

Federal Communications Commission

§ 1.773

in accordance with and subject to the requirements of part 61 of this chapter.

§ 1.772 Application for special tariff permission.

Applications under section 203 of the Communications Act for special tariff permission shall be made in the form and manner, with the number of copies set out in part 61 of this chapter.

[52 FR 5289, Feb. 20, 1987]

§ 1.773 Petitions for suspension or rejection of new tariff filings.

(a) *Petition*—(1) *Content*. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision thereof shall specify the filing's Federal Communications Commission tariff number and carrier transmittal number, the items against which protest is made, and the specific reasons why the protested tariff filing warrants investigation, suspension, or rejection under the Communications Act. No petition shall include a prayer that it also be considered a formal complaint. Any formal complaint shall be filed as a separate pleading as provided in § 1.721.

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing or any provision of such a publication, must specify the pertinent Federal Communications Commission tariff number and carrier transmittal number; the matters protested; and the specific reasons why the tariff warrants investigation, suspension, or rejection. When a single petition asks for more than one form of relief, it must separately and distinctly plead and support each form of relief. However, no petition may ask that it also be considered a formal complaint. Formal complaints must be separately lodged, as provided in § 1.721.

(ii) For purposes of this section, tariff filings by nondominant carriers will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That the harm alleged to competition would be more substantial than the injury to the public arising

from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(iii) For the purpose of this section, any tariff filing by a local exchange carrier filed pursuant to the requirements of § 61.39 will be considered *prima facie* lawful and will not be suspended by the Commission unless the petition requesting suspension shows that the cost and demand studies or average schedule information was not provided upon reasonable request. If such a showing is not made, then the filing will be considered *prima facie* lawful and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(iv) For the purposes of this section, tariff filings made pursuant to § 61.49(b) by carriers subject to price cap regulation will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition shows that the support information required in § 61.49(b) was not provided, or unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That the suspension would not substantially harm other interested parties;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(v) For the purposes of this section, any tariff filing by a price cap LEC filed pursuant to the requirements of §61.42(d)(4)(ii) of this chapter will be considered *prima facie* lawful, and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:

(A) That there is a high probability the tariff would be found unlawful after investigation;

(B) That any unreasonable rate would not be corrected in a subsequent filing;

(C) That irreparable injury will result if the tariff filing is not suspended; and

(D) That the suspension would not otherwise be contrary to the public interest.

(2) *When filed.* All petitions seeking investigation, suspension, or rejection of a new or revised tariff filing shall meet the filing requirements of this paragraph. In case of emergency and within the time limits provided, a telegraphic request for such relief may be sent to the Commission setting forth succinctly the substance of the matters required by paragraph (a)(1) of this section. A copy of any such telegraphic request shall be sent simultaneously to the Chief, Wireline Competition Bureau, the Chief, Pricing Policy Division, and the publishing carrier. Thereafter, the request shall be confirmed by petition filed and served in accordance with §1.773(a)(4).

(i) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filed pursuant to section 204(a)(3) of the Communications Act made on 7 days notice shall be filed and served within 3 calendar days after the date of the tariff filing.

(ii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 6 days after the date of the tariff filing.

(iii) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 7 days after the date of the tariff filing.

(iv) Petitions seeking investigation, suspension, or rejection of a new or re-

vised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 15 days after the date of the tariff filing.

(v) Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 25 days after the date of the tariff filing.

(3) *Computation of time.* Intermediate holidays shall be counted in determining the above filing dates. If the date for filing the petition falls on a holiday, the petition shall be filed on the next succeeding business day.

(4) *Copies, service.* An original and four copies of each petition shall be filed with the Commission as follows: The original and three copies of each petition shall be filed with the Secretary, 236 Massachusetts Ave., NE., Washington, DC 20002; one copy must be delivered directly to the Commission's copy contractor. Additional, separate copies shall be served simultaneously upon the Chief, Wireline Competition Bureau; and the Chief, Pricing Policy Division. Petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served either personally or via facsimile on the filing carrier. If a petition is served via facsimile, a copy of the petition must also be sent to the filing carrier via first class mail on the same day of the facsimile transmission. Petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on more than 15 days notice may be served on the filing carrier by mail.

