



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU RELEASES SUPPLEMENTAL LISTS OF COUNTIES SERVED BY PRICE CAP CARRIERS AND RATE-OF-RETURN STUDY AREAS NEWLY DEEMED COMPETITIVE PURSUANT TO COMPETITIVE MARKET TESTS FOR BUSINESS DATA SERVICES

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

By this Public Notice, the Wireline Competition Bureau (Bureau) publicly releases supplemental lists of counties served by price cap incumbent local exchange carriers (LECs), and study areas served by rate-of-return incumbent LECs receiving fixed universal service support, that are newly deemed competitive pursuant to the competitive market tests adopted in the business data services (BDS) proceedings.¹ These lists are based on updated Form 477 data and supplement the lists of price cap counties deemed competitive, non-competitive, or grandfathered and rate-of-return study areas deemed competitive pursuant to the Commission's initial competitive market tests. The supplemental lists of counties and study areas newly deemed competitive are attached as Appendices A and B, respectively. The supplemental lists, as well as the initial lists, are available at: <https://www.fcc.gov/general/bds-competitive-and-noncompetitive-lists>.²

On May 15, 2017, the Bureau announced the public release of a list of counties served by price cap carriers (price cap counties) that were deemed competitive, non-competitive, or grandfathered pursuant to the initial competitive market test adopted in the *Price Cap BDS Order*.³ Price cap carriers serving counties deemed competitive or in grandfathered markets with pricing flexibility were granted relief from ex ante pricing regulation and tariffing obligations for their DS1 and DS3 end-user channel

¹ See *Business Data Services in an Internet Protocol Environment et al.*, WC Docket No. 16-143 et al., 32 FCC Rcd 3459, 3527-29, paras. 145-152 (2017) (*Price Cap BDS Order*), 47 CFR § 69.803(c); *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. 103-104 (2018) (*Rate-of-Return BDS Order*), 47 CFR § 61.50(j).

² The Commission directed the Bureau to release a public notice listing newly competitive counties for price cap carriers and study areas for rate-of-return carriers and also provide this information on the Commission's website. *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151, 47 CFR § 69.803(b)(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104, 47 CFR § 61.50(j).

³ *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., 32 FCC Rcd 3966, 3966 (WCB 2017) (*Study Area List Public Notice*); FCC, *BDS County Lists* (May 15, 2017), <https://www.fcc.gov/bds-county-lists>. A county was deemed competitive in the initial price cap test if either: (1) 50% of locations with BDS demand within the county were within a half mile of a location served by a competitive provider based on data from the 2015 special access data collection; or (2) 75% of the census blocks within the county had access to broadband from a cable operator, based on Form 477 data as of December 2016. 47 CFR § 69.803(b)(1). A grandfathered market is a "county that does not satisfy the competitive market test set forth in § 69.803 for which a price cap carrier obtained Phase II relief pursuant to § 69.711(c)" prior to June 2017. 47 CFR §§ 69.801(e), 69.807(a).

terminations, and certain other lower-speed BDS.⁴ The initial price cap test results were based on data from the 2015 special access data collection and Form 477 data as of December 31, 2016.⁵ Pursuant to the initial price cap market test, 1,879 counties were deemed competitive, 1,276 counties were deemed non-competitive, and 69 counties were in grandfathered markets.⁶ No parties challenged these results.⁷

On October 25, 2018, the Bureau released a list of study areas served by rate-of-return carriers (rate-of-return study areas) receiving fixed universal service support that were deemed competitive pursuant to the competitive market test adopted in the *Rate-of-Return BDS Order*.⁸ Rate-of-return carriers electing incentive regulation for their BDS offerings serving competitive study areas were granted relief from ex ante pricing regulation and tariffing obligations for time division multiplexing (TDM)-based end-user channel terminations with capacity at or below a DS3.⁹ The test results were based on Form 477 data as of June 30, 2017.¹⁰ Pursuant to the initial application of the rate-of-return test, the Bureau deemed 16 rate-of-return study areas receiving fixed universal service support to be competitive.¹¹ No parties challenged those results.¹²

To ensure that the results of the competitive market tests continue to reflect current market conditions, the Commission directed the Bureau to update the results every three years based on the most recent Form 477 broadband deployment data submitted by cable operators.¹³ For the price cap update, the Commission directed the Bureau to use a modified version of the initial price cap test based on updated Form 477 data. Under the subsequent price cap test, a county is deemed competitive if 75% of the census blocks within the county are reported to have broadband connection availability by a cable operator.¹⁴ The Commission also directed the Bureau to re-run the rate-of-return test using updated Form 477 data.¹⁵ Under the rate-of-return test, a study area is deemed competitive if 75% of the census blocks within the study area are served by a cable operator offering a minimum of 10/1 Mbps broadband service.¹⁶ Given the high sunk costs involved in network deployment, the Commission determined that once a price cap

⁴ 47 CFR §§ 69.803(a), 69.807(a); see *Price Cap BDS Order*, 32 FCC Rcd at 3502-27, paras. 94-144.

