

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

In the Matter of
July 1, 2020
Annual Access Charge Tariff Filings
WC Docket No. 20-55

ORDER

Adopted: April 15, 2020

Released: April 15, 2020

By the Chief, Pricing Policy Division:

15-DAY TARIFF FILINGS: June 16, 2020
EFFECTIVE: July 1, 2020
PETITIONS: June 23, 2020
REPLIES: June 26, 2020

7-DAY TARIFF FILINGS: June 24, 2020
EFFECTIVE: July 1, 2020
PETITIONS: June 26, 2020
REPLIES: June 29, 2020

I. INTRODUCTION

1. In this Order, we establish procedures for the 2020 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) sets an effective date of July 1, 2020 for the annual access charge tariff filings made on both 15 and 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; and (3) addresses service of the petitions and replies. In the USF/ICC Transformation Order, the Commission adopted 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. The TRPs implement these adjustments. All correspondence and comments in connection with these filings should refer to the caption of this proceeding, July 1, 2020 Annual Access Charge Tariff Filings, WC Docket No. 20-55.

1 47 CFR §§ 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 CFR §§ 1.773.

3 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).

## II. DISCUSSION

### A. Tariff Effective Dates and Tariff Filing Dates

3. The Commission's rules require incumbent LECs to file annual access charge tariffs with a scheduled effective date of July 1.<sup>4</sup> Incumbent LECs are permitted to make their tariff filings either 15 or 7 days prior to the scheduled effective date of their tariff revisions, depending on the type of changes the tariffs propose.<sup>5</sup> In the interest of ensuring parties and Commission staff have enough time to consider and respond to petitions to suspend or reject a tariff filing, we also issue a limited waiver of sections 1.773(a) and (b) of our rules to modify the deadlines for filing petitions to suspend or reject tariff filings made on 7-days' notice and replies to any such petitions as to filings made on both 7-days' notice and 15-days' notice.<sup>6</sup> Section 1.3 of the Commission's rules authorizes waiver of a Commission rule for good cause shown, and we find that good cause exists to provide sufficient time for the submission and review of any such filings.<sup>7</sup> Absent such a waiver, any petitions related to 7-day filings and replies related to 15-day filings would be due on June 29, and replies related to 7-day filings would not be due until July 1, which is the effective date of the tariffs. Thus, adhering to these dates would not allow for adequate time to consider any such filings within the time constraints of the annual access charge tariff filing. We, therefore, find that a limited waiver is appropriate.

4. Incumbent LECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year.<sup>8</sup> Incumbent LECs that file tariffs under a rate-of-return ratemaking methodology are required to file every other year. Incumbent LECs filing pursuant to the requirements of section 61.38 of the Commission's rules are required to file annual access charge tariffs this year, an even-numbered year.<sup>9</sup> Rate-of-return incumbent LECs subject to section 61.39 of the Commission's rules<sup>10</sup> would not, absent requirements adopted in the *USF/ICC Transformation Order*,<sup>11</sup> be required to file annual access charge tariffs this year, because they file revisions in odd-numbered years.<sup>12</sup> Pursuant to the *USF/ICC Transformation Order*, however, rate-of-return incumbent LECs subject to section 61.39 of the Commission's rules must file tariffs this year to comply with the requirements of sections 51.909(j), 51.917(d)(iv), and 51.917(e) of the Commission's rules that such carriers adjust their relevant access charge and eligible recovery data.<sup>13</sup> Further, 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, 10.0%.<sup>14</sup>

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<sup>4</sup> See 47 CFR §§ 69.3(a), 51.705, 51.907, 51.909.

<sup>5</sup> 47 U.S.C. § 204(a)(3); 47 CFR § 61.58.

<sup>6</sup> 47 CFR §§ 1.773(a), (b).

<sup>7</sup> 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 deviation will serve the public interest).

<sup>8</sup> 47 CFR § 61.43.

<sup>9</sup> *Id.* §§ 61.38, 69.3(f)(1).

<sup>10</sup> *Id.* § 61.39.

<sup>11</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17981-83, paras. 897-99.

<sup>12</sup> 47 CFR § 69.3(f)(2).

<sup>13</sup> *Id.* §§ 51.909(j), 51.917(d)(iv), (e).

<sup>14</sup> 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).

