



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[WC Docket Nos. 17-308, 18-276; FCC 18-142]

Elimination of Outdated Tariff-Related Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to eliminate outdated tariff-related requirements that provide little benefit while imposing burdens on carriers.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested parties may file comments and reply comments on or before the dates indicated in the DATES section this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - 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 and boxes 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).

FOR FURTHER INFORMATION CONTACT: Robin Cohn, Wireline Competition Bureau, Pricing Policy Division at 202-418-1540 or at robin.cohn@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rulemaking released October 18, 2018. A full text copy of the Notice of Proposed Rulemaking may be obtained at the following Internet address:
<https://www.fcc.gov/document/fcc-waives-and-seeks-comment-eliminating-obsolete-tariff-rules>.

I. DISCUSSION

A. Amending the Cross-Referencing Rule

1. In light of the public's ability to access online all tariffs filed with the Commission through the Electronic Tariff Filing System (ETFS) on our website, we propose to amend our cross-referencing rule to allow a carrier to refer to its own tariff and the tariffs of its affiliated companies in its

tariff publications. We seek comment on this proposal.

2. The cross-referencing rule provides that, subject to certain exceptions, no tariff publication filed with the Commission may make reference to any other tariff publication or to any other document or instrument. The rule was adopted more than 75 years ago when tariffs were filed in hard copy with the Commission and reviewing them was time consuming and expensive. As the Commission explained in 1984, “[c]onfusion may result if references to other tariffs are allowed since all important information will not be consolidated in one place and references may be incomplete. In addition, referenced documents may not be easily accessible to the public.” We seek comment on whether those concerns are as legitimate today, as they were in past decades. Does the fact that all interstate tariffs are now filed electronically and are available to the public on our website alleviate concerns about the confusion that may result from a carrier cross-referencing its own or an affiliate’s tariffs? Does the nature of the cross-referencing rule as essentially a procedural requirement adopted decades ago counsel in favor of its modification at this juncture, given the passage of time since its adoption and the changed circumstances due to technological advances that make tariff information more publicly and readily accessible?

3. We also seek comment on the burden to a carrier of complying with the prohibition on cross-referencing its own and its affiliates’ tariffs. Currently, a carrier seeking to cross-reference its own tariffs can use the “special permission” procedures set forth in our rules, which require submission of an application requesting a one-time waiver of the rule. The Wireline Competition Bureau (the Bureau) routinely grants such waivers and as a practical matter those waivers do not appear to have resulted in any negative consequences. In their waiver requests, both Verizon and AT&T argue that the current process requiring a carrier to obtain special permission each time it seeks to refer to its own tariffs is unduly burdensome. Do other commenters agree? What are the costs and benefits of requiring a carrier to follow the procedural rule of getting special permission to refer to its own or an affiliate’s tariff in a tariff publication?

4. We invite commenters to identify any other costs and benefits of amending the cross-referencing rule to allow a carrier to refer to its own or an affiliate's tariff publications in its tariffs. Are there any disadvantages to permitting carriers' tariffs to include cross-references to their own or an affiliate's tariffs? Are there any different approaches we should take to this issue?

5. Consistent with the general approach of the cross-referencing rule and with the approach recommended by some stakeholders, our proposed amendments to the cross-referencing rule would apply to all carriers that file tariffs. We seek comment on this approach. Are there reasons to exclude particular types of carriers from application of the proposed rule revision?

B. Eliminating Advance Filing of Materials that Support Interstate Access Tariffs

6. We propose to eliminate, as no longer necessary and unduly burdensome, the provision in our rules requiring price cap incumbent LECs to file short form tariff review plans 90 days before their access tariffs are due. We seek comment on this proposal.

7. Eliminating the short form tariff review plan requirement is consistent with the Commission's past efforts to reduce the burden of tariff filings on price cap LECs while ensuring Commission staff and the public have sufficient information about such tariffs in advance of their effective date. Before 1997, the Commission required LECs to file their interstate access tariff revisions 90 days before the effective date of those tariffs, which gave the Commission staff and stakeholders a substantial amount of time to review those tariffs before they became effective. Pursuant to section 204(a)(3) of the Communications Act of 1934, as amended (Act), the Commission modified its rules to permit tariff filings on a streamlined basis on either seven days' notice (for rate reductions) or 15 days' notice (for rate increases). At the same time, in light of the shortened time for review and the high volume and complexity of tariff filings it was receiving, the Commission adopted a requirement that price cap carriers file supporting information, without rate data, 90 days in advance of the annual access tariff filing to allow the public and Commission staff the opportunity to review that information well in advance of the actual tariff filing.

8. Typically, price cap carriers have satisfied the requirement to file material supporting

their interstate access tariffs 90 days in advance of their tariff filings by filing standardized short form tariff review plans. The standardized short form tariff review plans are spreadsheets that detail exogenous cost adjustments that price cap LECs intend to make to their price cap indices. For example, price cap carriers make exogenous cost adjustments related to: (1) regulatory fees; (2) Telecommunications Relay Service (TRS) expenses; (3) excess deferred taxes; and (4) North American Numbering Plan Administration (NANPA) expenses.

