



This document is scheduled to be published in the Federal Register on 11/29/2018 and available online at <https://federalregister.gov/d/2018-25786>, and on [govinfo.gov](https://www.govinfo.gov)

6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[WC Docket Nos. 17-144, 16-143, 05-25; FCC 18-146]

Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers; Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comment on proposals to eliminate ex ante pricing regulation for price cap incumbent LECs' provision of TDM and other transport business data services. The Commission also seeks comment on the conditions under which ex ante pricing regulations should be eliminated for lower capacity TDM transport business data services offerings by rate-of-return carriers opting in to the Commission's new light-touch regulatory framework. With these steps, the Commission continues its ongoing efforts to modernize regulations for the dynamic and evolving business data services market.

DATES: Comments are due on or before [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.] Reply comments are due on or before [INSERT DATE 75 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: Federal Communications Commission, 445 12th St., SW, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Justin Faulb, Wireline Competition Bureau, Pricing Policy Division, at 202-418-1589 or via e-mail at justin.faulb@fcc.gov

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, released October 24, 2018. A full-text copy may be obtained at the following internet address:

<https://drupal7admin.fcc.gov/document/fcc-spurs-competition-rural-business-data-services-0>

BACKGROUND:

1. In light of the Eighth Circuit Court’s recent decision upholding the bulk of the Commission’s price cap BDS Order, but finding that the Commission provided insufficient notice of its decision to end ex ante pricing regulation of TDM transport services offered by price cap carriers, we now propose to eliminate ex ante pricing regulation of price cap incumbent LECs’ provision of TDM transport and other transport (i.e., non-end user channel termination) business data services and seek comment on this proposal. We also take this opportunity to seek comment on the circumstances under which we should eliminate ex ante pricing regulation of lower capacity TDM transport services (at or below a DS3 bandwidth) offered by those rate-of-return carriers that receive fixed high-cost universal service support and elect the lighter touch regulatory framework.

A. Eliminating Ex Ante Pricing Regulation of TDM Transport Services Provided by Price Cap Carriers

2. For the better part of the last two decades, in response to increasing competition for TDM transport in areas of the country served by price cap carriers, the Commission has consistently worked to modify and streamline regulation of such services. Most TDM transport offered by price cap carriers has been subject to some form of pricing flexibility as a result of the Commission’s 1999 Pricing Flexibility Order. In adopting the Pricing Flexibility Order, the Commission acknowledged that, because transport services encompass

higher capacity middle-mile segments of the network, facility-based entry was more likely to occur for those services than for end user channel terminations, and therefore set lower thresholds for carriers to demonstrate competition and obtain pricing flexibility. Although the Commission suspended further grants of pricing flexibility in 2012, it did not revoke any pricing flexibility previously granted.

3. In the BDS Order, the Commission evaluated the record before it and concluded that there was sufficient competition to justify nationwide pricing relief for TDM transport offered by price cap carriers. The record shows, for example, that some major urban areas have as many as 28 transport competitors while second-tier MSAs commonly have more than a dozen competitors. More broadly, the record shows that in 2013, 92.1% of buildings served with BDS demand in price cap territories were within a half mile of competitive fiber transport facilities. Further, the record shows that 89.6% of all price cap census blocks with BDS demand had at least one served building within a half mile of competitive fiber. Thus, the Commission found that “the vast majority” of locations featuring BDS demand had competitive fiber within close proximity. The Commission added that its data were conservative given the limits of the 2015 Collection, and that the data in that collection are from 2013, and therefore necessarily understate the level of current competition.

4. On appeal, the Eighth Circuit Court largely affirmed the BDS Order, but found the Commission did not provide adequate notice on the narrow issue of ending ex ante pricing regulation of TDM transport services. The court vacated those portions of the BDS Order dealing with TDM transport and remanded them to the Commission for further action, which we initiate here.

5. The current record includes “strong evidence of substantial competition” in price cap TDM transport markets. In addition to showing that there is “widespread deployment of competitive transport networks” in price cap areas, the record also indicates that transport services are “typically higher volume services . . . which can more easily justify competitive investment and deployment.”