⁵ 47 CFR § 69.803(b)(1).

⁶ FCC, *BDS County Lists* (May 15, 2017), <https://www.fcc.gov/bds-county-lists>.

⁷ See *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151.

⁸ *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., 33 FCC Rcd 10169 (WCB 2018) (*Study Area Public Notice*). A study area is deemed competitive in the rate-of-return test if 75% of the census blocks within the study area are served by a cable operator offering a minimum of 10/1 Mbps broadband service based on Form 477 data. 47 CFR § 61.50(j)(1).

⁹ 47 CFR § 61.50(k)(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 105.

¹⁰ *Study Area List Public Notice*, 33 FCC Rcd at 10169.

¹¹ FCC, *BDS Competitive and Noncompetitive Lists* (Jan. 31, 2020), <https://www.fcc.gov/bds-competitive-and-noncompetitive-lists>.

¹² See *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104.

¹³ 47 CFR §§ 61.50(j)(2), 69.803(c); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104; *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151.

¹⁴ 47 CFR § 69.803(c)(2); *Price Cap BDS Order*, 32 FCC Rcd at 3527-29, paras. 145-152. As with the initial price cap test, the Bureau used cable broadband connections with a minimum 10/1 Mbps capacity to assess competition.

¹⁵ *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104.

¹⁶ 47 CFR § 61.50(j)(1)-(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, paras. 103-104.

county or rate-of-return study area is deemed competitive it would retain its competitive status and not be retested.¹⁷

To reduce administrative burdens, the Commission directed the Bureau to update the price cap and rate-of-return test results at the same time in 2020.¹⁸ The first three-year update to the price cap test is due in 2020.¹⁹ The initial price cap and rate-of-return updates are also to “coincide with the initial running of the test for rate-of-return carriers electing to convert to incentive regulation as of July 1, 2020.”²⁰ We have updated the test results at this time to allow eligible rate-of-return carriers to take the steps necessary to elect incentive regulation for their BDS offerings effective July 1, 2020.²¹ Releasing this Public Notice now provides these carriers with sufficient time to review the updated test results and to assess whether to elect to convert their BDS offerings to incentive regulation prior to applicable procedural deadlines.²² This approach also ensures that the price cap update occurs within three years following the effective date of the initial price cap test, as required by the Commission’s rules.²³

To implement the updates, the Bureau used Form 477 data based on cable operators’ broadband deployment data as of December 31, 2018, which was released in a public notice on January 8, 2020.²⁴ The Bureau used these data because they are the most recent Form 477 data that will be publicly available in time to allow us to complete our analysis before rate-of-return carriers need to begin taking the steps necessary to elect incentive regulation for their BDS offerings in advance of their July 1, 2020 annual access tariff filings.²⁵ Based on these data, the Bureau, in coordination with the Office of Economics and Analytics, tested price cap counties that were initially deemed non-competitive pursuant to the initial price cap test and retested rate-of-return study areas receiving fixed universal service support that were not initially deemed competitive pursuant to the rate-of-return test.²⁶ The Bureau found that seven price cap counties that were previously deemed non-competitive now meet the competitive threshold. The price cap-served areas within those counties are therefore deemed competitive effective immediately.²⁷ The Bureau also found that seven additional rate-of-return study areas receiving fixed universal service

¹⁷ 47 CFR §§ 61.50(j)(3), 69.803(c)(3); see *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, para. 152; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439, para. 103.

¹⁸ *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104. The Commission directed the Bureau to update both tests every three years thereafter. *Id.*; 47 CFR §§ 61.50(j)(2), 69.803(c).

¹⁹ 47 CFR § 69.803(c); see *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104.

²⁰ *Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104. The Commission provided eligible rate-of-return carriers with two opportunities to elect incentive regulation for their BDS offerings: a first election effective July 1, 2019, and a second election effective July 1, 2020. *Rate-of-Return BDS Order*, 33 FCC Rcd at 10412-13, para. 23; 47 CFR § 61.50(l).

²¹ See *Rate-of-Return BDS Order*, 33 FCC Rcd at 10412-13, 10440, paras. 23, 104.

²² Rate-of-return carriers electing incentive regulation for their BDS offerings effective July 1, 2020 and that participate in the NECA traffic-sensitive pool must notify NECA by March 1, 2020 that they will no longer participate in the pool for their BDS offerings. *Rate-of-Return BDS Order*, 33 FCC Rcd at 10445, para. 119; 47 CFR § 69.3(e)(6). Rate-of-return carriers electing incentive regulation for their BDS offerings effective July 1, 2020 must notify the Bureau of their election by May 1, 2020. *Id.* § 61.50(l)(2). Such carrier’s election will be effective July 1, 2020, concurrent with the carrier’s annual access tariff filing. See 47 CFR § 61.50(l)(1)-(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, paras. 103-104.

