



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU SEEKS FOCUSED ADDITIONAL COMMENT IN BUSINESS DATA SERVICES AND USTELECOM FORBEARANCE PETITION PROCEEDINGS AND REOPENS SECURE DATA ENCLAVE

WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593

Comments Due: 14 days after date of publication in Federal Register

Reply Comments Due: 21 days after date of publication in Federal Register

By this Public Notice, the Wireline Competition Bureau (Bureau) makes several announcements regarding the above-referenced dockets. *First*, the Bureau announces that it is supplementing the record in the price cap business data services (BDS) proceedings¹ with tables and accompanying information prepared by the Office of Economics and Analytics, derived from highly confidential data from the *2015 Data Collection*.² These tables and accompanying information show the distances from competitive provider fiber to incumbent local exchange carrier (LEC) wire centers and end user buildings with BDS demand in price cap areas (*April Data Tables*). The Bureau seeks focused public comment on the extent to which the *April Data Tables* inform the extent of competition and competitive pressure in the market for lower speed (DS3 and below) time division multiplexing (TDM) transport services in price cap areas.³

Second, to allow parties access to the *2015 Data Collection*, including the *April Data Tables*, and the opportunity to comment, the Bureau announces that it will (1) reopen the secure data enclave which will house these data upon publication of this Public Notice in the Federal Register; and (2) close it at the end of the comment and reply period established by this Public Notice, unless an interested party demonstrates a continuing need for access.⁴

¹ WCB Docket Nos. 16-143, 05-25; RM-10593.

² The *2015 Data Collection* is comprised of the data that the Commission collected from BDS providers and purchasers and certain “best efforts” providers in price cap areas for purposes of the price cap BDS proceeding. See *Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143 et al., Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 4723, 4737-43, paras. 29-37, 39-43 (2016).

³ See *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*, WC Docket Nos. 17-144, 16-143, 05-25, Report and Order, Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10453-57, paras. 148-56 (2018) (*Second Further Notice*); see also Comments of INCOMPAS, WC Docket Nos. 16-143, 05-25, at 8 (filed Feb. 8, 2019) (asserting that “distances between the fiber and ILEC end offices” is the relevant measure of competition).

⁴ The secure data enclave contains the data and information submitted in the *2015 Data Collection* as well as software for parties to analyze the data. Pursuant to the protective orders in the price cap BDS proceedings, the secure data enclave is the exclusive method for authorized parties to access and analyze highly confidential data submitted in the *2015 Data Collection*. The Commission contracted with NORC at the University of Chicago

Third, pending the resolution of any objections to the Bureau incorporating the *2015 Data Collection* into the record of the USTelecom Forbearance Petition proceeding,⁵ the Bureau announces that it will also incorporate the *April Data Tables* into the record of that proceeding. The Bureau will allow access to the secure data enclave for parties in the USTelecom Forbearance Petition proceeding subject to a forthcoming protective order.⁶

Fourth, the Bureau also seeks comment in the USTelecom Forbearance Petition proceeding on the extent to which the *2015 Data Collection*, including the *April Data Tables*, provide relevant information to evaluate USTelecom's request for forbearance from the requirements to provide transport as an unbundled network element (UNE)⁷ pursuant to section 251(c)(3) of the Act and section 51.319(d) of the Commission's rules.⁸ In addition, for the purposes of the USTelecom Forbearance Petition proceeding, the Bureau seeks comment on the public filings submitted in response to the *Second Further Notice and Further Notice* in the BDS proceedings, WC Docket Nos. 17-144, 16-143 and 05-25, since it was released on October 24, 2018.⁹

The Bureau will place the *April Data Tables* in the secure data enclave which, pursuant to the protective orders in the price cap BDS proceedings,¹⁰ is the exclusive method for accessing highly confidential data submitted as part of the *2015 Data Collection*. Parties seeking to access the *April Data Tables* for purposes of participating in the price cap BDS proceedings must follow the procedures provided for in the BDS Protective Orders in that proceeding for accessing highly confidential data. Those seeking access to the *April Data Tables* for purposes of participating in the USTelecom Forbearance Petition proceeding must follow the procedures set forth for accessing highly confidential data in the forthcoming protective order in that proceeding.¹¹

