I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. As discussed in Section I.C. of the preamble to this action, the NPL is a list of national priorities. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is of only limited significance as it does not assign liability to any party. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Dated: May 9, 2018.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2018–10466 Filed 5–16–18; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 32, 51, 61, and 69

[WC Docket No. 17–144; FCC 18–46]

Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to allow rate-of-return carriers receiving universal service support under the Alternative Connect America Cost Model (A–CAM) to voluntarily migrate their lower speed circuit-based business data service (BDS) offerings to incentive regulation. It also seeks comment on whether to remove ex ante pricing regulation from these carriers' higher speed BDS offerings and on whether further regulatory relief is warranted for these carriers' lower-speed circuit-based BDS in areas deemed competitive by a potential competitive market test. Additionally, the document proposes to allow other rate-of-return carriers receiving fixed support to opt into the same incentive regulation proposed for A–CAM carriers. Finally, the Commission seeks comment on proposed rule changes that would implement the proposals made in this document, including corrections to inaccuracies contained in its current rules.

DATES: Comments are due on or before June 18, 2018; reply comments are due on or before July 2, 2018. Parties that believe this document may contain new or modified information collection requirements may submit written Paperwork Reduction Act (PRA) comments to the Office of Management and Budget (OMB), and other interested parties on or before July 16, 2018.

ADDRESSES: You may submit comments, identified by WC Docket No. 17–144, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs//.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 888–835–5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Justin Faulb, Wireline Competition Bureau, Pricing Policy Division at 202–418–1589 or via email at *Justin.Faulb@fcc.gov.*

For additional information concerning any potential information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), WC Docket No. 17–144; FCC 18–46, adopted on April 17, 2018 and released on April 18, 2018. The full-text of this document may be found at the following internet address: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-46A1.doc.*

Pursuant to §§ 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. 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).

Synopsis

I. Introduction

1. The Commission has long recognized that, because it promotes efficiency and reduces regulatory burdens, incentive regulation is preferable to rate-of-return regulation. Therefore, in a series of steps over the last three decades, the Commission provided incentives to encourage incumbent local exchange carriers (LECs) to move from rate-of-return regulation to incentive regulation. In this NPRM, we take more steps along that path by proposing to allow rate-of-return carriers that receive universal service support under the Alternative Connect America Cost Model (A–CAM) to voluntarily migrate their lower speed business data services (BDS) offerings to incentive regulation. Because A–CAM carriers that elect to move away from rate-of-return regulation for their BDS offerings (electing A–CAM carriers) will no longer need to provide cost-based justification for their rates, we propose to relieve them of burdensome cost-based pricing regulation, including the obligation to conduct cost studies for purposes of ratemaking. At the same time, because we recognize that ex ante pricing regulation is of limited use—and often harmful—in a dynamic and increasingly competitive market, we seek comment on identifying areas served by electing A–CAM carriers that are sufficiently competitive that their lower speed BDS offerings should be relieved of ex ante pricing regulation, and we seek comment on whether to relieve electing A–CAM carriers' higher speed BDS offerings from ex ante pricing regulation. And, because there are other rate-of-return carriers that receive model-based or fixed support, and would benefit from less burdensome regulation, we propose to provide the same relief to those carriers as we propose to provide to A–CAM carriers. Taken together we expect these actions will spur entry, innovation, and competition in the affected BDS markets.

II. Background

2. We start from the premise that incentive regulation encourages carriers to be efficient by granting them at least a share of profits obtained from cost reductions and allowing them to more aggressively serve consumers (including by reducing prices) in the face of competitive pressures. By contrast, rate-of-return regulation provides incentives for firms to ''pad'' their rate base and to make inefficiently high use of capital inputs. Additionally, rate-of-return regulation requires carriers to account for the costs they incur in providing service to justify their rates and universal service support and thus unavoidably involves substantial regulatory burdens.

3. In 1990, the Commission began the process of shifting away from cost-based regulation by adopting price cap rules that govern how the largest incumbent LECs establish their interstate access charges. Price cap regulation was intended to avoid the counterproductive incentives of rate-of-return regulation in part by divorcing the annual rate adjustments from the actual costs of each individual LEC, and in part by adjusting the cap based on actual industry productivity experience. In more recent years, a number of midsize carriers have voluntarily converted from rate-of-return to price cap regulation.

4. In 2011, as part of comprehensive reform and modernization of the universal service and intercarrier compensation systems, the Commission adopted rate caps for switched access services for rate-of-return carriers, thereby removing switched access services from rate-of-return regulation. In 2016, the Commission gave rate-of-return carriers the option of receiving forward looking model-based support from the high-cost universal service support program, the A–CAM, designed to estimate the cost of operating and maintaining an efficient modern network. More than 200 carriers opted to receive A–CAM support which eliminated the need for those carriers to conduct cost studies to quantify the amount of high-cost support they receive. The Commission observed that ''the election of model-based support places those carriers in a different regulatory paradigm'' and that ''[e]ffectively, the carriers that choose to take the voluntary path to the model are electing incentive regulation for common line offerings.'' As a result, rate-of-return carriers that elected the A–CAM support option are currently subject to rate-of-return regulation and the attendant requirement to conduct cost studies only for their BDS offerings.

5. In 2017, ITTA and USTelecom (together, Petitioners) filed a joint petition requesting that the Commission allow A–CAM carriers and other rate-of-return carriers that receive model-based support to opt into the regulatory framework for BDS that the Commission recently adopted for price cap carriers. The Petition explains that for such carriers, ''continued compliance with rate-o[f]-return-based rate regulation . . . entails significant costs.'' It further explains that because carriers that receive universal service support based on a cost model no longer have cost-based switched access charges, ''the need to perform annual cost studies now applies only with respect to BDS.'' It also claims that rate-of-return regulation deters investment in networks and harms competition. The Wireline Competition Bureau (Bureau) sought and received comment on the Petition. A number of commenters support the Petition, arguing that cost savings and lighter touch pricing regulation of model-based carriers' BDS would spur competition, incentivize investment, benefit consumers, and eliminate unnecessary administrative burdens. Other commenters expressed concerns, including whether sufficient competition exists in A–CAM study areas to justify reduced regulation.

6. In addition to facilitating rate-of-return carriers' move to incentive regulation, the Commission has taken major steps to reduce regulation for carriers that face competition. Given the inherent inefficiencies of regulation, the Commission relies on competition to the extent possible to ensure carriers' rates and practices are just and reasonable. In 1999, the Commission granted pricing flexibility to price cap carriers that provided service in areas where carriers could demonstrate threshold levels of deployment by competitive providers. The *Pricing Flexibility Order* adopted competitive triggers designed to measure the extent to which competitors had made irreversible, sunk investment in collocation and transport facilities. The Commission gave price cap carriers that satisfied those triggers the flexibility to offer BDS at unregulated rates through generally available and individually negotiated tariffs. In addition, starting in 2007, upon finding that competitive providers for BDS services existed in the relevant price cap areas, the Commission granted a number of price cap incumbent LECs forbearance from dominant carrier regulation, including tariffing and price cap regulation, for their newer packet-based broadband services. These forbearance orders concluded that a number of competing providers exist for broadband BDS. They also concluded that forbearance from burdensome regulations when competition exists

increases the amount of competition in the marketplace, ensuring that rates and practices for services are just, reasonable, and not unreasonably discriminatory.

7. The *BDS Order* the Commission adopted last year took another step toward reducing regulation in response to the growth of competition. In that order, the Commission found that reducing government intervention and allowing market forces to continue working would further spur entry, innovation, and competition in BDS markets served by price cap carriers. The Commission applied ex ante rate regulation ''only where competition is expected to materially fail to ensure just and reasonable rates'' and stated its preference to rely ''on competition rather than regulation, wherever purchasers can realistically turn to a supplier beyond the incumbent LEC.'' Based on the record before it, the Commission found that, on balance, competition was sufficient to ensure just and reasonable rates for packet-based business data services, TDM transport services, and higher bandwidth (*i.e.* above DS3) TDM services (including OCn services) in areas served by price cap carriers. It also adopted a competitive market test for TDM end user channel terminations in price cap areas and refrained from ex ante pricing regulation of those services in areas deemed competitive by that test.

