

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

In the Matter of
July 1, 2019
Annual Access Charge Tariff Filings
WC Docket No. 19-47

ORDER

Adopted: April 4, 2019

Released: April 4, 2019

By the Acting Chief, Pricing Policy Division:

15-DAY TARIFF FILINGS: June 17, 2019
EFFECTIVE: July 2, 2019
PETITIONS: June 24, 2019
REPLIES: June 28, 2019 (due no later than 12:00 p.m. (noon) Eastern Time)
7-DAY TARIFF FILINGS: June 25, 2019
EFFECTIVE: July 2, 2019
PETITIONS: June 27, 2019 (due no later than 12:00 p.m. (noon) Eastern Time)
REPLIES: June 28, 2019 (due no later than 12:00 p.m. (noon) Eastern Time)

I. INTRODUCTION

1. In this Order, we establish procedures for the 2019 filing of annual access charge tariffs and Tariff Review Plans (TRPs) for incumbent local exchange carriers (LECs) subject to price cap regulation, as well as rate-of-return LECs subject to sections 61.38, 61.39, and 61.50 of the Commission's rules.

2. This Order (1) waives the July 1, 2019 effective date and sets a modified effective date of July 2, 2019, for the July 2019 annual access charge tariff filings made both on 15 days' notice and on 7 days' notice; (2) establishes the dates for filing petitions to suspend or reject an incumbent LEC's tariff filing and replies to such petitions; (3) addresses service of the petitions and replies; (4) waives for 2019 the requirement that price cap incumbent LECs file a short form TRP; and (4) partially waives for the second quarter of 2019 the universal service contribution factor rule to allow incumbent LECs to charge the second quarter 2019 contribution factor until July 2, 2019, at which time they must begin charging the

1 47 C.F.R. §§ 61.38 (rate-of-return carriers that file tariffs based on projected costs and demand), 61.39 (rate-of-return carriers that file tariffs based on historical costs and demand), 61.43 (tariff filings for price cap LECs), and 61.50 (regulation of business data services offered by rate-of-return carriers electing incentive regulation).

2 See 47 C.F.R. §§ 69.3(a), 69.3(f)(2), 51.705, 51.907, 51.909.

3 See 47 C.F.R. §§ 1.773(a)(2)(i), (b)(1)(i).

4 47 C.F.R. § 61.49(k).

third quarter 2019 contribution factor.⁵ In the *USF/ICC Transformation Order*, the Commission adopted new rules requiring incumbent LECs to adjust, over a period of years, many of their switched access charges effective on July 1 of each of those years.⁶ The TRPs also implement these adjustments. All correspondence and comments in connection with these filings should refer to the caption of this proceeding, *July 1, 2019 Annual Access Charge Tariff Filings*, WC Docket No. 19-47.

II. DISCUSSION

A. Tariff Effective Dates and Tariff Filing Dates

3. We modify the effective date for this year's annual access charge tariff filings from July 1, 2019, to July 2, 2019 due to filing constraints arising from this year's calendar. Incumbent LECs are permitted to make their tariff filings 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 be filed with a scheduled effective date of July 1.⁸ Incumbent LECs filing tariffs on 15 days' notice would have to make such filings on June 16, a Sunday, in order for them to take effect on July 1. Because the Commission's rules treat Sunday tariff filings as having been filed on the next business day, it is necessary to modify the usual July 1 effective date for such tariffs.⁹ Section 1.3 of the Commission's rules authorizes waiver of a Commission rule for good cause shown.¹⁰ We find that moving the effective date of the 2019 tariff filings by one day in order to effectuate the ability of incumbent LECs to make tariff filings 15 days prior to their effective date constitutes good cause for waiver of the relevant tariff filing rules. Accordingly, we modify the effective date for incumbent LEC tariffs filed on 15 days' notice to be July 2, 2019, and incumbent LECs must make these tariff filings on June 17, 2019.

4. In the interest of consistency, we also find good cause exists to direct incumbent LECs filing tariffs on 7 days' notice to make such filings on June 25, 2019, with an effective date of July 2, 2019. In establishing an effective date of July 2, 2019 for the tariff filings made on both 15 days' notice and 7 days' notice, we grant a limited waiver of sections 69.3(a), 69.3(f)(2), 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, 2019.¹¹ We also grant a limited waiver of sections 1.773(a) and (b) of our rules to modify the petition and reply filing dates to provide sufficient time for the submission of any such filings.¹²

5. Incumbent LECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year.¹³ Incumbent LECs that file tariffs under a rate-of-

⁵ 47 C.F.R. § 54.712.

