

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
July 2, 2013) WC Docket No. 13-76
Annual Access Charge Tariff Filings)
)

ORDER

Adopted: March 26, 2013

Released: March 26, 2013

By the Acting Chief, Pricing Policy Division:

SHORT FORM Tariff Review Plan: May 17, 2013
COMMENTS: May 28, 2013
REPLIES: June 4, 2013

15-DAY TARIFF FILINGS June 17, 2013
PETITIONS: June 24, 2013
REPLIES: June 27, 2013 (due no later than 12:00 p.m. (noon) Eastern Time)

7-DAY TARIFF FILINGS: June 25, 2013
PETITIONS: June 27, 2013 (due no later than 12:00 p.m. (noon) Eastern Time)
REPLIES: June 28, 2013 (due no later than 12:00 p.m. (noon) Eastern Time)

I. INTRODUCTION

1. This order establishes procedures for the 2013 filing of annual access charge tariffs and Tariff Review Plans (TRPs) for incumbent local exchange carriers (ILECs) subject to price caps, as well as rate of return ILECs subject to Section 61.39 of the Commission’s rules¹ and those ILECs subject Section 61.38 of the Commission’s Rules that are either required to or choose to revise their Access Recovery Charge (ARC) and/or revise their rates.²

¹ 47 C.F.R. § 61.39 (rate of return carriers that file tariffs based on historical costs and demand).

² 47 C.F.R. §§ 51.915(e) and 61.38 (rate of return carriers that file tariffs based on projected costs and demand).

2. This order (1) sets an effective date of July 2, 2013³ for the July 2013 annual access charge tariff filings; (2) establishes the dates for filing petitions to suspend or reject an ILEC tariff filing and replies to such petitions; and (3) addresses service of the petitions and replies. In the *USF/ICC Transformation Order*⁴ the Commission adopted new rules requiring ILECs to adjust, over a period of years, their switched access charges effective on July 1 of each of those years. We clarify that the limited waiver granted herein relating to the timing of the 2013 annual access charge tariff filings applies to the Access Recovery Charge (ARC) rate, which is to be included in carriers annual access tariff.⁵ This order also establishes May 17, 2013 as the date that price cap ILECs must file the short form Tariff Review Plan (TRP).⁶ All correspondence and comments in connection with these filings should refer to the caption of this proceeding, *July 2, 2013 Annual Access Charge Tariff Filings*, WC Docket No. 13-76.

II. DISCUSSION

A. Tariff Effective Date and Tariff Filing Dates

3. ILECS are permitted to make their tariff filings on either 15 or 7 days prior to the effective date of their tariffs, depending on the type of changes the tariffs propose.⁷ The Commission's rules require that annual access charge tariff filings must be filed with a scheduled effective date of July 1.⁸ Absent a waiver, for ILECs to file their tariff revisions pursuant to Section 204(a)(3) of the Act they would have to file their tariffs on the weekend, which are not available days for tariffs to be filed.⁹ As a result, ILECs filing tariffs on 15 days' notice must make their annual access charge tariff filings on June 17, 2013 and ILECs filing tariffs on 7 days' notice must make their annual access charge tariff filings on June 25, 2013 with an effective date of July 2, 2013.

³ To establish a filing date of July 2, 2013, we therefore grant a limited waiver of 47 C.F.R. §§ 69.3(a), 51.705, 51.907, and 51.909 of our rules to the extent that those rules would otherwise require rates to be effective as of July 1, 2013. Absent a waiver, carriers would be required to have their annual access charges be effective on July 1, 2013, and doing so would require tariffs including those charges to be filed on June 16, which falls on a Sunday. Accordingly, under this limited waiver, carriers are required to file their annual access charge tariff filings on Monday, June 17, 2013, to become effective on July 2, 2013.

⁴ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v FCC*, No. 11-9581 (10th Cir. Filed Dec. 18, 2011) (and consolidated cases).

⁵ See *supra* note 3.