III. Path Forward For Lower Speed Services

8. We seek comment on a regulatory framework that would provide electing A–CAM carriers a path to allow a move from rate-of-return regulation to a more efficient system of incentive regulation for their TDM transport and end user channel terminations at speeds at or below a DS3. In so doing, we propose to require that each A–CAM carrier's decision about whether to move their BDS offerings out of rate-of-return regulation be made on an all-or-nothing basis for all of an A–CAM carrier's study areas that receive A–CAM support. We also invite comment on what would be an appropriate market analysis for these lower speed services and on a competitive market test that would allow us to distinguish between markets that are sufficiently competitive so as not to warrant the burdens of ex ante pricing regulation from those that are not. Although the sections below focus on A–CAM carriers, because we are proposing to allow other rate-of-return carriers that receive model-based or other types of fixed support the opportunity to elect the same or similar lighter-touch BDS regulation that we propose for A–CAM carriers, we also seek comment on providing a path forward for regulating such carriers' BDS offerings. As commenters respond to the requests for comment below, we encourage discussion of how such a path forward could work for other such rate-of-return carriers.

A. Incentive Regulation for Lower Capacity TDM Transport and End User Channel Termination Services

9. We propose to allow electing A–CAM carriers to convert their lower capacity TDM BDS offerings to an incentive regulatory approach modelled on the rules the Commission adopted for price cap carriers' lower speed BDS in noncompetitive areas, while still allowing such carriers to be subject to the switched access rate transition and the Eligible Recovery rules applicable to rate-of-return carriers. We propose to allow conversion to incentive regulation for TDM transport and end user channel termination services offered at speeds at or below a DS3, as well as other generally lower speed non-packet-based services that are commonly considered special access services. Are there other special access offerings by rate-of-return carriers that we should include in the incentive regulation option for A–CAM carriers? For example, are there any telecommunications service components associated with either residential digital subscriber line services or dedicated internet access services that would qualify as special access services that we should also allow to migrate to incentive regulation? We anticipate that this approach will encourage competition for BDS in areas served by electing A–CAM carriers and reduce unnecessary regulatory burdens on electing A–CAM carriers. We seek comments on this proposal, including on the benefits and costs of this approach.

10. The Commission has consistently acknowledged that incentive regulation can foster appropriate incentives for carriers to be efficient and to innovate. Under price cap regulation, as opposed to cost-based regulation, carriers have the incentive to become more efficient, to reduce costs, and to innovate as a means of increasing their profits. Moreover, an appropriate X-factor and periodic review by the Commission can ensure that carriers share some or all of these efficiencies with their customers. We invite parties to identify with specificity any short-comings in the proposal and to suggest alternatives that could achieve the objectives more efficiently. Given the well-recognized benefits of incentive regulation, we also seek comment on whether we should make this election mandatory for all A–CAM carriers.

1. Relieving Electing A–CAM Carriers of Rate-of-Return Regulation for Their Lower Speed TDM BDS Offerings

11. We propose to relieve electing A–CAM carriers of a variety of regulatory obligations that pertain to rate-of-return regulation, including the obligation to perform cost studies. Rate-of-return carriers are required by our rules to perform relatively burdensome cost studies to support their rate development. Petitioners and other commenters identify elimination of cost studies as a primary benefit of allowing A–CAM carriers to elect incentive regulation. We invite parties to quantify the burdens of preparing cost studies (including costs and/or hours of labor) and comment on whether cost studies impose any special burdens on smaller carriers. We also seek comment on whether data from A–CAM carriers' cost studies are necessary in the performance of any Commission regulatory function. If so, will the benefits of the data collected from electing A–CAM carriers' cost studies outweigh the burden of requiring them to continue to provide that data when they are no longer offering cost-based services? Are there other, less burdensome ways of collecting the relevant data from electing A–CAM carriers that we should explore? Are there other issues we need to address before relieving A–CAM carriers of the burden of cost studies? If so, how shall we address them?

12. We also propose to allow electing A–CAM carriers pricing flexibility for their lower capacity TDM services similar to that granted by the Commission in the *BDS Order* to price cap carriers in their provision of lower capacity TDM services in counties deemed noncompetitive by the competitive market test we adopted for price cap carriers. We propose to allow electing A–CAM carriers to offer term and volume discounts and contract-based services for their TDM transport and end user channel termination services offered at speeds at or below a DS3. Electing A–CAM carriers would be required to maintain generally available tariffed rates subject to incentive regulation for these lower speed TDM transport and end user channel terminations, and other special access services included in their tariffs. We seek comment on these proposals.

13. We also propose to allow electing A–CAM carriers to remain in the NECA traffic-sensitive tariff for switched access services, and to continue to be subject to the switched access rate cap provisions of section 51.909 and the

Eligible Recovery rules in section 51.917 of the Commission's rules. We propose to require electing A–CAM carriers to remove their special access services from the NECA traffic-sensitive tariff. We seek comment on these proposals.

14. We recognize that our proposed approach for electing A–CAM carriers treats TDM transport differently than the *BDS Order* does for price cap carriers. While the Commission found TDM transport to be competitive in price cap areas generally, here we propose to allow electing A–CAM carriers to convert lower speed TDM transport services to incentive regulation but not to immediately eliminate ex ante pricing regulation for them. We propose this different approach given that competition for such services may not be as robust in the less dense, more rural areas that A–CAM carriers typically serve. We seek comment on this aspect of our proposal, and on what data exist to confirm or invalidate our assumption. The Commission observed in the *BDS Order* that competitive transport services are typically deployed at locations where sufficient demand is aggregated to enable a competitor to justify investment. To what extent is there sufficient aggregated demand in A–CAM areas to justify the deployment of competitive transport? Are there instances where demand for TDM transport services may be increasing, creating the precondition for competitive entry in the future? Alternatively, has the overall decline in demand for TDM services also affected the demand for lower speed TDM transport services in A–CAM areas? Finally, we seek comment on allowing additional regulatory relief for A–CAM carriers' TDM transport offered at speeds at or below a DS3 in areas deemed competitive by a competitive market test we seek comment on below.

15. We do not propose to transition electing A–CAM carriers to incentive regulation for switched access services. The transition provisions for switched access rates and Eligible Recovery rules for rate-of-return carriers adopted by the *USF/ICC Transformation Order* are well established, have been upheld on appeal, and have been partially implemented; disrupting these transitions would likely impose additional costs and increase uncertainty, deterring investment and deployment. We also seek comment on the benefits and costs of our proposed approach. The Petition sought an ''exception'' to § 61.41 of the Commission's rules (the so-called ''all or nothing'' rule), which requires all of a price cap carrier's study areas and rates, including those of affiliates and carriers it purchases or merges with, to be subject to price cap regulation. We propose to amend § 61.41 to create an exception for the alternative regulatory structure we propose in this NPRM, and we seek comment on this proposal. Are there any other rules we should consider waiving or amending in the context of this proceeding?

