§ 69.801 Definitions.

(a) *Business data services.* The dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.

(b) *Competitive market test.* The competitive market test is defined in § 69.803.

(c) *County.* A county or county equivalent as defined in § 10.10 of this chapter. County-equivalents include parishes, boroughs, independent cities, census areas, the District of Columbia, and various entities in the territories.

(d) *End user channel termination.* A dedicated channel connecting a local exchange carrier end office and a customer premises, offered for purposes of carrying special access traffic.

(e) *Grandfathered market.* A county that does not satisfy the competitive market test set forth in § 69.803 for which a price cap local exchange carrier obtained Phase II relief pursuant to § 69.711(c).

(f) *Market deemed competitive.* A county that satisfies the competitive market test set forth in § 69.803.

(g) *Market deemed non-competitive.* A county that does not satisfy the competitive market test set forth in § 69.803.

(h) *Non-disclosure agreement.* A non-disclosure agreement is a contract, contractual provision, or tariff provision wherein a party agrees not to disclose certain information shared by the other party.

(i) *Special access data collection.* The special access data collection refers to the data and other information the Commission collected from business data services providers and purchasers pursuant to its December 18, 2012 Report and Order in WC Docket 05–25.

(j) *Transport* includes interoffice facilities, channel terminations between the serving wire center and point of presence, and all special access services that are described in § 69.114 other than end user channel terminations.

§ 69.803 Competitive market test.

(a) The competitive market test is used to determine which counties served by a price cap local exchange carrier, as defined in § 61.3(bb) of this chapter, are deemed competitive and therefore warrant relief from price cap regulation and detariffing of DS1 and DS3 end user channel terminations, and certain other business data services, sold by such carriers.

(b) *Initial test.* A county is deemed competitive in the initial competitive market test if:

(1) Either 50 percent of the locations with business data services demand within the county are within one half mile of a location served by a competitive provider based on data from the special access data collection, or 75 percent of the census blocks within the county are reported to have broadband connection availability by a cable operator based on Form 477 data as of December 2016. Lists of counties deemed competitive, non-competitive or grandfathered by the initial competitive market test are published on the Commission's Web site.

(2) The DS1 and DS3 end user channel terminations sold by price cap local exchange carriers in counties deemed competitive are no longer subject to price cap regulation and are detariffed according to § 61.201.

(c) *Subsequent tests.* The results of the initial competitive market test will be updated every three years following the effective date of the initial test.

(1) A county will be deemed competitive in a subsequent competitive market test if 75 percent of the census blocks within the county are reported to have broadband connection availability by a cable operator based on Form 477 data as of the date of the most recent collection.

(2) No later than three years following the effective date of the previous test, the Wireline Competition Bureau will conclude a subsequent test and will publish a revised list of counties deemed competitive at the conclusion of the test.

(3) A county deemed competitive in the competitive market test will retain its status in subsequent tests.

§ 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