⁶ The price cap ILECs that must file a short form TRP on May 17, 2013, are the ACS Companies; the Ameritech Operating Companies; BellSouth Telecommunications, Inc.; CenturyTel Operating Companies; Cincinnati Bell Telephone; Consolidated Communications; Embarq Local Telephone Companies; Frontier Telephone Companies; Hawaiian Telecom, Inc.; Illinois Consolidated Telephone Company; Micronesian Telecommunications, Corp.; Nevada Bell Telephone Company; Pacific Bell Telephone Company; Puerto Rico Telephone Company; Qwest Corporation; Southern New England Telephone; Southwestern Bell Telephone; The Fairpoint Telephone Companies; The Verizon Telephone Companies; Virgin Islands Telephone Company and Windstream Telephone System.

⁷ 47 U.S.C. § 204(a)(3).

⁸ See 47 C.F.R. §§ 69.3(a) 51.705, 51.907, 51.909. See also *supra* note 3.

⁹ To be effective on July 1, carriers would have to file their annual access charge tariff filings on either Sunday, June 16, 2013. Although the Commission's Electronic Tariff Filing System accepts filings over the weekend, because the Commission is officially closed, tariffs submitted after 7:00 p.m. Eastern Time on Friday are officially filed on Monday.

4. ILECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year.¹⁰ ILECs that file tariffs under rate-of-return ratemaking methodology are required to file every other year. ILECs filing pursuant to the requirements of section 61.39 of the Commission's rules are required to file annual access charge tariffs this year, an odd-numbered year.¹¹ Rate-of-return ILECs subject to section 61.38 of the Commission's rules¹² would not, absent requirements adopted in the *USF / ICC Transformation Order*,¹³ be required to file annual access charge tariffs this year, since they file revisions in even-numbered years.¹⁴ Pursuant to the *USF/ICC Transformation Order*, however, if a rate-of-return ILEC subject to section 61.38 of the Commission's rules is either required to or chooses to modify the ARC in its tariff, that ILEC must file a TRP with the requisite supporting material to justify the revised ARC rate.¹⁵

B. Tariff Review Plan Filing Dates

5. Price cap ILECs are required to submit both a short form TRP and a long-form TRP. Section 61.49(k) of the Commission's rules requires price cap ILECs to file a short form TRP without rate detail information 90 days prior to the usual effective date of July 1.¹⁶ In previous years, we have waived section 61.49(k) and allowed price cap ILECs to file the short form TRP on May 1st of the particular year.¹⁷ In the past several years, the United States Telecom Association (USTelecom) filed a petition requesting that the Bureau issue a further extension of the deadline and permit price cap ILECs to file the short form TRP on May 17, to allow for additional time to review the exogenous cost data.¹⁸ The Bureau granted the petition in past years, and waived Section 61.49(k) of the rules.¹⁹ On February 8, 2013, USTelecom filed a request for a similar extension for 2013, arguing they need additional time to prepare their exogenous cost data.²⁰ In addition USTelecom seeks a waiver of the requirement that all price cap local exchange carriers submit their PCI-1, and IND-1 forms as part of the Short Form TRP.²¹

¹⁰ 47 C.F.R. § 61.43.

¹¹ 47 C.F.R. § 61.39; 47 C.F.R. § 69.3(f)(2).

¹² 47 C.F.R. § 61.38.

¹³ See *USF/ICC Transformation Order*, at paras. 897-99.

¹⁴ 47 C.F.R. § 69.3(f)(1).

¹⁵ See *USF/ICC Transformation Order*, at paras. 906-916; 47 C.F.R. § 51.917(e).

¹⁶ 47 C.F.R. § 61.49(k).

¹⁷ See, e.g., *July 1, 2009 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 09-02, Order, 24 FCC Rcd 3664 (Wireline Comp. Bur. 2009).

¹⁸ See, e.g., *Petition of the United States Telecom Association for Waiver of Rule 61.49(k)'s Non-Exogenous Cost Data Requirements for the Short Form Tariff Review Plan and for Waiver of Rule 61.49(k)'s Deadline for Filing the Exogenous Cost Data Requirements of the Short Form Tariff Review Plan*, WC Docket No. 10-46 at 1 (filed Feb. 4, 2010).

