

## SUPPORTING STATEMENT

### A. Justification:

#### 1. Circumstances that make the collection necessary:

In the 1999 *Fifth Report and Order (Pricing Flexibility Order)*,<sup>1</sup> the Federal Communications Commission (Commission) modified the rules that govern the provision of interstate access services by those price cap incumbent local exchange carriers (price cap LECs) subject to price regulation to advance the pro-competitive, de-regulatory national policies embodied in the Telecommunications Act of 1996. The pricing flexibility framework adopted in the *Pricing Flexibility Order* was designed to grant greater flexibility to price cap LECs as competition develops, while ensuring that: (1) price cap LECs do not use pricing flexibility to deter efficient entry or engage in exclusionary pricing behavior; and (2) price cap LECs do not increase rates to unreasonable levels for customers that lack competitive alternatives. Price cap LECs seeking pricing flexibility were required to file applications providing certain specified information regarding the geographic areas for which flexibility was sought. This collection reflected the paperwork burdens associated with these applications.

In the August 2012 *Suspension Order*,<sup>2</sup> the Commission suspended its rules for the further grant of pricing flexibility pending adoption of a new regulatory framework. The Commission took this step based on “significant evidence that these rules . . . [were] not working as predicted, and widespread agreement across industry sectors” and that these rules failed to accurately reflect competition in current special access markets.<sup>3</sup>

On April 28, 2017, the Commission released the *Business Data Services Order*,<sup>4</sup> reforming the business data services/special access regulations for incumbent and competitive LECs. The Commission’s reforms included replacing the application-based pricing flexibility rules with a new framework under which:

- Packet-based services, time division multiplexing (TDM) services with bandwidth greater than 45 mbps and TDM transport services are not subject to ex ante pricing regulation.
- A new standard is applied to determine the extent to which the Commission regulates price cap LECs’ TDM end user channel terminations with bandwidth less than 45 mbps and certain other low bandwidth business data services.

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<sup>1</sup> *Fifth Report and Order and Notice of Proposed Rulemaking*, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), aff’d, *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

<sup>2</sup> *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, 25 FCC Rcd 10557 (2012) (*Suspension Order*).

<sup>3</sup> *Id.*

<sup>4</sup> *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143 et al., Report and Order, FCC 17-43 (rel. April 28, 2017) (*Business Data Services Order*).

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- Under this standard, a price cap LEC is not subject to ex ante pricing regulation in the provision of these services in counties deemed competitive under the Commission's competitive market test or for which the price cap LEC previously obtained Phase II pricing flexibility.
- The price cap LEC is subject to ex ante pricing regulation in other counties where it is the incumbent LEC, but in these counties the price cap LEC has downward pricing flexibility (i.e., the equivalent of Phase I pricing flexibility under the prior rules).

The Commission will update the competitive market test results every three years using data already collected in FCC Form 477.<sup>5</sup>

Among other rules changes, the *Business Data Services Order* repealed section 1.774, which set forth requirements for pricing flexibility applications, and added section 1.776, which limits the circumstances under which price cap LECs must file their business data services contracts as contract-based tariffs. The Commission also amended section 69.701 of its rules to specify that its pricing flexibility rules no longer apply to business data services.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The statutory authority for this collection is contained in sections 47 U.S.C. §§ 151, 152, 154(i)-(j), 201-205, and 303(r) of the Communications Act of 1934, as amended (Act).

2. The information to be collected would assist the Commission in determining whether price cap LECs' access charges are just and reasonable under the Act.
3. The Commission has established a program of mandatory electronic filing of tariffs and associated documents by incumbent LECs. For certain business data services, price cap LECs in non-competitive counties for which the LECs were not previously granted Phase II price flexibility will continue to file tariffs and associated documents electronically in accordance with the requirements established by the Wireline Competition Bureau. Other parties may also file documents in tariff proceeding via the Electronic Tariff Filing System. See 47 CFR § 1.774(e).
4. We know of no duplication of this information. There is no existing information that would suit our purposes.
5. This collection has been carefully designed to minimize the burden on all carriers, regardless of size.
6. These information collection requirements are necessary to allow the Commission to become aware of unjust and unreasonable charges in a timely manner. Without these information requirements, the Commission would be unable to minimize any adverse effects on the public.

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<sup>5</sup> The Commission obtained PRA approval for the collection of Form 477 data on June 28, 2017. See OMB Control No. 3060-0816.

7. We are not aware of any circumstances that require the collection to be conducted in any manner inconsistent with the guidelines in 5 CFR §1320.5.
8. Pursuant to 5 CFR § 1320.8(d), the Commission published a 60-day notice in the *Federal Register* on July 6, 2017 (See 82 FR 31324). No comments were received.
9. The Commission does not anticipate providing any payment or gift to respondents.
10. The information is not of a confidential nature. Respondents who believe certain information to be of a proprietary nature may request confidential treatment in accordance with the procedures described in 47 CFR § 0.459. See also 47 CFR § 1.774(b).
11. There are no questions of a sensitive nature with respect to this information collection.
12. The information collection requirements are as follows:

**A. Reporting Requirement: Contract-Based Tariff Filings**

1. Number of respondents: **13.**
2. Frequency of response: **On occasion reporting requirement as needed by filer.**
3. Total number of responses annually: **Approximately 50 responses.**
4. Estimated time per response: **3 hours.**
5. Total annual burden: **156 hours.**

The Commission estimates that approximately 13 entities will require approximately 3 hours of reporting time per filing.

