

(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]

**§ 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.* Except as provided in paragraph (g) of this section, This section provides for an optional method of filing for any local exchange carrier that is described as a 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 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 local exchange carriers subject to price cap regulation.

(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 provided 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 reason-

able 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:

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

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<sub>b</sub> = carrier common line minutes of use for the most recent 12-month period;  
 CCL MOU<sub>1</sub> = CCL MOU<sub>b</sub>; and  
 CCL MOU<sub>0</sub> = 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<sub>b</sub> = carrier common line minutes of use for the most recent 24-month period;  
 CCL MOU<sub>1</sub> = carrier common line minutes of use for the 12-month period; and  
 CCL MOU<sub>0</sub> = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

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:

(4) For a tariff change, the incumbent local exchange carrier which is an average schedule carrier must propose

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

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<sub>b</sub> = carrier common line minutes of use for the most recent 12-month period;

CCL MOU<sub>1</sub> = CCL MOU<sub>b</sub>; and

CCL MOU<sub>0</sub> = 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 re-

flect 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<sub>b</sub> = carrier common line minutes of use for the most recent 24-month period;

CCL MOU<sub>1</sub> = carrier common line minutes of use for the most recent 12-month period; and

CCL MOU<sub>0</sub> = 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 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:

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(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.

(g) A local exchange carrier otherwise eligible to file a tariff pursuant to this section may not do so if it is engaging in access stimulation, as that term is defined in § 61.3(bbb) of this part, and has not terminated its access revenue sharing agreement(s). A carrier so engaged must file interstate access tariffs in accordance with § 61.38, and § 69.3(e)(12)(1) of this chapter.

[76 FR 43212, July 20, 2011, as amended at 76 FR 73882, Nov. 29, 2011]

### § 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 ele-

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ment 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]

### § 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 order, and to all local exchange carriers, other than average schedule companies, that are affiliated with such carriers; and

(3) On an elective basis, to local exchange carriers, other than those specified in paragraph (a)(2) of this section, that are neither participants in any Association tariff, nor affiliated with any such participants, except that affiliation with average schedule companies shall not bar a carrier from elective price cap regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files a price cap tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file price cap tariffs in all their study areas.

(c) Except as provided in paragraph (e) of this section, the following rules in this paragraph (c) apply to telephone companies subject to price cap regulation, as that term is defined in § 61.3(ee), which are involved in mergers, acquisitions, or similar transactions.

(1) Any telephone company subject to price cap regulation that is a party to