¹⁹ See *July 1, 2010 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 10-03, Order, 25 FCC Rcd 2867, 2868-69, para 4 (Wireline Comp. Bur. 2010); *July 1, 2011 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 11-04, Order, 26 FCC Rcd 4933, 4934-35, para 4 (Wireline Comp. Bur. 2011); See *July 3, 2012 Annual Access Charge Tariff Filings*, WCB/Pricing File No. 12-07, Order, 27 FCC Rcd 2981, 2983, para. 5 (Wireline Comp. Bur. 2012).

²⁰ See *Petition of the United States Telecom Association for Waiver of Rule 61.49(k)'s Non-Exogenous Cost Data Requirements for the Short Form Tariff Review Plan and for Waiver of Rule 61.49(k)'s Deadline for Filing the Exogenous Cost Data Requirements of the Short Form Tariff Review Plan*, WC Docket No. 13-43 (filed Feb. 8, 2013) (USTelecom Petition).

²¹ *Id.* at 2.

By Public Notice issued February 12, 2013, we sought comment on the USTelecom Petition.²² No comments were filed. Accordingly, for the 2013 filing, we waive the 90-day requirement and permit the short form TRP to be filed on May 17, 2013.²³ As in the past, we will issue a separate order that will provide the details of the price cap short form and regular TRP requirements and will address the substantive aspects of the USTelecom Petition.²⁴ Comments on the short form TRP will be due on May 28, 2013. Reply comments will be due June 4, 2013.

C. Waiver of USF Contribution Date Rule

6. As stated above, we have granted waivers in this order to establish July 2, 2013 as the effective date of the July 2013 annual access charge tariff filings.²⁵ We recognize that moving the annual access charge tariff filing to July 2, 2013 creates administrative difficulties with respect to inclusion of the universal service charge contribution factor, since carriers may recover the costs of universal service fund contributions by passing through an explicit charge to customers.²⁶ Requiring carriers to have a different rate for the first day of July would be administratively burdensome for carriers and complicated for the Commission to manage. Accordingly, for incumbent LECs and competitive LECs filing an annual access charge tariff filing in 2013, we grant a limited waiver of section 54.712 of the Commission's rules, to allow such carriers to charge the universal service contribution factor for the second quarter 2013, until July 2, 2013, at which time carriers must begin charging the third quarter 2013 factor, with respect to end user charges that are part of the annual access filing.

7. In addition, if a carrier chooses to apply and pass through charges associated with the third quarter 2013 universal service contribution factor on July 1, 2013, we grant a limited waiver of section 61.59 of the Commission's rules, to allow carriers to modify material in their tariff that has not been effective for 30 days, in order to file their annual access charge tariff filing with an effective date of July 2, 2013.²⁷

D. Tariff and Tariff Review Plan Filing Instructions

8. ILECs must use the Commission's Electronic Tariff Filing System (ETFS) to file all of their tariff material.²⁸ ILECs should make every effort to file as early in the day as possible to avoid any complications in meeting the May 17, 2013, June 17, 2013 and June 25, 2013, pre-7:00 p.m. Eastern Time deadlines for filing in the ETFS. Price cap ILEC short form TRP filings must be received by ETFS after 7:00 p.m. Eastern Time on May 16, 2013 and before 7:00 p.m. Eastern Time on May 17, 2013 for

²² *United States Telecom Association Petition for Waiver of Requirements in Section 61.49(k) of the Commission's Rules for the Short Form Tariff Review Plan*, WC Docket No. 13-43, Public Notice, DA 13-188 (Pricing Pol. Div. rel. Feb. 12, 2013).

²³ See 47 C.F.R. § 61.49(k).

²⁴ An order that will detail the material that needs to be filed with the annual access charge tariff filing is forthcoming.

²⁵ See *supra* para. 2.

²⁶ 47 C.F.R. § 54.712 (a). As part of the annual access charge tariff filing, carriers include the universal service charge contribution factor for the third quarter, which begins on July 1, 2013. See 47 C.F.R. § 709(a). However, section 54.712 of the Commission's rules states that "[i]f a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor."

²⁷ 47 C.F.R. § 61.59(a).

²⁸ 47 C.F.R. § 61.13(b).

the filing to be considered officially received on May 17, 2013. ILEC tariff filings must be received by ETFS after 7:00 p.m. Eastern Time on June 14, 2013 and before 7:00 p.m. Eastern Time on June 17, 2013 for the filing to be considered officially received on June 17, 2013. ILEC tariff filings must be received after 7:00 p.m. Eastern Time on June 24, 2013 and before 7:00 p.m. Eastern Time on June 25, 2013 for the filing to be considered officially received on June 25, 2013.