Participants in the price cap BDS proceedings previously authorized to access the secure data enclave pursuant to the Protective Orders in the price cap BDS proceedings may request renewed access by emailing SpecialAccess@fcc.gov. Parties that were not previously authorized to access the secure data enclave must file an Acknowledgement of Confidentiality requesting access and send a copy to

(NORC) to host the secure data enclave via a virtual private network and at NORC facilities in Bethesda, Maryland. See *Wireline Competition Bureau to Close and Archive Secure Data Enclave in Price Cap Business Data Services Proceedings*, WC Docket Nos. 16-143, 05-25, Public Notice, DA 19-198 (WCB Mar. 20, 2019).

⁵ See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (USTelecom Forbearance Petition); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Order, DA 19-75 (WCB Feb. 14, 2019) (extending until August 2, 2019 the date by which the USTelecom Forbearance Petition shall be deemed granted in the absence of a Commission denial); see also *Wireline Competition Bureau to Incorporate Business Data Services Data and Second Further Notice and Further Notice Record into USTelecom Forbearance Proceeding*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25; RM-10593, Public Notice, DA 19-249 (WCB Apr. 3, 2019) (*April 3, 2019 Public Notice*) (describing the USTelecom Forbearance Petition and the Bureau's intent to incorporate new information and data into the record of that proceeding).

⁶ See *April 3, 2019 Public Notice* at 2. The *April 3, 2019 Public Notice* refers to the *2015 Data Collection* as the "Highly Confidential and Confidential BDS Collection." *Id.* at 1 & n.1.

⁷ USTelecom Forbearance Petition at 27; *id.* at Appx. A at 1.

⁸ 47 U.S.C. § 251(c)(3); 47 CFR § 51.319(d).

⁹ See *April 3, 2019 Public Notice* at 3; *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*, WC Docket Nos. 17-144, 16-143, 05-25, Report and Order, Second Further Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10453-58, paras. 147-62 (2018) (*Second Further Notice and Further Notice* or *Second Further Notice*).

¹⁰ See *Special Access for Price Cap Local Exchange Carriers et al.*, WC Docket No. 05-25 et al., Order and Data Collection Protective Order, 29 FCC Rcd 11657 (WCB 2014) (*Data Collection Protective Order*); Order and

SpecialAccess@fcc.gov.¹² For participants in the price cap BDS proceedings, instructions on requesting access to the secure data enclave are provided in a public notice released on November 5, 2018.¹³ Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments and rely comments on or before the dates indicated on the first page of this document in dockets 17-144, 16-143, 05-25, and RM-10593. Procedures for using the Commission's Electronic Comment Filing System can be found in the *Second Further Notice*.¹⁴

For participants in the USTelecom Forbearance Petition proceeding, the forthcoming protective order governing access to the secure data enclave for that proceeding will include instructions on requesting access to the secure data enclave and an Acknowledgement of Confidentiality that parties must execute and send to SpecialAccess@fcc.gov. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments and rely comments on or before the dates indicated on the first page of this document in docket 18-141. Procedures for using the Commission's Electronic Comment Filing System can be found in a public notice released on May 8, 2018.¹⁵

For further information, please contact Christopher Koves, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-8209 or via email at Christopher.Koves@fcc.gov, or Michele Levy Berlove, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1477 or via email at Michele.Berlove@fcc.gov.

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Modified Data Collection Protective Order, 30 FCC Rcd 10027 (WCB 2015) (*Modified Protective Order*); *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., Order, 31 FCC Rcd 7104 (WCB 2016) (collectively "the BDS Protective Orders").

¹¹ See *April 3, 2019 Public Notice*.

¹² See *Data Collection Protective Order*, 29 FCC Rcd at 11673, para. 5; *id.* at 11680, Appx. C.

¹³ *Secure Data Enclave for Accessing Highly Confidential Business Data Services Data to Reopen*, WC Docket No. 16-143 et al., Public Notice, 33 FCC Rcd 11064 (WCB 2018).

¹⁴ See *Second Further Notice*, 33 FCC Rcd at 10458-59, paras. 163-64.

¹⁵ *Pleading Cycle Established for Comments on USTelecom's Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, WC Docket No. 18-141, Public Notice, 33 FCC Rcd 4614 (WCB 2018).