2. Implementing Optional Incentive Regulation for Lower Capacity TDM Services

16. In this section, we make specific proposals regarding the terms of the incentive regulation we propose to adopt for electing A–CAM carriers and seek comment on these proposals.

a. Election

17. We propose to require carriers that elect to move off rate-of-return regulation for their BDS services to move to incentive regulation at the holding company level for study areas in all states that elected to receive A–CAM support rather than electing on an individual carrier or study area basis, as proposed by Petitioners. Requiring election at the holding company level will ensure cost savings from the elimination of annual cost studies to be realized by all affiliated carriers electing A–CAM support. Carriers have already had the opportunity to elect between A–CAM and cost-based support at a state-wide level. Allowing A–CAM carriers to elect regulatory treatment at a more disaggregated level would appear to be inconsistent with the underlying premise of price caps, which assumed a broad representation of carrier operations to provide a basis for establishing an industry-wide productivity factor. Currently, there are 262 A–CAM companies when calculated at the state level and 207 when calculated at the holding company level. We invite parties to comment on the proposed level of election. Parties believing the proposed holding company level is too high should explain why a more disaggregated level would be in the public interest. Any explanation should include concrete examples of why the proposed level would preclude a significant number of A–CAM carriers from electing incentive regulation. Parties should address whether other aspects of the proposal could be modified to make the proposed level of election more acceptable.

18. We propose to make incentive regulation for electing A–CAM carriers effective on the July 1st following adoption of an order in this proceeding, which is the deadline for the annual access tariff filing. Using July 1st will simplify the tariffing process for implementing any change and is consistent with the price cap rules' use of the prior calendar-year demand data for their price cap calculations. We invite parties to comment on this proposal, and to suggest other timing options that may work, identifying the benefits and drawbacks of such proposals. The proposals should address the periods for determining cost and demand for electing A–CAM carriers. We also invite parties to comment on whether we should allow a one-time opportunity to elect, or whether additional election opportunities should be allowed. If more than one opportunity to elect is offered, what should the timing be for any additional election opportunities?

19. We have recently proposed making a second A–CAM offer. In the event that additional rate-of-return carriers become A–CAM carriers, we propose that they may elect to adopt incentive regulation at the next annual tariff filing date that follows their election. We also propose to allow the new electing A–CAM carriers to adopt the other lighter touch regulatory options that are available to electing A–CAM carriers at that time. We invite parties to comment on these proposals.

b. Initial Rate Levels

20. We propose to allow electing A–CAM carriers that currently file their own tariffed rates for BDS offerings to use their existing rates to set their initial BDS rates under incentive regulation. The Commission used this method when allowing rate-of-return carriers filing their own rates to convert to price cap regulation. The demand to be used for the incentive regulation calculations would be that of the previous calendar year. The carrier would then apply the prescribed X-factor and the inflation factor, two variables in the Commission's existing formula for the price cap index (PCI), which would result in the proposed rates in the first year of incentive regulation, and each year thereafter. We invite parties to comment on this proposal. We ask that any party disagreeing with this approach submit a detailed proposal for setting initial rates, including an explanation of why its preferred approach would be equal to or better than the approach we propose.

21. Establishing initial BDS rates for electing A–CAM carriers participating in the NECA traffic-sensitive pool is more complicated because they are charging a pooled rate, which does not reflect the actual costs of the pooling carrier. The NECA pool BDS rates are

therefore not the proper rates to use as initial BDS rates. We therefore propose that each electing A–CAM carrier in the pool establish its initial BDS rates by multiplying the NECA pool rate the carrier has been charging by a net contribution/recipient factor. Thus, an A–CAM carrier with more BDS revenues than the BDS settlements it receives from the pool would have its pool rate reduced commensurately. The opposite would occur for an electing A–CAM carrier that received more BDS settlements than the BDS revenues it produced. The carrier would then apply the prescribed X-factor and the inflation factor, which would result in the proposed rates in the first year of incentive regulation, and each year thereafter. This approach avoids the necessity of doing new cost studies for each study area of the electing A–CAM carriers. We invite parties to comment on this approach. Alternatively, commenters may suggest other approaches, such as doing cost studies for the preceding calendar year, or other twelve-month period. Parties making such alternative proposals should address the manner in which the alternative time period data would be incorporated into the incentive regulation calculations.

22. Are there other approaches we should take in determining how electing A–CAM carriers should establish initial BDS rates? Are there other adjustments that we should make to our proposed initial rate setting process? For example, should the initial rates be lower than current rates because of the cost savings electing carriers will realize by moving to incentive regulation? If so, how much should be shared with consumers and how should such amount be determined? In a 2012 waiver petition seeking to move from rate-of-return to price cap status, FairPoint Communications, Inc., proposed reducing its special access rates by a percentage of the anticipated cost savings. We invite parties to comment on these issues and to suggest how such amounts should be determined, especially if another cost study is to be avoided.

c. Special Access Basket, Categories and Subcategories

23. Consistent with the *BDS Order,* we propose to retain the special access basket, categories and subcategories, and the attendant rules governing the allowed annual adjustments. We propose to require each electing A–CAM carrier to initialize its PCI for the special access basket and associated service band indices (SBIs) at 100 and to use the rate adjustment rules for price cap carriers contained in sections 61.45–48 of our rules, as appropriate, to reflect the prescribed productivity factor, the inflation factor, and any required exogenous cost adjustment in the PCI, to ensure that the Actual Price Index (API) does not exceed the PCI, and that the SBIs for each category or subcategory do not exceed their upper limits. The category and sub-category requirements are designed to limit the degree to which a carrier can raise rates in any given year in an effort to avoid anti-competitive pricing. We invite parties to comment on this proposal. Are there other approaches we should take? Are there other categories or sub-categories needed for A–CAM carriers that were not necessary for price cap carriers? We request that parties recommending that we modify the categories or sub-categories explain why such a change would improve the functioning of the incentive regulation plan and/or the BDS market and produce benefits for consumers.

d. Productivity Factor and Measure of Inflation

24. Consistent with the *BDS Order,* we also propose to adopt an X-factor of two percent to reflect the productivity growth that electing A–CAM carriers are likely to experience in the provision of these services relative to productivity growth in the overall economy in the foreseeable future and to use Gross Domestic Product-Price Index (GDP–PI) as the measure of inflation that electing A–CAM carriers will use in their PCI calculations. We do not propose to incorporate a consumer productivity dividend (CPD) adjustment into this X-factor. Based on the industry-wide analysis provided in the *BDS Order* and Petitioners' proposal that we use a two percent X-Factor, we believe an X-factor of two percent will ensure just and reasonable rates for BDS offered by electing A–CAM carriers, and that use of the GDP–PI is appropriate. We seek comment on this proposal.

25. Are there reasons we should use a different productivity factor for electing A–CAM providers than we use for price cap carriers? We request that any party proposing a different productivity factor or measure of inflation factor describe with specificity how their proposed X-Factor is derived and why it would be a better forecast of the expected pattern of growth than what we propose herein.

26. We also seek comment on the extent to which the voluntary nature of the election interacts with the appropriate level of the X-Factor. For example, are there relationships between different factors that could warrant that the Commission increase or decrease the X-Factor? Should the level of the X-Factor be affected by whether the carrier election is for all A–CAM study areas, or made on a more disaggregated level?

e. Exogenous Costs

27. We seek comment on the treatment that should be accorded exogenous costs if we allow A–CAM carriers to elect to move to incentive regulation. Exogenous costs are those costs that are beyond the control of the carrier, as determined by the Commission. Section 61.45(d) of our rules provides for an exogenous cost adjustment for price cap carriers to be apportioned on a cost-causative basis between price cap services as a group, and excluded services as a group. Exogenous cost changes attributed to price cap services are recovered from services other than those used to calculate the average traffic-sensitive charge. A–CAM carriers have been removed from rate-of-return regulation for universal service purposes and for interstate access services other than BDS. We invite parties to address how the principle of cost causation should be applied in determining the amount of any exogenous costs to be assigned to the BDS basket for electing A–CAM carriers. We propose that exogenous costs be allocated based on a ratio of BDS revenues to total revenues from all regulated services and A–CAM universal service support payments. We invite parties to address whether some other basis would be preferable, including the rationale for the alternative approach.

f. Low-End Adjustment

28. Consistent with the *BDS Order,* we propose to adopt a low-end adjustment mechanism to provide an appropriate backstop to ensure that electing A–CAM carriers are not subject to protracted periods of low earnings. Failure to include any adjustment for such circumstances could harm customers as well as shareholders of such a carrier as a below-normal rate-of-return over a prolonged period could threaten the carrier's ability to raise the capital necessary to provide modern, efficient services to customers. The low-end adjustment mechanism would permit a one-time adjustment to a single year's BDS rates to avoid back-to-back annual earnings below a set benchmark. If an electing A–CAM carrier's BDS earnings fall below the low-end adjustment mark in a base year period, it would be entitled to adjust its rates upward to target earnings to the benchmark. We propose that, consistent with past

practice, the low-end adjustment benchmark should be set 100 basis points below the authorized rate of return for rate-of-return carriers. We propose that electing A–CAM carriers that exercise downward pricing flexibility (for example, by entering into a contract tariff with a customer), or elect the option to use generally accepted accounting practices (GAAP) rather than the Part 32 Uniform System of Accounts as set forth in our recent *Part 32 Accounting Order,* will be ineligible for a low-end adjustment.

