriers that may be affected, obligations may include changes to existing tariffs during the transition and eventual removal of tariffs for the affected BDS. However, these impacts may be mitigated by the deregulatory nature of the proposed reforms, which would relieve affected small carriers from having to tariff their BDS. We seek comment on potential costs and benefits associated with the Commission's proposals, including information that will allow the Commission to further quantify the costs of compliance for small entities to determine whether it will be necessary for small entities to hire professionals to comply with the proposed rules, if adopted.

**E. Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities**

16. The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities.<sup>191</sup> The discussion is required to include alternatives such as: "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."<sup>192</sup>

17. The *Notice* seeks comment from all interested parties on the proposals and what potential burdens would be imposed by ending ex ante regulation for end user channel termination services and transport services. As an alternative to ending ex ante pricing regulation, the *Notice* seeks comment on how the Commission can modernize the competitive market tests to make them more accurate based on current data in light of technological and marketplace developments. This includes comments on whether BDC data, which currently rely on broadband availability data submitted by cable operators, is sufficient to capture competition in an area, or whether alternatively the tests should be revised to measure competitive effects from additional competitive providers, such as providers of fiber-to-the-premises, copper, and terrestrial fixed wireless. As another alternative, the Commission seeks comment on encouraging more small and other incumbent local exchange carriers subject to rate-of-return regulation for their BDS to transition these services to the Commission's incentive regulation framework with pricing flexibility and regulatory relief. The *Notice* also proposes a 24-month transition period to allow small and other incumbent LECs time to adapt their business data services operations to a detariffing regime, and seeks comment on whether an alternative timeline of 36-months, similar to previous detariffing orders, would be more appropriate for carriers.

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<sup>191</sup> *Id.* § 603(c).

<sup>192</sup> *Id.* § 603(c)(1)-(4).

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

18. None.

**STATEMENT OF  
CHAIRMAN BRENDAN CARR**

Re: *Price Cap Business Data Services; Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, Notice of Proposed Rulemaking, Third Further Notice of Proposed Rulemaking, and Order, WC Docket Nos. 21-17, 17-144.

When I rolled out our Build America Agenda, I said that we would deliver on all of the project's goals by implementing smart policies and carrying out a comprehensive deregulatory agenda. That's because deregulation and building go hand-in-hand—when you cut red tape, you free up resources to build.

As we've surveyed the landscape to identify rules that might be preventing the deployment of modernized services, one area we identified was the marketplace for business data services.

Many businesses and government institutions subscribe to broadband services for things like cloud access, backhaul, and creating private networks. This market was once dominated by incumbent carriers who enjoyed local monopolies. As the market evolved and competition moved in, the Commission's rules were slow to keep pace. For years, the Commission over-regulated this market, propping up legacy technologies and crushing the incentives for private operators to make network upgrades.

Under Chairman Pai, the Commission took a series of actions to pave the way for deregulating these services. But it's time to take a fresh look at the market as a whole.

With this action, we propose further deregulating business data services currently subject to ex ante pricing regulation. We will also commence the first comprehensive review of this market in over half a decade with the goal of identifying additional areas for regulatory relief. Our goal is to make sure carriers have the right incentives to invest in the technologies of the future, not the past.