6. In light of the current record of substantial competition and competitive pressure on TDM transport services in price cap areas, we now propose to eliminate nationwide ex ante pricing regulation of price cap carriers’ TDM transport services and seek comment on our proposal. Specifically, we propose granting price cap carriers forbearance pursuant to section 10 of the Communications Act of 1934, as amended (the Act) from section 203 tariffing requirements for their TDM transport business data services and other transport special access service offerings. Consistent with the transition adopted in the BDS Order for packet-based and higher capacity TDM BDS, we propose permissive detariffing for price cap carriers’ TDM transport services for a transition period, followed thereafter by mandatory detariffing of these business data services. We propose to end the transition period for price cap carriers’ TDM transport services on the same date that the transition period mandated by the BDS Order for price cap carriers’ other BDS services is scheduled to end—August 1, 2020—to align these transition periods and simplify their administration. In addition, we propose, for six (6) months following the effective date of an order adopting final rules, to require price cap carriers to freeze the tariffed rates for their TDM transport services, as long as those services remain tariffed. We seek comment on these proposals.

7. We propose that during this transition, tariffing for these transport services will be permissive—the Commission will accept new tariffs and revisions to existing tariffs for the affected services. Apart from the rate freeze noted above, carriers will no longer be required to comply with price cap regulation for these services, and once the rules proposed in this Second Further Notice are effective, carriers that wish to continue filing tariffs under the permissive detariffing regime would be free to modify such tariffs to reflect the new regulatory structure outlined in this Second Further Notice for the affected services. We propose allowing price cap carriers to remove the relevant portions of their tariffs for the affected services at any time during the transition, and for the rate freeze to no longer apply to services that are not tariffed. We propose that once the transition ends, no price cap carrier may file or maintain any interstate tariffs for affected business data services. We seek comment on these proposals.

8. We also seek comment on our analysis of the TDM transport market for price cap carriers. To what extent does the Commission’s competitive analysis in the BDS Order continue to represent an accurate assessment of the competitive nature of the TDM transport market in price cap areas? Has the market for TDM transport in price cap areas changed materially since the Commission adopted the BDS Order? Is there evidence that competition for TDM transport has changed in these markets since the Commission last analyzed this market? Are there providers of TDM transport that were not identified by the 2015 Collection? How has this growth in competition impacted demand for TDM transport? In addition to the evidence the Commission previously considered in finding that there is sufficient competition to justify nationwide pricing relief for TDM transport offered by price cap carriers, there are indications that cable providers’ market share of lower speed business data services continues

to grow significantly. As a competitor, cable operators self-provision all aspects of their BDS, including transport functionality, and rarely, if ever, collocate at incumbent LEC end offices. This increased competition from cable operators is in addition to competition from other providers. Given that cable competition does not typically rely on the TDM transport provided by incumbent local exchange carriers because they have built out their own networks, how should we factor such competition into a comprehensive analysis of TDM transport competition in price cap areas? Additionally, to what extent has the increase in demand for packet-based business data services and the resulting decrease in demand for TDM services affected competition for TDM transport?

9. We seek comment on whether we should consider any alternatives to removing ex ante pricing regulation for TDM transport offered by price cap carriers to better align our regulation with the dynamic and evolving nature of the business data services market. Should we, for example, adopt a competitive market test to measure the competitiveness of TDM transport offerings in areas served by price cap carriers? If so, how should such a test be structured? Should such a test assess competition using the counties served by price cap carriers as the relevant geographic market, as we do with the competitive market test for price cap carriers' lower capacity TDM end user channel terminations? Alternatively, should we use the same competitive market test for TDM transport offerings of price cap carriers as we do for lower capacity TDM end user channel terminations offered by price cap carriers? If we adopt a competitive market test for TDM transport offered by price cap carriers, how should we implement the results of such a test? Should we adopt similar transition provisions as those we adopted for the competitive market test for end user channel terminations in the BDS Order?

10. We invite interested parties to submit any additional data or information regarding the state of competition for TDM transport services in price cap areas. Are there more current data available on the state of competition for TDM transport services that could enhance our analysis of this market? Are there any other ways of measuring or estimating competition for TDM transport in areas served by price cap carriers that have not already been used by the Commission? Are there other types of data that could represent a proxy for competition in the TDM transport market in areas served by price cap carriers? While the data in the 2015 Collection are not as current as some more recent sources, the collection nonetheless remains the most comprehensive source of data for business data services. We will therefore again make these data available to interested parties using the same procedures the Commission previously used.

