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FEDERAL COMMUNICATIONS COMMISSION ALLOWS RATE-OF-RETURN CARRIERS CURRENTLY RECEIVING MODEL-BASED OR OTHER FORMS OF FIXED HIGH-COST SUPPORT TO ELECT TO TRANSITION THEIR BUSINESS DATA SERVICES OUT OF RATE-OF-RETURN REGULATION

The Federal Communications Commission (Commission) recently adopted new rules allowing rate-of-return carriers that receive fixed universal service support to choose to migrate their Business Data Service ("BDS") offerings on a voluntarily basis to a reduced regulatory framework for the BDS markets they serve. The Order can be viewed using the following link: https://prodnet.www.neca.org/publicationsdocs/wwpdf/fcc18146.pdf.

Carriers Eligible for the Transition of BDS Service Offerings

The carriers eligible to make this election include the following: "A-CAM carriers, rate-of-return carriers receiving fixed support by virtue of being affiliated with price cap carriers, Alaska Plan carriers, and rate-of-return carriers that accept future offers of A-CAM support or otherwise transition away from legacy support mechanisms."

New Framework

The Commission determined that it would adopt a separate, but largely parallel, regulatory framework for rate-of-return carriers receiving fixed support that will be better suited to their circumstances than the rules previously adopted for price cap carriers. The relaxed regulation will relieve electing rate-of-return carriers of regulation for their BDS that will save them the expense of preparing cost studies needed only for those offerings. Note that the Commission views this election as completing the move of a study area from rate-of-return regulation to incentive regulation and is permanent – the Commission prohibits electing carriers from returning their study areas to rate-of-return regulation.

The framework adopted by the Commission includes pricing flexibility for electing carriers' lower capacity (DS3 and below) TDM transport and end user channel termination services. The Commission also adopted "a competitive market test for electing carriers' lower capacity TDM end user channel termination services to identify competition by study area." In electing carriers' study areas deemed competitive based on the competitive market test, the Commission eliminated "ex ante pricing regulation for lower capacity TDM end user channel termination services." In addition, the Commission removed "ex ante pricing regulation from electing carriers' packet-based and higher capacity (above a DS3 bandwidth level) TDM services" and granted forbearance to those carriers from tariffing requirements for those services. Lastly, the Commission granted forbearance to the electing carriers from cost assignment and separations rules and related reporting requirements.

Transitioning to the New Framework

Eligible carriers will have two opportunities to transition to the new framework by electing to move their BDS offerings out of rate-of-return regulation:

1. An initial opportunity is effective on July 1, 2019 (with notice to the Wireline Competition Bureau by May 1, 2019); or
2. A second opportunity is effective on July 1, 2020 (with notice to the Wireline Competition Bureau by May 1, 2020).

Please note that electing carriers currently in the NECA pool are required to notify NECA by March 1, 2019, that they will not participate in the upcoming NECA traffic-sensitive tariff for their BDS offerings, or by March 1, 2020, if they are participating in the second opportunity. Electing carriers subject to the category relationships freeze of the separations rules, including any such carriers that accept future offers of A-CAM support or otherwise transition away from legacy support mechanisms, are offered the opportunity to opt out of that freeze.

Carriers that accept future offers of A-CAM support and carriers that otherwise transition away from legacy support mechanisms must provide notice of their election or transition to the FCC's Wireline Completion Bureau by May 1 of the year of their election or transition. Further, electing carriers that choose to update their separations category relationships pursuant to the BDS Order shall also include information to that effect in their notices to NECA and the Wireline Competition Bureau.

GVNW will continue to review the Order and will be providing carriers with additional information regarding their specific options to elect to transition to the new regulatory framework.

Please contact your GVNW Consultant or Steve Gatto (830.895.7226), sgatto@gvnw.com with any additional questions you may have about the new regulatory framework adopted in the BDS Order.