²³ See 47 CFR § 69.803(c).

²⁴ *FCC Releases Form 477 Data on Broadband Deployment as of December 31, 2018*, WC Docket No. 11-10, Public Notice, DA 20-30 (OEA, WCB, & WTB Jan. 8, 2020).

²⁵ *Id.*; 47 CFR §§ 61.50(j)(1), 69.803(c)(1). Form 477 data is typically reported by filers semiannually on or before March 1st (reporting data as of December 31st of the prior year) and September 1st (reporting data as of June 30th of the current year). See 47 CFR § 1.7002. Form 477 filers were required to submit data as of June 30, 2019 by

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support meet the applicable threshold and are therefore deemed competitive, effective upon the carrier's election of incentive regulation and July 1, 2020 annual access tariff filings.²⁸

The lists of price cap counties and rate-of-return study areas deemed newly competitive pursuant to the updated test results are attached as Appendices A and B, respectively, and are also posted on the Commission's website.²⁹ Parties wishing to challenge these updated test results may file a petition for reconsideration with the Bureau or an application for review with the Commission.³⁰ Pending any challenges to these results, the newly deemed competitive price cap counties and rate-of-return study areas will not be retested in subsequent three-year updates.³¹ These lists supplement the lists of price cap counties and rate-of-return study areas deemed competitive pursuant to the initial competitive market tests which are also available on the Commission's website.³²

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.

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September 3, 2019. *Form 477 Data as of June 30, 2019 Are Due No Later Than September 3, 2019*, WC Docket No. 11-10, Public Notice, 34 FCC Rcd 7065 (OEA 2019). While this data was submitted more recently than data as of December 31, 2018, it will not be made publicly available with sufficient time prior to the July 1, 2020 effective date for rate-of-return carriers to elect incentive regulation and therefore is inappropriate for this first update. *See Rate-of-Return BDS Order*, 33 FCC Rcd at 10440, para. 104; *see also FCC Releases Form 477 Data on Fixed Broadband Deployment as of June 30, 2018*, WC Docket No. 11-10, Public Notice, 34 FCC Rcd 7992 (OEA, WCB, & WTB 2019) (releasing Form 477 data dated as of June 30, 2018 on September 10, 2019).

²⁶ The Bureau did not test price cap counties previously deemed competitive or grandfathered pursuant to the initial price cap test or retest rate-of-return study areas previously deemed competitive pursuant to the rate-of-return test since they retain their competitive or grandfathered status. *See* 47 CFR §§ 61.50(j)(3), 69.803(c)(3), 69.807(a); *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, paras. 151-152; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439, para. 103.

²⁷ *See* 47 CFR § 69.803(c); *Price Cap BDS Order*, 32 FCC Rcd at 3528-29, paras. 151-52.

²⁸ *See* 47 CFR § 61.50(j)(1)-(2); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, paras. 103-104.

²⁹ *See* FCC, *BDS Competitive and Noncompetitive Lists* (Jan. 31, 2020), <https://www.fcc.gov/general/bds-competitive-and-noncompetitive-lists>.

³⁰ *Price Cap BDS Order*, 32 FCC Rcd at 3528, para. 151; *Rate-of-Return BDS Order*, 33 FCC Rcd at 10439-40, para. 104; 47 CFR § 1.106 (petitions for reconsideration); 47 CFR § 1.115 (applications for review); *see also* 47 CFR § 1.115(c) note (“Subject to the requirements of § 1.106, new questions of fact or law may be presented to the designated authority in a petition for reconsideration.”).

³¹ *See* 47 CFR §§ 61.50(j)(3), 69.803(c)(3).

³² *See* FCC, *BDS Competitive and Noncompetitive Lists* (Jan. 31, 2020), <https://www.fcc.gov/general/bds-competitive-and-noncompetitive-lists>; *County List Public Notice*; *Study Area List Public Notice*.

APPENDIX A**Price Cap Counties Deemed Newly Competitive Effective January 31, 2020**

<u>FIPS</u>	<u>State</u>	<u>County or County-Equivalent</u>
21013	KY	Bell County
21071	KY	Floyd County
21095	KY	Harlan County
21125	KY	Laurel County
21153	KY	Magoffin County
35009	NM	Curry County
47185	TN	White County

APPENDIX B**Rate-of-Return Study Areas Deemed Newly Competitive Effective Upon July 1, 2020 Tariff Filing
Electing Incentive Regulation for Business Data Services**

Carrier Type	State	Holding Company Name	SAC
Consolidated RoR	NY	Consolidated Communications, Inc.	150078
ACAM	NY	Pattersonville Telephone Company (NY)	150116
ACAM	NY	Telephone and Data Systems, Inc.	150129
ACAM	NY	Telephone and Data Systems, Inc.	150133
ACAM	PA	Townes Telecommunications, Inc.	170200
ACAM II	NC	North-State Telephone Co. (NC)	230491
ACAM	WI	Telephone and Data Systems, Inc.	330968