⁶ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18149, para. 1404 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁷ 47 U.S.C. § 204(a)(3).

⁸ See 47 C.F.R. §§ 69.3(a), 51.705, 51.907, 51.909.

⁹ See 47 C.F.R. §§ 1.4(e), 61.14(a).

¹⁰ See 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown"). See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1969), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (waivers must show special circumstances warranting a deviation from the general rule, and show such a deviation will serve the public interest).

¹¹ See 47 C.F.R. §§ 69.3(a), 69.3(f)(2), 51.705, 51.907, 51.909.

¹² See 47 C.F.R. §§ 1.773(a), (b).

¹³ 47 C.F.R. § 61.43.

return ratemaking methodology are required to file every other year. Incumbent LECs 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.¹⁴ Rate-of-return incumbent LECs subject to section 61.38 of the Commission's rules¹⁵ would not, absent requirements adopted in the *USF/ICC Transformation Order*,¹⁶ be required to file annual access charge tariffs this year, because they file revisions in even-numbered years.¹⁷ Pursuant to the *USF/ICC Transformation Order*, however, rate-of-return incumbent LECs subject to section 61.38 of the Commission's rules must file a TRP this year to comply with the requirements of sections 51.909(i), 51.917(d)(iv), and 51.917(e) of the Commission's rules.¹⁸

6. Rate-of-return incumbent LECs receiving model-based or other forms of fixed high-cost universal service support may elect incentive regulation for their lower capacity (DS3 or lower) time division multiplexing (TDM) circuit-based transport and end user channel termination business data services (BDS) offerings with a July 1, 2019 effective date.¹⁹ For rate-of-return carriers that file their own tariffed rates, the initial rates (before adjustments for the X-factor, inflation factor, exogenous cost changes, and unfreezing category relationships) for lower capacity TDM transport and end-user channel termination services, other than end-user channel termination services in areas deemed competitive, must be based on electing carriers' tariffed rates in effect on January 1, 2019.²⁰ For rate-of-return carriers participating in the NECA traffic-sensitive tariff pool, electing carriers will establish initial BDS rates (before the adjustments mentioned above) under incentive regulation by multiplying the NECA pool rate in effect on January 1, 2019 by a net contribution or net recipient factor in accordance with procedure set forth in the *Rate-of-Return Business Data Services Order*.²¹

7. Rate-of-return incumbent LECs that elected to freeze their separations category relationships in 2001 have the opportunity to opt out of the freeze and update their category relationships with a July 1, 2019 effective date.²² Also, all rate-of-return incumbent LECs are required to modify rates subject to rate-of-return regulation to comply with the prescribed rate of return for this tariff year, 10.25 percent.²³

B. Waiver of the Short Form TRP

8. We waive section 61.49(k) of the Commission's rules, which obligates price cap incumbent LECs to submit a short form TRP as part of the annual access charge tariff filing process, due to the likely unavailability of information needed to fulfill this requirement and the limited utility of such

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

¹⁵ 47 C.F.R. § 61.38.

¹⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17981-83, paras. 897-99.

¹⁷ 47 C.F.R. § 69.3(f)(1).

¹⁸ 47 C.F.R. §§ 51.909(i), 51.917(d)(iv), (e).

¹⁹ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144, Report and Order, Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10454-57, para. 3 (2018) (*Rate-of-Return Business Data Services Order*).

²⁰ *Id.* at 10418, para. 37.

²¹ *Id.* at 10418-19, paras. 38-39.

²² *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order and Waiver (rel. Dec. 17, 2018) paras. 29, 31, 34, 36-40.

