



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET N.W.  
WASHINGTON, D.C. 20554

DA 95-2053

News media information 202/418-0500 Recorded listing of releases and texts 202/418-2222.

September 27, 1995

## COMMON CARRIER BUREAU RESTATES COMMISSION POLICY ON INDIVIDUAL CASE BASIS TARIFF OFFERINGS

Recently, the Tariff Division has received several tariff transmittals proposing services on an individual case basis (ICB). These transmittals appear to be inconsistent with Commission's current policy on ICB tariff offerings and with the Commission's cost support rules. In this Public Notice we restate the Commission's current policy governing ICB offerings to assist carriers in their preparation of such tariff filings.

ICB offerings refer to the carrier practice of providing a particular service in response to a specific request from a customer under individualized rates, terms and conditions. Such offerings are not generally available to other prospective customers, although the tariffs containing the specific service offerings and ICB rates are filed with the Commission. ICB offerings are an exception to the standard carrier practice of making a service generally available to prospective customers under uniform rates, terms and conditions stated in the applicable tariff. The Commission has ruled that an ICB service offering is not unreasonably discriminatory so long as it conforms to the following standards.

1. The service in question is one with which the carrier is not experienced, i.e., it must be one that the carrier has not previously offered and that is not "like" any other current offering;<sup>1</sup>
2. The ICB rate is to be used only as an interim transitional measure;<sup>2</sup>
3. The carrier develops averaged rates for the service within a reasonable period of time and makes the service generally available at such averaged rates as soon they are developed;<sup>3</sup> and

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<sup>1</sup>See In the Matter of Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145 Phase I, Memorandum Opinion and Order, 97 F.C.C. 2d 1082, 1143 (1984) (*ECA Tariff Order*); Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Memorandum Opinion and Order, 4 FCC Rcd 8634, 8643(1989) (*ICB Order*).

<sup>2</sup>*ICB Order*, 4 FCC Rcd at 8642.

<sup>3</sup>*Id.*

4. The carrier provides cost support information in accordance with the standards set forth in Section 61.38 of the Commission's rules.<sup>4</sup>

The Commission recognizes that it may not be possible for carriers to develop general rates for services with which they have no experience. *See, e.g., ECA Tariff Order*, 97 F.C.C. 2d at 1143. To be eligible for ICB pricing, the new service must not be "like" any other offering. We apply a functional equivalency test<sup>5</sup> to determine whether the new service is "like" another offering. This standard is important for two reasons. First, Section 202(a) of the Communications Act of 1934, as amended, prohibits a carrier from assessing different rates for "like" service. Second, experience with a like service would provide a carrier with the information needed to develop generally available rates, thereby making ICB pricing unnecessary. *ICB Order*, 4 FCC Rcd at 8643.

The Commission has also determined that carriers may offer services at ICB rates only on an interim basis, pending the tariffing of the service as a generally available offering at averaged rates. *See ECA Tariff Order*, 97 F.C.C. 2d at 1143, *ICB Order*, 4 FCC Rcd at 8642. Thus, ICB offerings can only be available until the carrier gathers sufficient information to develop a general rate. *See also ICB Order* at 8642 (five years to develop general rates beyond the scope of reasonableness).

Finally, carrier ICB offerings also must satisfy the cost support showing required under Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38. In 1988 and 1991, the Bureau rejected ICB offerings based upon the carriers' failure to comply with this requirement. *Bell Atlantic Transmittal Nos. 224 and 226*, 3 FCC Rcd at 1623, *BellSouth Transmittal No. 346*, 6 FCC Rcd at 374.

The Commission has recently solicited comment governing the ICB policy in CC Docket No. 94-1, Phase II (*See Price Cap Performance Review for Local Exchange Carriers, Second Further Notice of Proposed Rulemaking*, FCC 95-393, released Sept. 20, 1995). Pending the outcome of that rulemaking, ICB service offerings are required to comply with the Commission's existing policy.

For further information, contact Judy Nitsche (202) 428-1540 (Common Carrier Bureau, Tariff Division).

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<sup>4</sup>*See, e.g., In the Matter of Bell Atlantic Telephone Companies Transmittal Nos. 224 and 226 Revisions to Tariff 1*, 3 FCC Rcd 1621, 1622-23 (Com.Car.Bur. 1988) (*Bell Atlantic Transmittal Nos. 224 and 226*); *In the Matter of BellSouth Telephone Companies Transmittal No. 346 Revisions to Tariff F.C.C. No. 4*, 6 FCC Rcd 373, 374 (Com.Car.Bur. 1991) (*BellSouth Transmittal No. 346*).

<sup>5</sup>*American Broadcasting Cos. v. FCC*, 663 F.3d 133, 138-39 (D.C. Cir. 1980). *See also Ad Hoc Telecommunications Users Com. v. FCC*, 680 F.2d 790, 795 (D.C. Cir. 1982).