9. Over the last few years, the Bureau has found that the information needed to populate the short form tariff review plans is often not available when the short form tariff review plans are due. To address the insufficiency of available information, by waiver the Bureau reduced the time period for filing short form tariff review plans: first to 60 days prior to the annual access charge tariff filing and then to 45 days prior to the annual access charge tariff filing. For the 2017 and 2018 tariff filing years, the Bureau waived the short form tariff review plan filing requirement altogether because some of the factors needed to calculate exogenous cost adjustments for regulatory fees and TRS and NANPA expenses were not going to be available prior to the short form tariff review plan filing deadline. The Bureau found that absent such information the short form tariff review plans would provide little value to the Commission, industry, and consumers. Also, over the last decade, the Commission has taken a variety of deregulatory actions, including access charge reform and the grant of forbearance to price cap LECs from dominant carrier regulation for their newer packet-based and higher bandwidth services, that have resulted in a decline in the number of interstate access tariff filings as the scope of services subject to price cap regulation has narrowed.

10. We seek comment on our proposal to stop requiring the filing of materials supporting price cap LECs' interstate access tariffs 90 days in advance of their tariff filings. In both 2017 and 2018, this requirement was waived by the Bureau and it does not appear that the Bureau waivers have interfered with the ability of interested stakeholders to review the price cap LECs' more extensive tariff review plans filed with their annual access charge tariff filings in advance of the July 1 effective date. However, we seek comment on whether in previous years there was a benefit to stakeholders of the short form tariff

review plan filings that we should consider? Were there any negative effects of either shortening the filing deadline for short form tariff review plans or waiving the short form tariff review plan requirement entirely? Does the decline in the number of interstate access tariff filings due to regulatory changes provide an additional basis for eliminating the short form tariff review plan requirement?

11. We also seek comment on the burden of filing the short form tariff review plans. What were the costs to filers that had to file short form tariff review plans in previous years? The same exogenous cost information collected in the short form tariff review plans is also required in the long form tariff review plans submitted 15 days before the annual access tariff filing. Is submission of the same information twice unduly burdensome? Are there benefits to price cap carriers from filing the short form tariff review plans? What would be the practical consequences of eliminating the short form tariff review plan requirement? Should carriers be given the option to file the short form tariff review plan or should the rule be completely eliminated? Finally, we seek comment on whether there are alternatives to eliminating the rule that the Commission should consider.

C. Implementing the Proposed Rule Changes

12. We seek comment on the timing for making the changes to our part 61 rules proposed herein. We propose an effective date that is thirty (30) days following publication of any revised rules in the Federal Register, which will effectuate application of any such rules in a timely manner. We invite parties to comment on this proposal and to explain the implications of different effective dates for any changes we make to our part 61 rules. We further note that none of the rule modifications proposed herein would affect either the Commission's authority to reject, suspend, and investigate particular tariff filings or parties' ability to challenge a tariff filing on the grounds that it is unjust and unreasonable. Do commenters have input on these or other issues related to the legal ramifications or implementation of the proposed rule amendments?

II. PROCEDURAL MATTERS

13. Comment Filing Procedures. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates

indicated in the DATES section of this document.

14. Ex Parte Presentations. The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. 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 § 1.1206(b). In proceedings governed by § 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.

15. Paperwork Reduction Act. This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002.

16. Initial Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980

(RFA), as amended, requires agencies to prepare a regulatory flexibility analysis for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.” The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

17. In this NPRM, we propose to amend two of the Commission’s rules applicable to tariffs, §§ 61.49(k) and 61.74(a), in order to minimize burdens associated with such rules and as part of the Commission’s efforts to reduce unnecessary regulations that no longer serve the public interest. These proposed revisions to § 61.49(k) only impact price cap LECs for the services that continue to be tariffed and any impact of these rule changes is minor, while the proposed revisions to § 61.74(a) are procedural in nature and the impact is likewise minor. Therefore, we certify that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities.

18. The Commission will send a copy of this NPRM, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. The initial certification will also be published in the Federal Register.

19. Contact Person. For further information regarding this proceeding, contact Robin Cohn, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1540, or robin.cohn@fcc.gov.

III. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201-205, 215, 218, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201-05, 215, 218, 220, this Notice of Proposed Rulemaking IS ADOPTED.

21. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed

Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and record keeping requirements, Tariffs, Telecommunications, Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Cecilia Sigmund,

Federal Register Liaison Officer.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 61 of title 47 of the Code of Federal Regulations as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 154(j), 201-205, 403, unless otherwise noted.

§ 61.49 [Amended]

2. Amend § 61.49 by removing and reserving paragraph (k).

3. Amend § 61.74 by redesignating paragraphs (b) through (e) as paragraphs (c) through (f) and adding a new paragraph (b) to read as follows:

§ 61.74 References to other instruments.

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(b) Tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.

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[FR Doc. 2018-25324 Filed: 11/19/2018 8:45 am; Publication Date: 11/20/2018]