29. We invite interested parties to comment on the proposal to adopt a low-end adjustment mechanism. We ask parties to comment on whether this measure will ensure that electing A–CAM carriers have the opportunity to attract sufficient capital. We note that an A–CAM carrier would have to present cost data to support a claim for a low-end adjustment. Because eliminating the need for cost studies is one of the driving objectives behind Petitioners' proposal, we ask parties to comment on whether there are alternative ways to make the required determinations short of performing a full cost study. Parties offering suggestions should explain the proposed mechanism in sufficient detail that a comparison to the results of a cost study can be made. We also seek comment on the appropriateness of setting the benchmark for the low-end adjustment at 100 basis points below the authorized rate of return for rate-of-return carriers. We note that this proposal would allow the benchmark to track the gradual reduction in the authorized rate-of-return as it transitions down.

g. Cost Assignment and Jurisdictional Separations Rules

30. Pursuant to section 10 of the Act, and to implement our new incentive regulation for those A–CAM carriers that elect incentive regulation, we propose to forbear from application of our cost assignment rules, including jurisdictional separations requirements. Consistent with our previous forbearance orders for price cap carriers, we propose to define cost assignment rules to include the rules governing the assignment of costs and revenues by carriers. We seek comment on our proposed definition.

31. In providing similar forbearance to price cap carriers, the Commission observed that such rules ''were developed when the ILECs' interstate rates and many of their intrastate rates were set under rate-based, cost-of-service regulation. The Commission has explained that 'because price cap regulation severs the direct link between regulated costs and prices, a carrier is not able automatically to recoup misallocated non-regulated costs by raising basic service rates,' thus reducing incentives to shift non-regulated costs to regulated services.'' Does the same reasoning for forbearance apply to A–CAM carriers electing incentive regulation? Will the operation of the incentive regulation rules we propose make enforcement of the cost assignment and separations rules unnecessary to ensure just, reasonable and not unjustly or unreasonably discriminatory charges, practices, classifications, and regulations, or make enforcement of those rules unnecessary to protect consumers from unjust, unreasonable, and unjustly or unreasonably discriminatory rates, practices, classifications, and regulations? Is enforcement of such regulations unnecessary to protect consumers? Would forbearance be consistent with the public interest and would the reduction of regulatory burdens improve market competitiveness?

32. We further propose to condition any grant of forbearance from application of the cost assignment and jurisdictional separations rules for an electing A–CAM carrier that froze their separations category relationships on its conducting a cost study for the preceding calendar year. The A–CAM carrier would then adjust the initialized BDS rates determined pursuant to the procedures described above by the results of the cost study. We invite parties to comment on this proposal and to identify any constraints that should be placed on application of the cost study results to the development of revised access charges, including BDS rates. For example, should a carrier be limited in the extent it may adjust the relative price relationships between business data services that may be established?

33. Above, we propose procedures for electing A–CAM carriers to use in establishing initial BDS rates under incentive regulation that assume other factors remained unchanged. Forbearing from cost allocation and jurisdictional separations requirements for A–CAM carriers electing incentive regulation, however, would change one of the controlled factors. We invite comment on what adjustments, if any, we should allow an A–CAM carrier that elects to freeze its category relationships to make to its rates to ensure that its BDS rates are just and reasonable pursuant to section 201 of the Act.

h. GAAP Accounting

34. We propose to allow electing A–CAM carriers to use GAAP for keeping their accounts, should they choose to do so. The Commission recently revised the Part 32 rules to allow price cap LECs to elect to use GAAP in recording and reporting their financial data, subject to two targeted accounting requirements. Electing carriers may either (a) calculate an Implementation Rate Difference between the attachment rates calculated by the price cap carrier under the Uniform System of Accounts (USOA) and under GAAP as of the last full year preceding the carrier's initial opting-out of Part 32 USOA accounting requirements; or (b) comply with GAAP accounting for all purposes other than those associated with setting pole attachment rates while continuing to use the Part 32 accounts and procedures necessary to establish and evaluate pole attachment rates. Electing carriers must adjust their annually computed GAAP-based rates by the Implementation Rate Difference for a period of 12 years after the election. This frees price cap carriers from having to maintain two sets of books: One for financial reporting purposes consistent with GAAP and one for regulatory reporting purposes consistent with the accounting requirements of Part 32. For the same reasons, we propose to allow electing A–CAM carriers to have the option to use GAAP. We propose to require electing A–CAM carriers that choose to use GAAP accounting to be subject to the same data provisioning requirements as price cap carriers, including the requirements relating to the calculation of pole attachment rates. As a result, such carriers will have to determine an Implementation Rate Difference to apply in calculating their pole attachment rates. We seek comment on this proposal. Are there other issues with allowing electing A–CAM carriers to use GAAP accounting that we should consider?

B. Providing a Path To Relieve Electing A–CAM Carriers of Ex Ante Pricing Regulation for Lower Speed End User Channel Terminations and TDM Transport in Competitive Areas

35. We seek comment on whether we should adopt a competitive market test (CMT) to assess the availability of actual and likely competitive options in the provision of transport and last-mile services in areas served by electing A–CAM carriers and to remove from ex ante pricing regulation DS1 and DS3 end user channel terminations, TDM transport at speeds at or below a DS3, and other generally lower speed BDS

provided (or some subset of these services) by electing A–CAM carriers in areas that the CMT finds competitive. If so, what should be the elements of such a test and what are the costs and benefits of adopting such a test? We also seek comment on whether we should use different metrics and/or different tests to measure the competitiveness of lower speed end user channel terminations as compared to lower speed TDM transport services.

36. If we adopt a CMT for electing A–CAM carriers, should we use the CMT the Commission adopted in the *BDS Order* for price cap carriers (the existing CMT) as a starting point? The existing CMT features two prongs, based on data from price cap study areas. The first measures whether 50 percent of the locations with BDS demand in a county are within a half-mile of a location that was served by a competitive provider, based on the *2015 Collection.* The second uses Form 477 data to measure whether a cable operator offers a minimum of 10/1 Mbps broadband service in 75 percent of the census blocks in the county. If either prong is satisfied, that county is deemed competitive for price cap carriers' BDS. Below, we seek comment on several options for a CMT for electing A–CAM carriers, some of which include the use of the existing CMT. Beside the options we offer below, are there other options we should consider if we choose to adopt a CMT? What are the costs and benefits of each?