B. Eliminating Ex Ante Pricing Regulation of Lower Capacity TDM Transport Provided by Carriers that Receive Fixed Universal Service Support and Elect Incentive Regulation for Their BDS Offerings

11. We also seek comment on providing a path to eliminating ex ante pricing regulation of lower capacity (i.e., at or below a DS3 bandwidth level) TDM transport services, including other transport (i.e., non-end user channel termination) special access services, offered by rate-of-return carriers that receive fixed high-cost universal service support, and elect our new lighter touch regulatory framework (electing carriers) for their BDS. In that framework, electing carriers' lower capacity circuit-based BDS, including their TDM transport and end user channel terminations, are converted to incentive regulation, and are offered subject to pricing flexibility that includes contract tariff pricing and term and volume discount plans. We also adopt a competitive market test for removing ex ante pricing regulation from

electing carriers' lower capacity TDM end user channel terminations. However, based on the current record, we declined to adopt a competitive market test for electing carriers' lower capacity TDM transport, nor did we eliminate all ex ante pricing regulation for lower capacity TDM transport provided by electing carriers. As the Commission explained in the Notice, competition for electing carriers' lower capacity TDM transport may not be as robust in the less dense and more rural study areas that rate-of-return carriers typically serve, compared to denser and more populated price cap study areas.

12. The Commission has long recognized transport is more competitive than end user channel terminations and required a different competitive showing for reduced pricing regulation. Given that we are proposing to eliminate ex ante pricing regulation of TDM transport services in price cap areas, we also seek further comment on whether, and under what circumstances, we should remove ex ante pricing regulation for electing carriers' lower capacity TDM transport. We previously declined to remove ex ante pricing regulation of TDM transport services because the record lacks data sufficient to justify such a step. We invite commenters to provide or identify data that would justify further pricing deregulation of electing carriers' lower capacity TDM transport.

13. If there are such data, should we use that data to adopt a competitive market test for determining whether to relieve electing carriers' lower capacity TDM transport of ex ante pricing regulation in a particular study area? Were we to adopt a competitive market test for electing carriers' lower capacity TDM transport, how should it be structured? Should such a test largely mirror the structure of the current electing carrier competitive market test for lower capacity TDM end user channel terminations?

14. If we adopt a competitive market test for lower capacity TDM transport offered by electing carriers, how should we implement the results of such a test? Should we adopt similar transition provisions as those we adopt for the competitive market test for electing carriers' lower capacity TDM end user channel terminations? Are there any reasons to structure the transition differently?

15. In the alternative, we seek comment on whether we should remove ex ante pricing regulations for lower capacity TDM transport offered by electing carriers nationwide. Is there data available that would show nationwide competition sufficient to remove ex ante pricing regulation? How would we analyze the data given the variability of competition in areas served by electing rate-of-return carriers? Is there evidence of competition for lower capacity TDM transport in these areas consistent with the competition the Commission determined was present in price cap areas nationwide?

16. We also seek comment on AT&T's recommendation that we base our decisions on data specific to electing carriers and their operating territories. We recognize that a large data collection would be a burden on rate-of-return carriers' limited resources, and we want to avoid imposing unnecessary regulatory burdens on them. We therefore request that commenters provide or identify additional data or other information relevant to the status of competition for lower capacity TDM transport in the study areas served by the rate-of-return carriers eligible to elect incentive regulation, including data on transport competition and competitive fiber deployment. Are there existing data collections that could be used as a proxy for the presence of lower capacity TDM transport competition in areas served by rate-of-return carriers eligible to elect incentive regulation? For example, in the BDS Order, the Commission

relied in part on competitive fiber maps, building locations, and Census data to assess competition for TDM transport in price cap areas. Alternatively, Petitioners submitted a study in the record of this proceeding that included certain types of demographic and competitive data that they contend are reasonable proxies for lower capacity TDM transport competition in their service areas. Parties should comment on the usefulness of these proxies and whether there are others that could provide a reasonable basis for Commission action.

1. Need for, and Objectives of, the Proposed Rules

17. In the FNPRMs, we propose changes to, and seek comment on, the appropriate regulatory treatment of TDM transport business data services (BDS) offerings offered by both price cap carriers and rate-of-return carriers that receive fixed universal service support and elect incentive regulation. In the FNPRMs, the Commission proposes to remove ex ante pricing regulation from TDM transport business data services offered by price cap carriers and seeks comment on doing so for rate-of-return carriers.

a. Legal Basis

18. The legal basis for any action that may be taken pursuant to the FNPRMs is contained in sections 1, 4(i), 10, and 201(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, and 201(b).

2. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

19. 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 and by the rule revisions on which the FNPRMs seek comment, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental

jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

a. Total Small Entities

20. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

21. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

22. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of

governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on these data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

b. Broadband Internet Access Service Providers

23. Internet Service Providers (Broadband). Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

c. Wireline Providers

24. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using

facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

25. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LEC services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. A total of 1,307 firms reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

26. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an

estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

27. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

28. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

29. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

30. Toll Resellers. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer

employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

31. Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the Second Further Notice.

32. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities.

d. Wireless Providers – Fixed and Mobile

33. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

34. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

35. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions.

36. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

e. Cable Service Providers

37. Because section 706 requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

38. Cable and Other Subscription Programming. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g. limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly, we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

39. Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standards 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. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

40. Cable System Operators (Telecom Act Standard). The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% 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." There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

41. All Other Telecommunications. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

3. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

42. The FNPRMs propose changes to, and seek comment on, the Commission’s regulatory treatment of lower capacity TDM transport business data services offered by price cap and certain rate-of-return carriers. The objective of the proposed modifications is to reduce the unnecessary regulatory burdens and inflexibility of BDS regulation for both price cap and for rate-of-return carriers, which are for the most part small businesses, when competition justifies reduced regulation. These proposed rule modifications would provide additional incentives for competitive entry, network investment and the migration to IP-based network technologies and services.

43. Specifically, the FNPRMs propose to eliminate ex ante pricing regulation and tariffing requirements for price cap carriers’ TDM transport BDS. This will eliminate reporting, recordkeeping,

and other compliance requirements for any price cap carrier. They also seek comment on whether to remove ex ante pricing regulation and tariffing requirements of TDM transport services offered by rate-of-return carriers that received fixed universal service support and elect incentive regulation. This change would impact the reporting, recordkeeping, and other compliance requirements for these rate-of-return carriers, nearly all of which are small entities.

4. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

44. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (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 rules 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.

45. The rule changes proposed by the FNPRMs would reduce the economic impact of the Commission's rules on price cap carriers and rate-of-return carriers that elect incentive regulation in the following ways. The Second Further Notice of Proposed Rulemaking proposes to free price cap carriers from ex ante pricing regulation for their TDM transport offerings, including the requirement to tariff their TDM transport services. The Further Notice of Proposed Rulemaking seeks comment on whether the Commission should do the same for TDM transport offered by rate-of-return carriers that received fixed universal support, or if the Commission should adopt a competitive market test for these carriers' TDM transport services. These rule changes would represent alternatives to the Commission's current rules that would significantly minimize the economic impact of those rules on price cap carriers and

electing rate-of-return carriers. Finally, we seek comment as to any additional economic burden incurred by small entities that may result from the rule changes proposed in the FNPRMs.

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

46. None.

II. PROCEDURAL MATTERS

47. 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 Dockets WC 17-144, 16-143, 05-25. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- 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 overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary: Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. 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 overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- 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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

48. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. 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.

49. Paperwork Reduction Act Analysis. This document may contain proposed new or modified information collection requirements subject to the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

50. Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (FNPRMs). 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 provided on the first page of the FNPRMs. The Commission will send a copy of the FNPRMs, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRMs and IRFA (or summaries thereof) will be published in the Federal Register.

III. ORDERING CLAUSES

51. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 10, and 201(b) of the Communication Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, and 201(b) that this Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ARE ADOPTED.

52. IT IS FURTHER ORDERED, that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects:

47 CFR Part 61 – Tariffs

Communications common carriers, Radio, Reporting and recordkeeping requirements,

Telegraph, Telephone.

47 CFR Part 69 – Access Charges

Communications common carriers, Reporting and recordkeeping requirements,

Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,

Federal Register Liaison Officer

Office of the Secretary.

PROPOSED RULES

The Federal Communications Commission seeks comment on a proposal to amend 47 CFR parts 61 and 69, as follows:

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.

PART 61 - TARIFFS

2. Section 61.201 is amended by revising paragraph (a)(3) to read:

§ 61.201 Detariffing of price cap local exchange carriers.

(a)(3) Transport services as defined in § 69.801 of this chapter;

PART 69 – ACCESS CHARGES

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

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Section 69.807 paragraph (a) is revised to read as follows:

§ 69.807 Regulatory relief.

- (a) Price cap local exchange carrier transport and end user channel terminations in markets deemed competitive and in grandfathered markets for a price cap carrier that was granted Phase II pricing flexibility prior to June 2017 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.

[FR Doc. 2018-25786 Filed: 11/28/2018 8:45 am; Publication Date: 11/29/2018]