

**§ 65.102**

(c) The Chief, Wireline Competition Bureau, may issue the notice described in § 65.101(a).

[60 FR 28544, June 1, 1995, as amended at 67 FR 13229, Mar. 21, 2002]

**§ 65.102 Petitions for exclusion from unitary treatment and for individual treatment in determining authorized return for interstate exchange access service.**

(a) Exclusion from unitary treatment will be granted for a period of two years if the cost of capital for interstate exchange service is so low as to be confiscatory because it is outside the zone of reasonableness for the individual carrier's required rate of return for interstate exchange access services.

(b) A petition for exclusion from unitary treatment and for individual treatment must plead with particularity the exceptional facts and circumstances that justify individual treatment. The showing shall include a demonstration that the exceptional facts and circumstances are not of transitory effect, such that exclusion for a period of a least two years is justified.

(c) A petition for exclusion from unitary treatment and for individual treatment may be filed at any time. When a petition is filed at a time other than that specified in § 65.103(b)(2), the petitioner must provide compelling evidence that its need for individual treatment is not simply the result of short-term fluctuations in the cost of capital or similar events.

[60 FR 28544, June 1, 1995]

**§ 65.103 Procedures for filing rate of return submissions.**

(a) Rate of return submissions listed in § 65.103 (b)(1) and (c) may include any relevant information, subject to the page limitations of § 65.104. The Chief, Wireline Competition Bureau, may require from carriers providing interstate services, and from other participants submitting rate of return submissions, data, studies or other information that are reasonably calculated to lead to a full and fair record.

(b) In proceedings to prescribe an authorized unitary rate of return on interstate access services, interested parties may file direct case submis-

sions, responses, and rebuttals. Direct case submissions shall be filed within sixty (60) calendar days following the effective date of a Commission notice initiating a rate of return proceeding pursuant to § 65.101(b). Rate of return submissions responsive to the direct case submissions shall be filed within sixty (60) calendar days after the deadline for filing direct case submissions. Rebuttal submissions shall be filed within twenty-one (21) calendar days after the deadline for filing responsive submissions.

(c) Petitions for exclusion from unitary treatment and for individual treatment may be filed on the same date as the deadline for filing responsive rate of return submissions. Oppositions shall be filed within 35 calendar days thereafter. Rebuttal submissions shall be filed within 21 calendar days after the deadline for filing responsive submissions.

(d) An original and 4 copies of all rate of return submissions shall be filed with the Secretary.

(e) The filing party shall serve a copy of each rate of return submission, other than an initial submission, on all participants who have filed a designation of service notice pursuant to § 65.100(b).

[60 FR 28544, June 1, 1995, as amended at 67 FR 13229, Mar. 21, 2002]

**§ 65.104 Page limitations for rate of return submissions.**

Rate of return submissions, including all argument, attachments, appendices, supplements, and supporting materials, such as testimony, data and documents, but excluding tables of contents and summaries of argument, shall be subject to the following double spaced typewritten page limits:

(a) The direct case submission of any participant shall not exceed 70 pages in length.

(b) The responsive submission of any participant shall not exceed 70 pages in length.

(c) The rebuttal submission of any participant shall not exceed 50 pages in length.

(d) Petitions for exclusion from unitary treatment shall not exceed 70 pages in length. Oppositions to petitions for exclusion shall not exceed 50

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pages in length. Rebuttals shall not exceed 35 pages in length.

[60 FR 28544, June 1, 1995]

### § 65.105 Discovery.

(a) Participants shall file with each rate of return submission copies of all information, including studies, financial analysts' reports, and any other documents relied upon by participants or their experts in the preparation of their submission. Information filed pursuant to this paragraph for which protection from disclosure is sought shall be filed subject to protective orders which shall be duly granted by the Chief, Wireline Competition Bureau, for good cause shown.

(b) Participants may file written interrogatories and requests for documents directed to any rate of return submission and not otherwise filed pursuant to § 65.105(a). The permissible scope of examination is that participants may be examined upon any matter, not privileged, that will demonstrably lead to the production of material, relevant, decisionally significant evidence.

(c) Discovery requests pursuant to § 65.105(b), including written interrogatories, shall be filed within 14 calendar days after the filing of the rate of return submission to which the request is directed. Discovery requests that are not opposed shall be complied with within 14 calendar days of the request date.

(d) Oppositions to discovery requests made pursuant to § 65.105(b), including written interrogatories, shall be filed within 7 calendar days after requests are filed. The Chief, Wireline Competition Bureau, shall rule upon any such opposition. Except as stayed by the Commission or a Court, any required response to a discovery request that is opposed shall be provided within 14 calendar days after release of the ruling of the Chief, Wireline Competition Bureau.

(e) An original and 4 copies of all information described in § 65.105(a) and all requests, oppositions, and responses made pursuant to § 65.105 (a), (b) and (d) shall be filed with the Secretary.

(f) Service of requests, oppositions, and responses made pursuant to § 65.105 (b) and (d) shall be made upon all par-

ticipants who have filed a designation of service notice pursuant to § 65.100(b). Service of requests upon participants who have filed designation of service notices pursuant to § 65.100(b) shall be made by hand on the filing dates thereof.

[60 FR 28544, June 1, 1995, as amended at 67 FR 13229, Mar. 21, 2002]

## Subpart C—Exchange Carriers

### § 65.300 Calculations of the components and weights of the cost of capital.

(a) Sections 65.301 through 65.303 specify the calculations that are to be performed in computing cost of debt, cost of preferred stock, and financial structure weights for prescription proceedings. The calculations shall determine, where applicable, a composite cost of debt, a composite cost of preferred stock, and a composite financial structure for all local exchange carriers with annual revenues equal to or above the indexed revenue threshold as defined in § 32.9000. The calculations shall be based on data reported to the Commission in FCC Report 43-02. (See 47 CFR 43.21). The results of the calculations shall be used in the prescription proceeding to which they relate unless the record in that proceeding shows that their use would be unreasonable.

(b) Excluded from cost of capital calculations made pursuant to § 65.300 shall be those sources of financing that are not investor supplied, or that are otherwise subtracted from a carrier's rate base pursuant to Commission orders governing the calculation of net rate base amounts in tariff filings that are made pursuant to section 203 of the Communications Act of 1934, 47 U.S.C. 203, or that were treated as "zero cost" sources of financing in section 450 and subpart G of this part 65. Specifically excluded are: accounts payable, accrued taxes, accrued interest, dividends payable, deferred credits and operating reserves, deferred taxes and deferred tax credits.

[60 FR 28545, June 1, 1995, as amended at 67 FR 5702, Feb. 6, 2002]