

§ 61.40

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.

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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