



Part 61 - Tariffs

Part 61 of the Commission's rules outlines the procedures that carriers must follow in filing tariffs. Tariffs are legal documents governing the terms and conditions under which common carriers offer their services to the public. Tariffs for local services are generally filed with state public utility commissions; tariffs for interstate services are generally filed with the FCC. The rules include provisions governing the form and content of tariff publications, notice periods, cost support requirements, and procedures governing review of filed tariffs.

Dominant vs Non-Dominant Carriers

Early tariff rules applied in the same manner to all subject carriers. When competition in the interstate long distance telecommunications market began to evolve in the 1970's, the Commission drew a regulatory distinction between "dominant" and "nondominant" carriers, i.e., those found to have the power to set prices on a monopoly basis in a given market vs. those lacking such market power. Tariffs filed by dominant carriers were subject to traditional rules governing notice periods and standards of review. Tariffs filed by non-dominant carriers were first subject to "streamlined" regulation then later prohibited entirely.

Access Charge Tariffs

In its 1983 Access Charge Order (in preparation for the 1984 AT&T divestiture), the FCC determined that local exchange carriers should be required to file tariffs for interstate "access" services. Concern over the potential administrative burdens associated with these tariffs, in part, led the Commission to require the formation of NECA to act as access tariff filing agent for local exchange carriers. Rules governing access tariffs are found in Part 69.

Price Cap Regulation

Tariff rates were traditionally set using "cost of service" methods, which required carriers to submit extensive cost support materials with their filings. Starting in 1989, the FCC began applying incentive or "price cap" methods to larger carriers. Larger LECs and many mid-size companies are now subject to price cap regulation.

Deemed Lawful

Courts adjudicating ratemaking cases have long drawn a distinction between "legal" and "lawful" tariffs. A "legal" tariff is a tariff that is procedurally valid – it has been filed with the Commission and the Commission has allowed it to take effect. A "lawful" tariff is a tariff that is not only legal, but also contains rates that are "just and reasonable." In the 1996 Act, Congress determined tariffs filed on a streamlined basis would be "deemed lawful" unless suspended and

set for investigation by the Commission. “Deemed lawful” rates are not subject to refunds. NECA usually files its tariffs on a streamlined basis.

Forbearance

On July 15, 2016, the Commission released an [Order](#) granting USTelecom’s 2012 Petition for Declaratory Ruling that ILECs are non-dominant in their provision of interstate mass market and enterprise switched access services. USTelecom’s Petition did not encompass dedicated services, such as special access, or seek relief from wholesale obligations, such as the provision of unbundled network elements (UNEs). The Commission relieved ILECs of their tariffing obligations only insofar as they are dominant. It clarified that ILECs may remain obligated to file cost support with their interstate switched access tariffs for reasons not tied to market power over interstate switched access, e.g., they are rate-of-return regulated. It also streamlined the section 214 transfer of control and service discontinuance review procedures that apply to these services.

The Commission noted most ILEC interstate switched access tariff filings will continue to be filed on seven or fifteen days’ notice per the Part 51 rules to receive the benefit of “deemed lawful” rates. The Commission also continued to require ILECs that participate in the CAF ICC recovery mechanism to file interstate switched access tariffs on as many days’ notice as they had before, and declined to impose mandatory detariffing on such services. The Commission clarified that this ruling leaves in place the existing requirements that govern NECA pooling, including the requirements set forth in the ICC transitional rules (§ 51.909(a)(4)).

Part 61 Structure

- Subpart B contains the rules for the electronic filing of tariffs.
- Subpart C covers non-dominant carrier tariffing and detariffing.
- Subpart D and E Contains the tariffing rules for dominant international and dominant domestic carriers.
- Subpart F covers formatting and notice requirements for tariffing publications.
- Subpart G contains specific rules for tariff publications of dominant and nondominant carriers.
- Subpart H covers concurrences.
- Subpart I addresses the adoption of tariffs and other documents of predecessor carriers.
- Subpart J covers tariff suspensions.
- Subpart K covers the detariffing of Business Data Services.