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provide the data required by paragraphs (b) and (c) of this section on the date the issuing carrier files the tariff matter with the Commission.

(f) *Copies of explanation and data to customers.* Concurrently with the filing of any rate for special construction (or special assembly equipment and arrangements) developed on the basis of estimated costs, the issuing carrier must transmit to the customer a copy of the explanation and data required by paragraphs (b) and (c) of this section.

(g) On each page of cost support material submitted pursuant to this section, the issuing carrier shall indicate the transmittal number under which that page was submitted.

[76 FR 43211, July 20, 2011]

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§61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings by incumbent local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in §69.602.

(a) *Scope.* This section provides for an optional method of filing for any incumbent local exchange carrier that is described as subset 3 carrier in §69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under §36.611(a)(8) of this chapter. However, the Commission may require any issuing carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of price cap local exchange carriers.

(b) *Explanation and data supporting tariff changes.* The material to be submitted to either a tariff change or a new tariff which affects rates or charges must include an explanation of the filing in the transmittal as required by §61.15. The basis for rate-making must comply with the following requirements. Except as pro-

vided in paragraph (b)(5) of this section, it is not necessary to submit this supporting data at the time of filing. However, the incumbent local exchange carrier should be prepared to submit the data promptly upon reasonable request by the Commission or interested parties.

(1) For a tariff change, the incumbent local exchange carrier that is a cost schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, a cost of service study for Traffic Sensitive elements for the most recent 12-month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for Traffic Sensitive elements for the total period since the incumbent local exchange carrier's last annual filing, with related demand for the same period.

(2) For a tariff change, the incumbent local exchange carrier that is an average schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, the incumbent local exchange carrier's most recent annual Traffic Sensitive settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, an amount calculated to reflect the Traffic Sensitive average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas approved by the Commission.

(3) For a tariff change, the incumbent local exchange carrier that is a cost schedule carrier must propose Common Line rates based on the following:

(i) For the first biennial filing, the common line revenue requirement shall be determined by a cost of service study for the most recent 12-month period. Subscriber line charges shall be based on cost and demand data for the same period. Carrier common line rates shall be determined by the following formula:

$$\frac{CCL Rev Req}{CCL MOU_t * (1+h/2)^2}$$

Where:

$$h = \frac{CCL\ MOU_1}{CCL\ MOU_0} - 1$$

And where:

CCL Rev Req = carrier common line revenue requirement for the most recent 12-month period;

CCL MOU_b = carrier common line minutes of use for the most recent 12-month period;

CCL MOU₁ = CCL MOU_b; and

CCL MOU₀ = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(ii) For subsequent biennial filings, the common line revenue requirement shall be determined by a cost of service study for the most recent 24-month period. Subscriber line charges shall be based on cost and demand data for the same period. Carrier common line rates shall be determined by the following formula:

$$\frac{CCL\ Rev\ Req}{CCL\ MOU_b * (1+h/2)^{5/2}}$$

Where:

$$h = \frac{CCL\ MOU_1}{CCL\ MOU_0} - 1$$

And where:

CCL Rev Req = carrier common line revenue requirement for the most recent 24-month period;

CCL MOU_b = carrier common line minutes of use for the most recent 24-month period;

CCL MOU₁ = carrier common line minutes of use for the 12-month period; and

CCL MOU₀ = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(4) For a tariff change, the incumbent local exchange carrier which is an average schedule carrier must propose common line rates based on the following:

(i) For the first biennial filings, the common line revenue requirement shall be determined by the incumbent local exchange carrier's most recent annual Common Line settlement from the National Exchange Carrier Association. Subscriber line charges shall be based on cost and demand data for the same period. Carrier common line rates shall be determined by the following formula:

$$\frac{CCL\ Rev\ Req}{CCL\ MOU_b * (1+h/2)^2}$$

Where:

$$h = \frac{CCL\ MOU_1}{CCL\ MOU_0} - 1$$

And where:

CCL Rev Req = carrier common line settlement for the most recent 12-month period;

CCL MOU_b = carrier common line minutes of use for the most recent 12-month period;

CCL MOU₁ = CCL MOU_b; and

CCL MOU₀ = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(ii) For subsequent biennial filings, the common line revenue requirement shall be an amount calculated to reflect the average schedule pool settlements the carrier would have received if the carrier had continued to participate in the carrier common line pool, based upon the average schedule Common Line formulas developed by the National Exchange Carrier Association for the most recent 24-month period. Subscriber line charges shall be based on cost and demand data for the same period. Carrier common line rates shall be determined by the following formula:

$$\frac{CCL\ Rev\ Req}{CCL\ MOU_b * (1+h/2)^{5/2}}$$

Where:

$$h = \frac{CCL\ MOU_1}{CCL\ MOU_0} - 1$$

And where:

CCL Rev Req = carrier common line settlement for the most recent 24-month period;

CCL MOU_b = carrier common line minutes of use for the most recent 24-month period;

CCL MOU₁ = carrier common line minutes of use for the most recent 12-month period; and

CCL MOU₀ = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(5) For End User Common Line charges included in a tariff pursuant to this Section, the incumbent local exchange carrier must provide supporting

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information for the two-year historical period with its letter of transmittal in accordance with § 61.38.

(c) *Maximum allowable rate of return.* Incumbent Local exchange carriers filing tariffs under this section are not required to comply with §§ 65.700 through 65.701 of this chapter, except with respect to periods during which tariffs were not subject to this section. The Commission may require any carrier to submit such information if it deems it necessary to monitor the carrier's earnings. However, rates must be calculated based on the incumbent local exchange carrier's prescribed rate of return applicable to the period during which the rates are effective.

(d) Rates for a new service that is the same as that offered by a price cap local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rates established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap local exchange carrier; and

(2) Data to establish compliance with this paragraph that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange carrier. Compliance may be shown through submission of applicable tariff pages of the adjacent carrier; a showing that the serving areas are adjacent; any necessary explanations and work sheets.

(e) Average schedule companies filing pursuant to this section shall retain their status as average schedule companies.

(f) On each page of cost support material submitted pursuant to this section, the issuing carrier shall indicate the transmittal number under which that page was submitted.

[76 FR 43212, July 20, 2011]

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until approval has been given by the Office of Management and Budget.

§ 61.40 Private line rate structure guidelines.

(a) The Commission uses a variety of tools to determine whether a dominant carrier's private line tariffs are just, reasonable, and nondiscriminatory. The dominant carrier's burden of cost justification can be reduced when its private line rate structures comply with the following five guidelines.

(1) Rate structures for the same or comparable services should be integrated;

(2) Rate structures for the same or comparable services should be consistent with one another;

(3) Rate elements should be selected to reflect market demand, pricing convenience for the carrier and customers, and cost characteristics; a rate element which appears separately in one rate structure should appear separately in all other rate structures;

(4) Rate elements should be consistently defined with respect to underlying service functions and should be consistently employed through all rate structures; and

(5) Rate structures should be simple and easy to understand.

(b) The guidelines do not preclude a carrier, in a given case when a private line tariff does not comply with these guidelines, from justifying its departure from the guidelines and showing that its tariff is just, reasonable, and nondiscriminatory.

[49 FR 40869, Oct. 18, 1984, as amended at 76 FR 43213, July 20, 2011]

EFFECTIVE DATE NOTE: At 76 FR 43213, July 20, 2011, § 61.40 was amended by revising paragraph (a) introductory text. This text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 61.41 Price cap requirements generally.

(a) Sections 61.42 through 61.49 shall apply as follows:

(1) [Reserved]

(2) To such price cap local exchange carriers as specified by Commission