



Part 65: Interstate Rate of Return Prescription

Part 65 defines the maximum allowable interstate exchange access rate of return (RoR) that certain ILECs can receive for providing certain interstate services. This Part also contains rules governing procedures for changing this allowable rate of return, the filing procedures a company must follow to participate in a represcription proceeding, and enforcement mechanisms.

Prior to AT&T's divestiture, the Commission set a single RoR for AT&T's interstate services, with represcription proceedings held at irregular intervals. Those proceedings consisted of traditional, trial-like hearings. After divestiture, the Commission developed a more streamlined represcription process, enabling the Commission to establish separate rates for AT&T and for ILECs using their own facilities for originating and terminating interstate calls. At that time, all carriers providing interstate access services operated on a RoR basis. The first represcription proceeding under these new rules set the RoR on interstate access at 12% for ILECs, but in 1990 the Commission represcribed the allowable RoR at 11.25%.

The Commission has relied on the tariff review and complaint processes as an enforcement mechanism for the RoR prescription, with varying results in subsequent court reviews. The continuing viability of the Commission's RoR enforcement mechanisms has been called into question, however, following the D.C. Circuit's 2002 decision in *ACS of Anchorage v. FCC* to vacate a Commission Order that required an ILEC to pay damages for RoR violations arising out of tariffs filed on a "streamlined" basis. The Court found that section 204(a)(3) of the Act, under which a streamlined tariff is "deemed lawful," bars refunds for RoR violations. Since most tariffs are filed on a streamlined basis, the extent of the Commission's ability to enforce RoR prescriptions under Part 65 has become unclear.

In its November 2011 Transformation Order, the FCC initiated a proceeding to represcribe the authorized RoR, which had not been updated since 1990. The FCC performed its own preliminary analysis and determined the authorized interstate RoR should be no more than 9%. NECA, NTCA, and WTA objected to the FCC's preliminary conclusions, and presented evidence indicating the existing RoR was reasonable. In its March 30, 2016 RoR Reform Order, the Commission represcribed the RoR for rate-of-return regulated carriers, reducing it from the current 11.25% to 9.75%, with a phased transition. Pursuant to the transition, the RoR will be reduced annually until July 1, 2021, when it reaches the target RoR of 9.75%.

Part 65 Structure

- Subpart B sets forth the procedures for a rate of return prescription proceeding.
- Subpart C covers the components, weights, and calculations for exchange carriers.
- Subpart D covers interexchange carriers' net income.
- Subpart E requires rate of return reporting.

- Subpart F addresses the maximum allowable rates of return.
- Subpart G defines the rate base.