(b) *Reply—(1) When filed.* A publishing carrier's reply to a petition for relief from a tariff filing shall be filed in accordance with the following periods:

(i) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filed pursuant to section 204(a)(3) of the Act made on 7 days notice shall be filed and served within 2 days after the date the petition is filed with the Commission.

(ii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice shall be filed and served within 3 days after the date

the petition is due to be filed with the Commission.

(iii) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 15 but less than 30 days notice shall be filed and served within 4 days after service of the petition.

(iv) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on at least 30 but less than 90 days notice shall be filed and served within 5 days after service of the petition.

(v) Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 90 or more days notice shall be filed and served within 8 days after service of the petition.

(vi) Where all petitions against a tariff filing have not been filed on the same day, the publishing carrier may file a consolidated reply to all the petitions. The time for filing such a consolidated reply will begin to run on the last date for timely filed petitions, as fixed by paragraphs (a)(2) (i) through (iv) of this section, and the date on which the consolidated reply is due will be governed by paragraphs (b)(1) (i) through (iv) of this section.

(2) *Computation of time.* Intermediate holidays shall be counted in determining the 3-day filing date for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on less than 15 days notice. Intermediate holidays shall not be counted in determining filing dates for replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff filing made on 15 or more days notice. When a petition is permitted to be served upon the filing carrier by mail, an additional 3 days (counting holidays) may be allowed for filing the reply. If the date for filing the reply falls on a holiday, the reply may be filed on the next succeeding business day.

(3) *Copies, service.* An original and four copies of each reply shall be filed with the Commission, as follows: the original and three copies must be filed with the Secretary, 236 Massachusetts Ave., NE., Washington, DC 20002; one copy must be delivered directly to the Commission's copy contractor. Addi-

tional separate copies shall be served simultaneously upon the Chief, Wireline Competition Bureau, the Chief, Pricing Policy Division and the petitioner. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on 15 days or less notice shall be served on petitioners personally or via facsimile. Replies to petitions seeking investigation, suspension, or rejection of a new or revised tariff made on more than 15 days notice may be served upon petitioner personally, by mail or via facsimile.

[45 FR 64190, Sept. 29, 1980, as amended at 49 FR 40876, Oct. 18, 1984; 49 FR 49466, Dec. 20, 1984; 52 FR 26682, July 16, 1987; 54 FR 19840, May 8, 1989; 58 FR 17529, Apr. 5, 1993; 58 FR 51247, Oct. 1, 1993; 62 FR 5777, Feb. 7, 1997; 64 FR 51264, Sept. 22, 1999; 65 FR 58466, Sept. 29, 2000; 67 FR 13223, Mar. 21, 2002; 71 FR 15618, Mar. 29, 2006]

§ 1.774 Pricing flexibility.

(a) *Petitions.* (1) A petition seeking pricing flexibility for specific services pursuant to part 69, subpart H, of this chapter, with respect to a metropolitan statistical area (MSA), as defined in § 22.909(a) of this chapter, or the non-MSA parts of a study area, must show that the price cap LEC has met the relevant thresholds set forth in part 69, subpart H, of this chapter.

(2) The petition must make a separate showing for each MSA for which the petitioner seeks pricing flexibility, and for the portion of the study area that falls outside any MSA.

(3) Petitions seeking pricing flexibility for services described in §§ 69.709(a) and 69.711(a) of this chapter must include:

(i) The total number of wire centers in the relevant MSA or non-MSA parts of a study area, as described in § 69.707 of this chapter;

(ii) The number and location of the wire centers in which competitors have collocated in the relevant MSA or non-MSA parts of a study area, as described in § 69.707 of this chapter;

(iii) In each wire center on which the price cap LEC bases its petition, the name of at least one collocator that uses transport facilities owned by a provider other than the price cap LEC