13 respondents x 4 submissions/year x 3 hours = 156 hours.

6. Total estimate of “in-house” cost to respondents: **\$6,753.24.**
7. Explanation of calculation:

The Commission estimates that respondents will use personnel comparable in pay to a GS 12/Step 5 employee earning \$43.29 per hour. Thus:

13 respondents x 4 filings/year x 3 hours/filing x \$43.29/hour = \$6,753.24.

**B. Reporting requirement: Contract Tariff Certification:**

1. Number of respondents: 3.

2. Frequency of response: On occasion reporting requirement.

This obligation is required each time each respondent provides contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule 64.1903 separate affiliate for use in the provision of any in-region, long distance services.

3. Total number of responses annually: 3.

4. Estimated time per response: 20 hours.

5. Total annual burden: 60 hours.

The Commission estimates that this requirement will take approximately 20 hours and that the 3 respondent entities (BOCs) will respond once a year.

3 respondents x 1 submission/year x 20 hours = 60 hours

6. Total estimate of “in-house” cost to respondents: \$2,597.40.

7. Explanation of calculation:

The Commission estimates that respondents will use personnel comparable in pay to a GS 12/Step 5 employee earning \$43.29 per hour. Thus:

We estimate it will take approximately 20 hours to comply with the requirement:

3 respondents x 20 hours per filing x \$43.29/hour = \$2,597.40.

C. Third-Party Disclosure Requirement: Provision of Customer-Specific Presubscribed Interexchange Carrier Charge (PICC) Data to Interexchange Carriers (IXCs)

1. Number of respondents: 13.

2. Frequency of response: Third-party disclosure requirement.

3. Total number of responses annually: 13.

4. Estimated time per response: 80 hours.

5. Total annual burden: 1,040 hours.

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The Commission estimates that this requirement will take approximately 80 hours and that the 13 respondent entities will respond once a year.

13 respondents x 1 submission/year x 80 hours = 1,040 hours

6. Total estimate of “in-house” cost to respondents: **\$45,021.60.**

7. Explanation of calculation:

The Commission estimates that respondents will use personnel comparable in pay to a GS 12/Step 5 employee earning \$43.29 per hour. Thus:

13 respondents x 80 hours per filing x \$43.29/hour = \$45,021.60.

**Total Number of Respondents: 13**

**Total Number of Responses Annually:  $50 + 3 + 13 = 66$ .**

**Total Annual Burden Hours:  $156 + 60 + 1,040 = 1,256$  hours.**

**Total “In-House” Costs:  $\$6,753.24 + \$2,597.40 + \$45,021.60 = \$54,372.24$ .**

- 13 a. The following represents the Commission’s estimate of the annual cost burden to respondents or record keepers resulting from this collection of information:

These information collection requirements impose no start-up costs on respondents.

- b. Estimated operations and maintenance and purchase of services component:

Respondents are subject to a filing fee of \$925. Thus:

66 responses x \$925 filing fee = **\$61,050.**

The Commission is reporting an increase in the filing fee (from \$845 to \$925).

- c. Total annualized cost requested: **\$61,050.**

14. Estimated costs to the Commission:

- a. Contract-based Tariff Filings: We estimate that the time required to review contract-based tariff filings is approximately 3 hours. Assuming an employee earns \$43.29 per hour (GS 12/Step 5), the total cost for the Commission is:

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**66 filings x 3 hours x \$43.29/hour = \$8,571.42.**

- b. Contract Tariff Certification: The Commission does not review this information collection requirement.
- c. Provision of PICC data to IXCs: The Commission does not review this information collection requirement.

**Total Cost to the Commission: \$8,571.42.**

15. The Commission notes the following changes since the previous submission:
  - (a) We have eliminated pricing flexibility showings by replacing the application-based system for obtaining pricing flexibility with a new framework.
  - (b) The total number of responses annually has been reduced from 367 to 66, a decrease of 301 responses.
  - (c) The total annual burden of this information collection is now 1,256 hours, a decrease of 4,914 hours from the previously approved burden of 6,170 hours.
  - (d) The Commission has increased the filing fee, from \$845 to \$925, but, due to the decrease in the number of filings, the total annual cost is now \$61,050, a decrease of \$249,065 from the previously approved burden of \$310,115.
16. The Commission does not anticipate that it will publish any of the information.
17. We do not seek approval to not display the expiration date for OMB approval of the information collections.
18. There are no exceptions to the Certification Statement.

**B. Collection of Information Employing Statistical Methods:**

The Commission does not anticipate that the collection of information will employ statistical methods.