²³ See *Connect America Fund et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., 31 FCC Rcd 3087, 3212, para. 326 (2016).

data.²⁴ The short form TRP is a spreadsheet that is filed, without rate information, 90 days prior to the usual annual access charge tariff filing effective date of July 1.²⁵ It details exogenous cost adjustments that price cap LECs might make to their price cap indices.²⁶ Last year, we waived the short form TRP filing requirement because the factors needed to calculate exogenous cost adjustments for regulatory fees, Telecommunications Relay Service (TRS), and North American Numbering Plan Administration (NANPA) expenses were not going to be available prior to the short form TRP filing deadline and absent such information, the short form TRP would provide little value to the Commission, industry, and consumers.²⁷

9. We find similar considerations that led us to waive the short form TRP filing requirement in 2018 apply this year. As was the case last year, it is unlikely that the information necessary to populate the short form TRPs will be available by the required filing date. In addition, the exogenous cost data contained in the short form TRPs will be included in the long form TRPs, pending availability of such data, at which time the information can be reviewed by the Commission and interested parties. We therefore find that a waiver of this year's obligation is appropriate to avoid the unnecessary burden that would otherwise be imposed by requiring carriers to prepare and file a short form TRP. This waiver applies to all price cap incumbent LECs that would have to file a short form TRP as part of the 2019 annual access charge filing, absent the waiver.

C. Partial Waiver of USF Contribution Date Rule

10. We also waive section 54.712 of the Commission's rules to the extent necessary to allow carriers filing an annual access charge tariff that will be effective July 2, 2019 to use the second quarter universal service fund (USF) contribution factor for the first day of the third quarter for purposes of recovering the costs of contributing to the USF through a line item on their customers' bills.²⁸ This waiver will give electing carriers the opportunity to avoid administrative burdens associated with making two separate sets of tariff filings with effective dates of July 1 and July 2, respectively, to implement their USF and annual access charge tariff filing obligations. Section 54.712 of the Commission's rules specifies 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."²⁹ The USF contribution factor is calculated and published quarterly, and as a result, when there are changes, carriers typically file quarterly tariff revisions to reflect the new USF factor.³⁰

11. Moving the annual access charge tariff effective date to July 2, 2019 creates administrative difficulties with respect to some carriers' transition from the second quarter to the third quarter universal service fund contribution factors. When the annual access charge filings are effective

²⁴ 47 CFR § 61.49(k). See *July 1, 2017 Annual Access Charge Tariff Filings*, WC Docket No. 17-65, Order, 32 FCC Rcd 3878 (WCB 2017) (*2017 Short Form TRP Waiver Order*).

²⁵ See 47 C.F.R. § 61.49(k).

²⁶ *July 1, 2018 Annual Access Charge Tariff Filings*, WC Docket No. 18-100, Order, 33 FCC Rcd 3497, 3499-500, paras. 6-7 (WCB 2018) (*2018 Annual Filing Procedures Order*).

²⁷ *Id.* at 3500, para. 7.

²⁸ 47 C.F.R. § 54.712. See *2018 Annual Filing Procedures Order*, 33 FCC Rcd at 3500-01, paras. 8-10 (partially waiving section 54.712 for when the tariff filing effective date was modified from July 1 to July 3); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order (WCB 2012), 27 FCC Rcd 5986, 5990-91, paras. 12-15 (same).

²⁹ 47 C.F.R. § 54.712.

³⁰ *Id.*

July 1, carriers can file a single tariff, effective July 1, that provides for changes in the USF contribution factor and changes in access charges. Requiring carriers to file tariff revisions to implement the third quarter contribution factor and a separate set of tariff revisions to be effective one day later for changes to access charges would be burdensome for carriers and the Commission. Accordingly, for LECs filing an annual access charge tariff in 2019, we allow such carriers to charge the USF contribution factor for the second quarter of 2019 until July 2, 2019, at which time carriers must begin charging the third quarter 2019 contribution factor, with respect to end-user charges that are part of the annual access filing.

12. In addition, if a carrier chooses to implement the third quarter 2019 USF contribution factor effective July 1, 2019, we grant a limited waiver of section 61.59(a) of the Commission's rules to allow such carriers to modify material in their tariff that has not been effective for 30 days, in order to make their annual access charge tariff filing effective July 2, 2019.³¹

D. Tariff and Tariff Review Plan Filing Instructions

13. Incumbent LECs must use the Commission's Electronic Tariff Filing System (ETFS) to file all of their tariff material.³² Incumbent LECs should make every effort to file as early in the day as possible to avoid any complications in meeting the applicable filing deadlines. Incumbent LEC tariff filings must be received by ETFS after 7:00 p.m. Eastern Time on June 16, 2019 and before 7:00 p.m. Eastern Time on June 17, 2019 for the filing to be considered officially received on June 17, 2019. Incumbent LEC tariff filings must be received after 7:00 p.m. Eastern Time on June 24, 2019 and before 7:00 p.m. Eastern Time on June 25, 2019 for the filing to be considered officially received on June 25, 2019.