9. Copies of the information filed electronically may be obtained via the Internet using the ETFS at <http://svartifoss2.fcc.gov/prod/ccb/etfs>, or from Best Copy and Printing, Inc., (202) 488-5300, Portals II, at 445 12th Street, SW, Room CY-B402, Washington, DC 20554. For more information contact either Pamela Arluk or Richard Kwiatkowski at (202) 418-1520, Pricing Policy Division, Wireline Competition Bureau.

E. Pleading Filing Dates and Procedures

10. In accordance with the tariff filing schedule, petitions to suspend or reject tariff filings made on 15 days' notice will be due June 24, 2013 and replies will be due no later than 12:00 p.m. (noon) Eastern Time June 27, 2013. Petitions to suspend or reject tariff filings made on seven days' notice will be due no later than 12:00 p.m. (noon) Eastern Time on June 27, 2013 and reply comments will be due no later than 12 p.m. (noon) Eastern Time on June 28, 2013.²⁹

11. Parties filing pleadings are encouraged to use the Electronic Comment Filing System (ECFS) in order to facilitate access to these documents. Comments and reply comments should reference **WC Docket No. 13-76**. Parties filing paper copies must file an original and four (4) copies of each filing.

12. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC.

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

13. Three (3) paper copies and one e-mail copy of the comments and reply comments must also be sent to Richard Kwiatkowski, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-A460, Washington, DC 20554, Richard.Kwiatkowski@fcc.gov. A courtesy copy must be addressed to the Chief, Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A225, Washington, DC 20554 and

²⁹ We waive any inconsistent portions of sections 1.4(f) and 1.773(b) of the Commission's rules.

e-mailed to Pamela.Arluk@fcc.gov. Parties shall also serve one copy with Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to FCC@BCPIWEB.COM.

F. SERVICE

14. Because there is limited time available for review of the petitions and replies, we establish the following service requirements for these filings. On the date a filing is submitted to the Commission, it shall also be served upon the filing local exchange carrier or the petitioner to which it responds, respectively, or its attorney or other duly constituted agent, by personal delivery, by facsimile transmission, or e-mail.³⁰ Parties are instructed to provide contact persons and facsimile numbers in their filings. Parties filing petitions and replies electronically are reminded they are still required to serve copies in accordance with the requirements stated in this paragraph.

III. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4 (i) and (j), 201-209, of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), (j), 201-209, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, this order IS HEREBY ADOPTED as described above.

16. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commissions rules, 47 C.F.R. § 1.3, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, sections 69.3(a), 51.907(b), and 51.909(b) of the Commission's rules, 47 C.F.R. §§ 69.3(a), , 51.907(b), 51.909(b), ARE WAIVED for the limited purpose specified in paragraph 2, *supra*.

17. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commissions rules, 47 C.F.R. § 1.3, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, section 61.49(k) of the Commission's rules, 47 C.F.R. § 61.49(k), IS WAIVED for the limited purpose specified in paragraph 5, *supra*.

18. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commissions rules, 47 C.F.R. § 1.3, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, sections 54.712, and 61.59 of the Commission's rules, 47 C.F.R. §§ 54.712, 61.59, ARE WAIVED for the limited purpose specified in paragraphs 6-7, *supra*.

19. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, sections 1.4(f) and 1.773(b) of the Commission's rules, 47 C.F.R. §§ 1.4(f), 1.773(b), ARE WAIVED for the limited purpose specified in paragraph 10, note 29, *supra*.

³⁰ 47 C.F.R. §§ 1.773(a)(4), (b)(3). We waive any inconsistent portions of section 1.47(d) of the Commission's rules. 47 C.F.R. § 1.47(d).

20. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, section 1.47(d) of the Commission's rules, 47 C.F.R. § 1.47(d), IS WAIVED for the limited purpose specified in paragraph 14, note 30, *supra*.

FEDERAL COMMUNICATIONS COMMISSION

Victoria S. Goldberg
Acting Chief, Pricing Policy Division
Wireline Competition Bureau