1. CMT Options

a. Rerun the Second Prong of the Existing CMT Using 477 Data for A–CAM Areas

37. First, we seek comment on adopting a CMT that uses only a version of the second prong of the existing CMT using data from areas served by A–CAM carriers. Under this approach, we would rerun the second prong of the existing CMT using FCC Form 477 data only from electing A–CAM carriers' study areas. We would then deem competitive, for purposes of relieving electing A–CAM carriers' lower speed TDM BDS services from ex ante pricing regulation, any county where a cable operator or other competitive provider offers a minimum of 10/1 Mbps broadband service in 75 percent of the census blocks in the portion of the county served by an electing A–CAM carrier. This approach has the benefit of simplicity. It would allow us to use FCC Form 477 data that we regularly collect and would identify areas served by electing A–CAM carriers that competitors or potential competitors already serve. Because we would not be using the first prong of the existing CMT, there would be no need to conduct a BDS data collection for A–CAM carriers akin to the *2015 Collection.* For a variety of reasons, we are not inclined to adopt an approach that would require another such large-scale data collection. The burdens associated with such a data collection would be substantial for A–CAM carriers and other providers of data, and could significantly delay Commission action without corresponding benefits. However, we invite comment on this issue. Because of the lack of cable service in many rate-of-return study areas, we recognize that this test will likely result in very few A–CAM counties being deemed competitive. Does that suggest this test is accurate in identifying competition in A–CAM areas? Are there other costs and benefits to this approach that we should consider?

b. Use the Results of the Existing CMT

38. Petitioners propose that we apply the existing CMT to electing A–CAM carriers' BDS offerings. Under this proposal, an electing A–CAM carrier's lower speed TDM BDS offerings would be relieved of ex ante pricing regulation in those counties that have already been deemed competitive by the existing CMT. Petitioners recognize that there are 78 purely rate-of-return counties that were not analyzed by the existing CMT. They propose to use the second prong of the existing CMT to determine whether those counties should be considered competitive. Petitioners argue that this approach would involve minimal administrative and compliance burdens and would avoid the need for revising and re-running the CMT for electing A–CAM carriers or analyzing any additional data.

39. We seek comment on Petitioners' proposed approach. The existing CMT was developed for price cap carriers' service areas and involved analysis of competition only in price cap areas. The Commission did not consider competition in A–CAM markets. Is an analysis of existing or potential competition in price cap areas of a county an appropriate way to determine whether competition or potential competition exists in areas of that county served by an electing A–CAM carrier? Is it likely to result in deregulating lower speed TDM-based BDS services offered by electing A–CAM carriers in counties where such carriers will not face competitive pressure in pricing those services? Are there other benefits or drawbacks to this approach that we should consider?

c. Apply a Modified Two-Prong CMT to Areas Served by Electing A-CAM Carriers

40. Another option would be to adopt a CMT for electing A–CAM carriers using prongs similar to those of the existing CMT, but using data specific to areas served by electing A–CAM carriers. We seek comment on this approach. We recognize that for purposes of the first prong of the new CMT, this approach would require a data collection sufficient to allow us to identify for each county served by an electing A–CAM carrier whether 50 percent of the locations with BDS demand in that part of the county are within a half-mile of a location that was served by a competitive provider. Such a collection could be limited to electing A–CAM carriers and their competitors. Nonetheless, we have reservations about the relative costs and benefits of conducting such a data collection. And, the current record is split on whether we should consider a new data collection. We seek comment on how to most efficiently collect relevant data and on whether the burdens of such a data collection outweigh the benefits. We also seek comment on other benefits and drawbacks to this option.

d. Adopt a CMT Based on a Market Analysis Specific to Areas Served by A–CAM Carriers

41. A fourth option is to create a whole new CMT based on a competitive market analysis specific to BDS services in areas served by electing A–CAM carriers. Petitioners argue that the BDS market analysis conducted in the *BDS Order* with respect to price cap areas applies equally to rate-of-return areas served by A–CAM carriers. We seek comment on Petitioners' argument.

42. In the *BDS Order,* the Commission conducted a broad, data-driven, multi-faceted market analysis based on a comprehensive data collection to evaluate the extent of competition for BDS in price cap areas. The Commission's market analysis was informed by, but not limited to, traditional antitrust principles, such as the market power analysis performed by U.S. antitrust agencies. The Commission analyzed the product market, geographic market, barriers to entry, and other characteristics of price cap BDS markets.

43. If we conduct a new market analysis, should it be similar to the market analysis conducted by the Commission in the *BDS Order* as a precondition to determining whether competition is sufficient to warrant lighter touch regulation in certain BDS

markets? If we do conduct a new market analysis, we propose to consider product and geographic markets, competitive entry, and other market attributes to ascertain the extent to which nearby potential BDS competitors are likely to temper price, resulting in reasonably competitive prices over the short- to medium-term (*i.e.,* up to three to five years). Would this be the right approach to assessing the level of competition for BDS in A–CAM areas? What other approaches should we consider taking? How should we analyze transport under our market analysis? Would a competitive market analysis give us sufficient basis to go beyond the incremental deregulation of lower speed transport that we propose above? We ask commenters to support their positions with data that would help us determine whether markets are sufficiently competitive to warrant deregulatory treatment.

44. *Data for a Market Analysis.* If we conduct a market analysis, what relevant data are available and what are the potential utility and limitations of the available data? Should we review FCC Form 477 data on mass market broadband service to determine the extent to which they serve as evidence of the presence of network facilities capable of delivering reasonably competitive BDS over the short- to medium-term (three to five years) in A–CAM areas? We seek comment on the data, methodologies, and modeling used to develop the A–CAM study area boundaries, including state-level location density data, the A–CAM model, and geocoded location data submitted to USAC and the extent they can assist us in analyzing the BDS market in A–CAM areas.

45. To the extent the Commission's existing data sources are insufficient, we seek data from commenters on facilities-based BDS providers serving A–CAM areas that would help us to ascertain markets with reasonably competitive conditions to justify lighter touch regulatory treatment. Are there existing data similar to data collected as part of the *2015 Collection* that would help us better understand or estimate the location of BDS demand in A–CAM areas, including consumers and business locations served (or readily served) by BDS, as well as data on market structure, demand, pricing, and competitive pressures in those areas? Does similar data exist that could identify BDS demand for transport in A–CAM areas? If we have to collect new data, what data should we collect and what is the most efficient way to collect it? Does the cost of conducting and analyzing such a data collection outweigh the benefits of conducting an A–CAM specific market analysis?

46. *Product Market.* If we conduct a new market analysis, should we use the same analysis to define the product market for lower speed TDM end user channel terminations and transport in A–CAM areas as we used to define the product market for BDS in price cap areas in the *BDS Order*? We anticipate that the product market for BDS in A–CAM areas will closely resemble the BDS product market delineated in the *BDS Order* for price cap areas and seek comment on this belief and on potential differences that may exist between the two types of markets. Despite these similarities, we recognize that there may be differences between price cap areas and A–CAM areas that may affect the BDS product markets in these areas. Are there products that were marketed or supplied to BDS customers in price cap areas that are not in demand, marketed, or otherwise supplied in A–CAM areas as a BDS substitute, and to what extent do products that are not in the same BDS product market nonetheless exert competitive pressure on prices for BDS in A–CAM areas?

47. *Geographic Market.* In the *BDS Order,* the Commission defined the geographic market in terms of ''the area to which consumers can 'practically turn for alternative sources,' and within which providers can reasonably compete.'' Consistent with the *BDS Order,* should we define the geographic market as an area where customers have medium-term competitive choices for BDS based on customer locations within a half mile of a location served over the facilities of at least one non-incumbent competitive provider? We encourage commenters to provide data and analysis to support their positions.

48. *Competitive Entry.* As part of our analysis, and consistent with the *BDS Order,* should we consider how varying market characteristics impact entry by non-incumbent competing BDS providers in A–CAM areas, along with evidence of entry barriers being overcome by traditional and non-traditional competing providers? We seek comment on identifiable market features in A–CAM areas, including carrier market share, number and size distribution of competing firms, the nature of competitors' barriers to entry, the availability of reasonably substitutable services, the level of demand elasticity, and whether a firm controls bottleneck facilities to help us identify where competition is sufficient to make imposing the burdens of ex ante pricing regulation unnecessary and counterproductive.