14. Copies of the information filed electronically may be obtained via the Internet using ETFS at <https://apps.fcc.gov/etfs/etfsHome.action>. For more information, contact either Robin Cohn Pricing Policy Division, Wireline Competition Bureau, or Richard Kwiatkowski, Economic Analysis Division, Office of Economics and Analytics, at (202) 418-1540.

E. Pleading Filing Dates and Procedures

15. In accordance with the tariff filing schedule, petitions to suspend or reject tariff filings made on 15 days' notice will be due June 24, 2019, and replies will be due no later than 12:00 p.m. (noon) Eastern time on June 28, 2019. 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, 2019, and replies will be due no later than 12 p.m. (noon) Eastern Time on June 28, 2019. We waive any portions of sections 1.4(f), 1.773(a), and 1.773(b) of the Commission's rules that are inconsistent with these deadlines.³³

16. Pursuant to sections 1.419 and 1.773 of the Commission's rules,³⁴ interested parties may file petitions to suspend or reject tariff filings, and replies thereto, on or before the dates indicated in this document. Pleadings should reference **WC Docket No. 19-47**, and may be filed using the Electronic Comment Filing System (ECFS).³⁵

- Electronic Filers: Pleadings may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>.

³¹ 47 C.F.R. § 61.59(a).

³² 47 C.F.R. § 61.13(b).

³³ 47 C.F.R. §§ 1.4(f), 1.773(a), 1.773(b).

³⁴ 47 C.F.R. §§ 1.419, 1.773.

³⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. 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, Office of the Secretary, Federal Communications Commission.
 - All 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. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must 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).

17. A courtesy copy of any comments, reply comments, petitions and replies must also be e-mailed to Richard Kwiatkowski, Economic Analysis Division, Office of Economics and Analytics, Federal Communications Commission, 445 12th Street, SW, Room 6-A430, Washington, DC 20554, Richard.Kwiatkowski@fcc.gov. In addition, a courtesy copy must be addressed to the Chief, Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-A221, Washington, DC 20554 and e-mailed to Robin.Cohn@fcc.gov.

18. The proceeding this Order initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

F. Service

19. Because there is limited time available for review of the petitions to suspend or reject tariff filings, and replies thereto, we establish the following service requirements for these filings. On the

³⁶ 47 C.F.R. § 1.1200 *et seq.*

date a filing is submitted to the Commission, it shall also be served upon the filing LEC 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.³⁷ We waive any inconsistent portions of sections 1.47(d), 1.773(a)(4) and 1.773(b)(3) of the Commission's rules to effectuate this requirement.³⁸ Parties are instructed to provide contact persons, email addresses, and facsimile numbers in their filings. Parties filing petitions and replies electronically are reminded that they are still required to serve copies in accordance with the requirements stated in this paragraph.

III. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and (j), 5, and 201-209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 155, 201-209, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, this Order IS ADOPTED.

21. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, sections 69.3(a), 69.3(f)(2), 51.705, 51.907, and 51.909 ARE WAIVED to the extent specified in *supra* paragraph 4.

22. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, sections 1.4(f), 1.773(a) and 1.773(b) of the Commission's rules, 47 C.F.R. §§ 1.4(f), 1.733(a), and 1.773(b), ARE WAIVED for the limited purpose specified in *supra* paragraphs 4 and 15.

23. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, section 61.49(k) of the Commission's rules, 47 C.F.R. § 61.49(k), IS WAIVED to the extent specified in *supra* paragraphs 8-9.

24. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, section 54.712 of the Commission's rules, 47 C.F.R. § 54.712, IS WAIVED to the extent specified in *supra* paragraphs 10-11.

25. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, section 61.59(a) of the Commission's rules, 47 C.F.R. § 61.59(a), IS WAIVED to the extent specified in *supra* paragraph 12.

26. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, sections §§ 1.733(a)(4), 1.773(b)(3), and 1.47(d) ARE WAIVED for the limited purpose specified in *supra* paragraph 19.

27. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Gil M. Strobel
Acting Chief
Pricing Policy Division
Wireline Competition Bureau

³⁷ See 47 C.F.R. §§ 1.773(a)(4), (b)(3).

³⁸ 47 C.F.R. § 1.47(d).