5. Rate-of-return incumbent LECs receiving model-based or other forms of fixed high-cost universal service support that have not already elected 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 may do so with a July 1, 2020 effective date.<sup>15</sup> For rate-of-return carriers that elect incentive regulation effective July 1, 2020 and 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, 2020.<sup>16</sup> For rate-of-return carriers participating in the National Exchange Carrier Association (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, 2020 by a net contribution or net recipient factor in accordance with procedure set forth in the *Rate-of-Return BDS Order*.<sup>17</sup>

6. Pursuant to the *Rate-of-Return BDS Order*, rate-of-return incumbent LECs subject to the separations category relationships freeze that receive fixed or model-based universal service support and elect incentive regulation for their BDS offerings effective July 1, 2020 have the opportunity to opt out of the freeze and update their category relationships with a July 1, 2020 effective date.<sup>18</sup>

#### **B. Tariff and Tariff Review Plan Filing Instructions**

7. Incumbent LECs must use the Commission's Electronic Tariff Filing System (ETFS) to file all of their tariff material.<sup>19</sup> 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 15, 2020 and before 7:00 p.m. Eastern Time on June 16, 2020 for the filing to be considered officially received on June 16, 2020. Incumbent LEC tariff filings must be received after 7:00 p.m. Eastern Time on June 23, 2020 and before 7:00 p.m. Eastern Time on June 24, 2020 for the filing to be considered officially received on June 24, 2020.

8. 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, at (202) 418-1540, or Richard Kwiatkowski, Economic Analysis Division, Office of Economics and Analytics, at (202) 418-1383.

#### **C. Pleading Filing Dates and Procedures**

9. Petitions to suspend or reject 15 days' notice tariff filings will be due no later than June 23, 2020, and replies will be due no later than June 26, 2020. Petitions to suspend or reject 7 days' notice tariff filings will be due no later than June 26, 2020, and replies will be due no later than June 29, 2020. 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.<sup>20</sup>

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<sup>15</sup> *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 BDS Order*); 47 CFR § 61.50(c).

<sup>16</sup> *Rate-of-Return BDS Order*, 33 FCC Rcd at 10418, para. 37.

<sup>17</sup> *Id.* at 10418-19, paras. 38-39.

<sup>18</sup> *Id.* at 10422-26, paras. 45-59.

<sup>19</sup> 47 CFR § 61.13(b).

<sup>20</sup> See *supra* para. 3; see also 47 CFR §§ 1.3, 1.773(a), (b).

10. Pursuant to sections 1.419 and 1.773 of the Commission's rules,<sup>21</sup> 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. 20-55** and may be filed using the Electronic Comment Filing System (ECFS).<sup>22</sup>

- Electronic Filers: Pleadings may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. We encourage parties to take full advantage of the Commission's various electronic filing systems for filing applicable documents.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent 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.
  - If the Commission's hand-delivery filing location reopens, filings can be sent by hand or messenger delivery.<sup>23</sup> 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 St., SW, Washington, DC 20554.
  - These filing instructions are subject to any future changes the Commission may make to its filing procedures.

11. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

12. In addition, on the day an electronic filing is submitted or a paper filing is mailed, an electronic courtesy copy of any comments, reply comments, petitions and replies, must also be emailed to [Robin.Cohn@fcc.gov](mailto:Robin.Cohn@fcc.gov) and [Richard.Kwiatkowski@fcc.gov](mailto:Richard.Kwiatkowski@fcc.gov).

13. The proceeding this Order initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>24</sup> 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

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<sup>21</sup> 47 CFR §§ 1.419, 1.773.

<sup>22</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>23</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (OS Mar. 19, 2020) (explaining that, due to the COVID-19 pandemic, the Commission closed the hand-delivery and messenger-delivery filing window at FCC Headquarters).

<sup>24</sup> 47 CFR § 1.1200 *et seq.*

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).<sup>25</sup> 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).<sup>26</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### D. Service

14. Because there is limited time available for review of petitions to suspend or reject tariff filings made pursuant to this order, we establish the following service requirements for such petitions and responses thereto. Any party filing a petition to suspend or reject such a tariff filing must also serve that petition on the entity that is the subject of the petition, the relevant tariff filer, its attorney or other duly constituted agent, by personal delivery, facsimile transmission, or email.<sup>27</sup> Any party responding to a petition to suspend or reject must serve that response on the relevant petitioner, its attorney or other duly constituted agent by personal delivery, facsimile transmission, or email. We waive any inconsistent portions of sections 1.47(d), 1.773(a)(4) and 1.773(b)(3) of the Commission's rules as necessary to effectuate this requirement.<sup>28</sup> 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

15. 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.

16. 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 1.773(a) and 1.773(b) of the Commission's rules, 47 C.F.R. §§ 1.733(a), and 1.773(b), ARE WAIVED for the limited purpose specified in *supra* paragraph 3.

17. 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 §§ 1.773(a)(4), 1.773(b)(3), and 1.47(d) ARE WAIVED for the limited purpose specified in *supra* paragraph 14.

18. 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  
Chief  
Pricing Policy Division  
Wireline Competition Bureau

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<sup>25</sup> 47 CFR § 1.1206(b).

<sup>26</sup> *Id.* § 1.49(f).

<sup>27</sup> *See id.* §§ 1.773(a)(4), (b)(3).

<sup>28</sup> *Id.* §§ 1.47(d), 1.773(a)(4), (b)(3)