49. We seek comment on the number, type, size, concentration, and market share of nearby BDS competitors (*i.e.,* within a half-mile) that operate in A–CAM study areas, in the form of facilities-based wired communications network providers, that temper prices to reasonably competitive levels in the short- to medium-term.

50. Consistent with the *BDS Order,* should we consider as part of our market analysis the extent to which providers and potential providers face barriers to enter the BDS marketplace in A–CAM areas? We seek comment on the timeliness, likelihood, and sufficiency of a competitor's entry into the BDS market in A–CAM areas. We seek comment on the barriers facing carriers for both lower speed TDM end user channel terminations and transport. How are the markets different? For example, in the *BDS Order,* the Commission found lower entry barriers for deploying TDM transport services than for end user channel termination services. Is this accurate for A–CAM carrier study areas as well? Would buildout and entry by an entrant be rapid enough to render incumbent LECs' attempts to set prices above competitive levels unprofitable? Would such entry occur over a longer timeframe, such as three to five years, and, if so, would that justify taking the same light touch regulatory approach here as taken in the *BDS Order*? To what extent is market entry profitable (and thus likely) based on projected expenditures and revenues from customers and potential customers? Is the presence of a second provider in the relevant geographic market, whether a non-incumbent LEC or a cable operator, sufficient to constrain prices to competitive levels? To what extent does the half-mile test that was derived from the market analysis of price cap areas relate to demand densities in those areas that may not be present in A–CAM areas? Finally, we seek comment on the extent incumbents and non-incumbent entrants, particularly cable companies, are upgrading or building out their networks to sources of BDS demand in A–CAM study areas.

2. Updating CMT Results for A–CAM Carriers

51. The *BDS Order* directed the Bureau to review the existing price cap CMT every three years using the second prong of the test based on Form 477 data. If we adopt a CMT for electing A–CAM carriers, we seek comment on whether we should conduct similar periodic reviews of any CMT we adopt for such carriers. For administrative ease, should we target the timing of our

initial review of the results of a CMT for electing A–CAM carriers to coincide with our initial review of price cap served areas? Under the *BDS Order,* counties that were determined to be competitive were no longer subject to review of their status in subsequent updates of the CMT. Should we treat A–CAM areas similarly? If not, we seek comment on alternatives to grandfathering those A–CAM areas.

3. Regulation in Areas Deemed Competitive by the CMT

52. If we adopt a CMT for areas served by electing A–CAM carriers, consistent with the *BDS Order,* we propose to refrain from ex ante pricing regulation for lower speed transport and TDM end-user channel terminations in areas deemed competitive. We also seek comment on whether forbearing from section 203 tariffing requirements for these services in these areas would meet the statutory criteria of section 10 of the Act. As we did in the *BDS Order,* we recognize the continuing applicability and importance of sections 201, 202, and 208 of the Act to ensure that consumers will remain protected from unjust and unreasonable rates in areas deemed competitive. We seek comment on this proposal.

IV. Removing Ex Ante Pricing Regulation From Packet-Based BDS and TDM-Based BDS Providing Bandwidth in Excess of a DS3

53. We also seek comment on whether we should eliminate ex ante pricing regulation of packet-based and TDM-based business data services providing bandwidth in excess of a DS3 offered by those carriers that elect to move their lower speed BDS offerings from rate-of-return regulation to incentive regulation. If so, should we provide 36 months for such a transition? If we transition these high-speed services, consistent with the *BDS Order,* we would continue to recognize the applicability and importance of sections 201, 202, and 208 of the Act in protecting consumers from unjust and unreasonable practices.

54. With respect to price cap areas, the Commission's market analysis did ''not show compelling evidence of market power'' in incumbent LECs' provision of packet-based services and higher capacity TDM-based business data services (in excess of the bandwidth of a DS3), particularly for higher bandwidth services. We seek comment on whether these observations offer any insights on the nature and extent of competition in A–CAM areas. Are markets for higher capacity TDM-based BDS offerings (above the bandwidth of a DS3) and packet-based services likely to be sufficiently competitive in A–CAM areas over the next three to five years such that the harms of price regulation in these markets, most notably in terms of discouraging the extension of competition, are likely to be greater than any harms that may occur were we not to regulate? Are these markets sufficiently competitive to outweigh any benefits of ex ante pricing regulation? Parties are encouraged to provide evidence to support their arguments. We seek comment on the extent to which Commission or other data could facilitate our evaluation of competition in these areas, including Form 477 mass market broadband data, A–CAM study area boundary data, A–CAM modeling data, and geocoded location data submitted to USAC. We invite commenters to identify specific data sources that could be useful to our inquiry and to explain their utility.

55. The Commission also found that sales of TDM-based BDS by price cap carriers were declining due to product substitution, including customer loss to cable operators and other competitive providers. To what extent are purchasers substituting packet-based services for TDM-based services in A–CAM areas? Are TDM-based services declining in A–CAM areas at a rate similar to the decline in price cap areas? The Commission found declining prices for packet-based BDS across all bandwidths in price cap areas to be evidence of competitive conditions. Have prices for packet-based BDS in A–CAM areas also declined across all bandwidths? Are lower bandwidth packet-based services (at or below the level of a DS3) experiencing price changes in A–CAM areas as in price cap areas?

56. We recognize that price cap carriers' provision of these services was generally relieved of ex ante pricing regulation prior to the *BDS Order* in a series of forbearance decisions. In contrast, A–CAM carriers provide these services subject to rate-of-return regulation. Would removing ex ante pricing regulation for these services for electing A–CAM carriers encourage competitive entry and network investment and provide an incentive for the transition to packet-based technologies as we found to be the case for price cap carriers? In the foregoing, we seek comment on the parameters of this potential transition. Are there other issues we should consider as we evaluate whether to remove ex ante pricing regulation for all packet-based and TDM-based services providing bandwidth in excess of a DS3 offered by electing A–CAM carriers?

57. We seek comment on granting forbearance from section 203 tariffing requirements for A–CAM carriers' provision of certain BDS after they elect incentive regulation. In the *BDS Order,* the Commission granted forbearance from the application of section 203 to each price cap LEC in its provision of any packet-based BDS and of circuit-based BDS above the DS3 bandwidth level. The Commission also granted forbearance from the application of section 203 to price cap incumbent LECs in their provision of BDS that comprise transport pursuant to section 69.709(a)(4) of the Commission's rules, and to DS1 and DS3 end user channel termination services and any other special access services currently tariffed in competitive counties or in non-competitive counties previously subject to Phase II pricing flexibility. The Commission concluded that ''[w]here a price cap LEC provides these services in competitive markets, application of section 203, including its tariffing requirement, is not necessary to ensure that the LEC's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory. Nor is application of section 203 necessary to protect consumers.''

58. While the Petition does not expressly request forbearance from tariffing requirements, we seek comment on whether to de-tariff certain electing A–CAM BDS offerings by granting forbearance from section 203 tariffing obligations. We seek comment on whether we should remove ex ante pricing regulation of packet-based BDS and higher capacity TDM-based services providing bandwidth in excess of a DS3 for A–CAM carriers that elect incentive regulation. Would forbearing from the tariffing requirement for these services meet the statutory criteria set by section 10 of the Act? Would de-tariffing these services promote competitive market conditions? Would de-tariffing reduce compliance costs, increase regulatory flexibility, increase incentives to invest in innovative products and services and thereby facilitate the technology transitions, or otherwise be in the public interest as the Petition asserts? If the Commission decides to forbear from section 203, should it mandate or simply allow de-tariffing? Would mandatory de-tariffing further promote competition and drive down prices by requiring electing carriers to negotiate agreements to provide the de-tariffed services that they offer?

V. Transition Mechanisms

59. We seek comment on how to transition electing A–CAM carriers and the areas they serve if the Commission adopts a new lighter touch regulatory framework for their provision of BDS. The *BDS Order* provided certain mechanisms to facilitate the transition to the new regulatory framework that it established for price cap carriers. These mechanisms included a thirty-six month transition period in which de-tariffing is permitted but not mandated, a six month freeze of tariffed rates for end-user channel terminations in newly deregulated counties, and a grandfathering of existing contractual or other long-term BDS arrangements. We seek comment on the appropriateness of these and other mechanisms to aid in the transition of electing A–CAM areas to any new regulatory framework we establish for them. Are there other transition issues and mechanisms that may be unique to A–CAM carriers and the areas they serve that would help ensure an orderly transition? For example, should the Commission consider any additional mechanisms that would facilitate transitions for electing A–CAM carriers that participate in NECA pooling arrangements?

VI. Other Carriers

60. We propose to offer the opportunity to elect the same type of regulatory relief that we propose to provide to electing A–CAM carriers to other rate-of-return carriers that currently receive fixed universal service support, rather than receiving support based on their costs. Such carriers include traditional rate-of-return carriers that are affiliated with price cap carriers and are therefore receiving support based on the Connect America Cost Model (CACM); rate-of-return carriers participating in the Commission's ''Alaska Plan''; and carriers that accept further offers of A–CAM support.

61. Like A–CAM carriers, the members of each of these three groups of rate-of-return carriers all receive non-cost-based universal service support and therefore are routinely required to prepare cost studies only for their BDS. What are the costs and benefits of relieving them of existing pricing regulations and allowing them to elect the type of incentive pricing regulation we propose? Should we modify our proposed incentive regulation in any way to reflect differences in any of these types of carriers' circumstances? Are there any other types of carriers that should be eligible for our incentive regulation proposal and, if so, based on what rationale?

VII. ITTA/USTelecom Petition

62. Throughout this NPRM, we seek comment on various aspects of the Petition for rulemaking filed by ITTA and USTelecom. However, the Petition differs in some ways from what we propose in this NPRM. Most fundamentally, it proposes that subject to certain conditions we simply allow model-based carriers to elect the same regulatory framework that the *BDS Order* provided for price cap carriers. It also proposes providing electing A–CAM carriers an opportunity for a one-time unfreezing of category relationships for purposes of jurisdictional separations. To the extent we have not already done so, we invite comment on the Petition and each of the proposals made therein.

VIII. Proposed Rule Changes

63. We seek comment on the proposed rule changes that can be found in Appendix A. Those rule changes largely track the proposals made in this NPRM. They also include some corrections to what appear to be inaccuracies in our current rules. These proposed changes include changing (1) the cross reference to § 61.3(aa) in § 51.903(g) to § 61.3(bb), (2) the cross reference to § 61.3(ee) in § 61.41(d) to § 61.3(ff), (3) the cross reference to § 61.3(x) in § 69.114 to § 61.3(ff), and (4) the cross reference to § 69.801(g) in § 69.805(a) to § 69.801(h). These cross references have been rendered inaccurate because of changes in the definitions contained in § 61.3 that occurred in other rulemaking proceedings or because they were incorrectly stated when added to our rules.

IX. Procedural Matters

64. 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.

A. Initial Regulatory Flexibility Analysis

65. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Notice of Proposed Rulemaking. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on the Notice of Proposed Rulemaking. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

B. Paperwork Reduction Act

66. This document may contain proposed new or modified information collection requirements. 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, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

X. Initial Regulatory Flexibility Analysis

67. 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 Notice of Proposed Rulemaking (NPRM). 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 NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

68. In this NPRM, we propose changes to, and seek comment on, our rate-of-return and business data services rules as they are applied to rate-of-return carriers that receive universal service support based on the Alternative-Connect America Cost Model (A–CAM), or under the Commission's universal service support mechanism for Alaska-based carriers (Alaska Plan), or is an affiliate of a price cap local exchange carrier operating pursuant to a waiver of § 61.41 of our rules. In the NPRM, the Commission proposes to adopt a form of incentive regulation for A–CAM carriers' provision of business data services (BDS), conduct a market analysis to evaluate the characteristics of BDS markets served by A–CAM carriers, and adopt a new lighter touch regulatory framework for A–CAM carriers' BDS that in most respects parallels the framework recently adopted for price cap carriers in the *BDS Order.*

B. Legal Basis

69. The legal basis for any action that may be taken pursuant to this NPRM 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).

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

70. 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 NPRM seeks 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.

1. Total Small Entities

71. *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.

72. 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).

73. 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.''

2. Broadband Internet Access Service Providers

74. *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.

3. Wireline Providers

75. *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.

76. *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.

77. *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.

78. 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.

79. *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.

80. *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.

81. *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.

82. *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 of Proposed Rulemaking.

83. *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.

84. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

4. Wireless Providers—Fixed and Mobile

85. *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.

86. 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.

87. *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.

88. *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.

5. Satellite Service Providers

89. *Satellite Telecommunications Providers.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

6. Cable Service Providers

90. 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.

91. *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.

92. *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.

93. *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 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.'' 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.

94. *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.

7. Electric Power Generators, Transmitters, and Distributors

95. *Electric Power Generators, Transmitters, and Distributors.* 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 closest applicable SBA category is ''All Other Telecommunications''. The SBA's small business size standard for ''All Other Telecommunications,'' consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. 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 under this category and the associated size standard the majority of these firms can be considered small entities.

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

96. This NPRM proposes changes to, and seeks comment on, the Commission's rate-of-return and business data services rules. The objective of the proposed modifications is to reduce the unnecessary regulatory burdens and inflexibility of rate-of-return regulation for BDS services for A–CAM carriers, which are for the most part small businesses. These rule modifications would provide additional incentives for competitive entry, network investment and the migration to IP-based network technologies and services. The NPRM seeks comment on proposed rules that would generally reduce compliance requirements for A–CAM carriers that choose to opt into the new incentive regulation and regulatory framework for the provision of BDS.

97. Under the Commission's rate-of-return rules, rates for business data services are based on costs derived from carrier-specific cost studies which represent a significant compliance burden for A–CAM carriers relative to their overall revenues. The NPRM proposes to transition these carriers to a form of incentive regulation that will enable these LECs to significantly reduce these compliance costs. The NPRM also proposes a new regulatory framework for A–CAM carriers' BDS that would in many cases eliminate ex ante pricing regulation and tariffing requirements for carriers electing incentive regulation.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

98. 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.

99. The rule changes proposed by the NPRM would reduce the economic impact of the Commission's rules on A–CAM carriers that elect incentive regulation in the following ways. Electing A–CAM carriers would no longer be required to prepare annual cost studies to justify their BDS rates. Such carriers would also be freed of ex ante pricing regulation for many of their BDS offerings, including packet-based BDS, circuit-based BDS above a DS3

bandwidth (about 45 Mbps) such as OCn services, and circuit-based end user channel terminations (*e.g.* DS1 and DS3) in geographic areas deemed to be competitive by a competitive market test. These proposed rule changes represent alternatives to the Commission's current rules that would significantly minimize the economic impact of those rules on electing A–CAM LECs. Finally, we seek comment as to any additional economic burden incurred by small entities that may result from the rule changes proposed in the NPRM.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

100. None.

XI. Ordering Clauses

101. 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 the Petition for Rulemaking filed by ITTA and USTelecom in this proceeding *is granted* to the extent described herein.

102. *It is further 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 Notice of Proposed Rulemaking *is adopted.*

103. *It is further ordered,* Pursuant to Section 220(i) of the Communications Act, 47 U.S.C. 220(i), that notice be given to each state commission of the above rulemaking proceeding, and that the Secretary shall serve a copy of this NPRM on each state commission.

104. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *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.

List of Subjects

47 CFR Part 1

Communications common carriers, Equal employment opportunity, Reporting and recordkeeping requirements, Telecommunications, Television.

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 32, 51, 61 and 69 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, 1451, and 1452.

■ 2. Section 1.1409 is amended by revising paragraph (g) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(g) A price cap company, or a rate-of-return carrier electing to provide service pursuant to § 61.50 of this chapter, opts-out of Part 32 may calculate attachment rates for its poles, ducts, conduits, and rights of way using either Part 32 accounting data or GAAP accounting data. A company using GAAP accounting data to compute rates to attach to its poles, ducts, conduits, and rights of way in any of the first twelve years after opting-out must adjust (increase or decrease) its annually computed GAAP-based rates by an Implementation Rate Difference for each of the remaining years in the period. The Implementation Rate Difference means the difference between attachment rates calculated by the carrier under Part 32 and under GAAP as of the last full year preceding the carrier's initial opting-out of Part 32 USOA accounting requirements.

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

■ 3. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 219, 220 as amended, unless otherwise noted.

■ 4. Section 32.1 is revised to read as follows:

§ 32.1 Background

The revised Uniform System of Accounts (USOA) is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. The USOA also provides the financial community and others with financial performance results. In order for an accounting system to fulfill these purposes, it must exhibit consistency and stability in financial reporting (including the results published for regulatory purposes). Accordingly, the USOA has been designed to reflect stable, recurring financial data based to the extent regulatory considerations permit upon the consistency of the well-established body of accounting theories and principles commonly referred to as generally accepted accounting principles (GAAP). The rules of this part, and any other rules or orders that are derivative of or dependent on these Part 32 rules, do not apply to price cap companies, and rate-of-return telephone companies offering business data services pursuant to § 61.50 of this chapter, that have opted-out of USOA requirements pursuant to the conditions specified by the Commission in section 32.11(g).

■ 5. Section 32.11 is amended by revising paragraph (g) to read as follows:

§ 32.11 Companies Subject to this part.

* * * * *

(g) Notwithstanding subsection (a), a price cap company, or a rate-of-return telephone company offering business data services pursuant to § 61.50 of this chapter, that elects to calculate its pole attachment rates pursuant to section 1.1409(g) of this chapter will not be subject to this Uniform System of Accounts.

PART 51—INTERCONNECTION

■ 6. The authority citation for part 51 continues to read as follows:

Authority: 47 U.S.C. 151–55, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302.

■ 7. Section 51.903 is amended by revising paragraph (g) to read:

§ 51.903 Definitions.

* * * * *

(g) Rate-of-Return Carrier is any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(bb) of this chapter, but only with respect to the

territory in which it operates as an incumbent local exchange carrier.

* * * * *

PART 61—TARIFFS

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

Authority: Secs. 1, 4(i), 4(j), 201–05 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–05 and 403, unless otherwise noted.

■ 9. Section 61.41 is amended by revising paragraph (d) and adding paragraph (f) to read as follows:

§ 61.41 Price cap requirements generally.

* * * * *

(d) Except as provided in paragraph (e) of this section, local exchange carriers that become subject to price cap regulation as that term is defined in § 61.3(ff) shall not be eligible to withdraw from such regulation.

* * * * *

(f) Notwithstanding the requirements of paragraphs (c) and (d) of this section, a telephone company subject to rate-of-return regulation that is affiliated with a price cap local exchange carrier may provide business data services pursuant to § 61.50 without converting other services to price cap regulation.

■ 10. Section 61.50 is added to read as follows:

§ 61.50 Incentive regulation of rate-of-return carrier provision of business data services.

(a) A rate-of-return carrier, as defined in § 51.903(g), has the option to offer business data services to customers pursuant to this section if the carrier

(1) Receives universal service payments pursuant to the Alternative-Connect America Cost Model pursuant to § 54.311;

(2) Is an affiliate of a price cap local exchange carrier operating pursuant to a waiver of § 61.41; or

(3) Receives universal service payments pursuant to § 54.306.

(b) A rate-of-return carrier may not elect to offer business data services to customers pursuant to this section unless it notifies the Chief of the Wireline Competition Bureau at least 120 days before the effective date of the election. Carriers may only elect this option to be effective on July 1, [year].

(c) A rate-of-return carrier may elect to offer business data services pursuant to this section only if all affiliated rate-of-return carriers make the election.

(d) A rate-of-return carrier electing to offer business data services under this section may continue to participate in the NECA Traffic Sensitive Pool for access services other than business data services.

(e) A rate-of-return carrier electing to offer business data services pursuant to this section shall employ the procedures outlined in §§ 61.41 through .49 to adjust its indexes to the extent those sections are applicable to business data services, except that:

(1) For the special access basket specified in § 61.42(d)(5), the value of X for local exchange carriers offering service under this section shall be 2.0% effective July 1, [year]; and

(2) Exogenous costs shall be allocated to business data services based on relative revenues, including any universal service support amounts.

(f) Tariffs offering business data services pursuant to this section may offer those business data services at different rates in different study areas.

(g) A rate-of-return carrier offering business data services pursuant to this section may make a low-end adjustment pursuant to § 61.45(d)(1)(vii) of this subpart unless it:

(1) Exercises the regulatory relief pursuant to paragraph (j) of this section in any part of its service region; or

(2) Exercises the option to use Generally Accepted Accounting Principles rather than the Part 32 Uniform System of Accounts pursuant to § 32.11(g).

(h) Rate-of-return carriers electing to offer business data services pursuant to this section may offer transport and end user channel terminations that include:

(1) Volume and term discounts;

(2) Contract-based tariffs, provided that:

(i) Contract-based tariff services are made generally available to all similarly situated customers;

(ii) The rate-of-return carrier excludes all contract-based tariff offerings from incentive regulation pursuant to § 61.42(f) of this subpart;

(3) Ability to file tariff revisions on at least one day's notice, notwithstanding the notice requirements for tariff filings specified in § 61.58 of this chapter.

(j) A rate-of-return carrier electing to offer business data services pursuant to this section shall comply with the requirements of section 69.805 of this Chapter.

(k) The regulation of other services offered by a rate-of-return carrier that offers business data services pursuant to this section shall not be modified as a result of the requirements of this section.

■ 11. Section 61.55 is amended by revising paragraph (a) to read as follows:

§ 61.55 Contract-based tariffs.

(a) This section shall apply to price cap local exchange carriers permitted to offer contract-based tariffs under § 1.776 or § 69.805 of this chapter, as well as to the offering of business data services by rate-of-return carriers pursuant to § 61.50 of this part.

* * * * *

PART 69—ACCESS CHARGES

■ 12. 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.

■ 13. Section 69.114 is amended by revising paragraph (a) to read as follows:

§ 69.114 Special Access.

(a) Appropriate subelements shall be established for the use of equipment or facilities that are assigned to the Special Access element for purposes of apportioning net investment, or that are equivalent to such equipment or facilities for companies subject to price cap regulation as that term is defined in § 61.3(ff) of this chapter.

* * * * *

■ 14. Section 69.805 is amended by revising paragraph (a) to read as follows:

§ 69.805 Prohibition on certain non-disclosure agreement conditions.

(a) In markets deemed non-competitive, buyers and sellers of business data services shall not enter into a tariff, contract-based tariff, or commercial agreement, including but not limited to master service agreement, that contains a non-disclosure agreement as defined in § 69.801(h), that restricts or prohibits disclosure of information to the Commission, or requires a prior request or legal compulsion by the Commission to effect such disclosure.

* * * * *

[FR Doc. 2018–10338 Filed 5–16–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 171031999–8428–01]

RIN 0648–BH39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 43

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.