

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

In the Matter of)
)
 July 1, 2021) WC Docket No. 21-148
 Annual Access Charge Tariff Filings)
)

ORDER

Adopted: April 16, 2021

Released: April 16, 2021

By the Chief, Pricing Policy Division:

15-DAY TARIFF FILINGS: June 16, 2021
EFFECTIVE: July 1, 2021
PETITIONS: June 23, 2021
REPLIES: June 28, 2021 (due no later than 12:00 p.m. (noon) Eastern Time)

7-DAY TARIFF FILINGS: June 24, 2021
EFFECTIVE: July 1, 2021
PETITIONS: June 28, 2021 (due no later than 12:00 p.m. (noon) Eastern Time)
REPLIES: June 30, 2021 (due no later than 12:00 p.m. (noon) Eastern Time)

I. INTRODUCTION

1. In this Order, we establish procedures for the 2021 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.¹

2. This Order: (1) sets an effective date of July 1, 2021 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;² (3) grants a limited waiver of section 51.909(a)(4) of the Commission’s rules to the National Exchange Carrier Association (NECA) for purposes of the 2021-22 annual access tariff filing period;³ and (4) addresses service of the petitions and replies. In the *USF/ICC Transformation Order*, the Commission adopted rules requiring incumbent LECs to reduce, over a period of years, many of their switched access rates. That rate transition has been completed.⁴ The Commission also established a mechanism known as Eligible Recovery that enables

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 47 CFR § 51.909(a)(4).

⁴ See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17677, 17934-35, 18149, paras. 36, 801 & fig. 9, 1404 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); 47 CFR §§ 51.915, 51.917. Price cap incumbent LECs were required to transition certain tariffed switched access rates effective July 1 on each of those

(continued....)

incumbent LECs to recover a decreasing portion of their lost revenue attributable to the required switched access rate decreases.⁵ The TRPs implement adjustments to incumbent LECs' Eligible Recovery as required under the Commission's rules each year, effective July 1.⁶ All correspondence and comments in connection with these filings should refer to the caption of this proceeding, *July 1, 2021 Annual Access Charge Tariff Filings*, WC Docket No. 21-148.

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 1.⁷ 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 they propose to make.⁸

4. Incumbent LECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year.⁹ 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 61.39 of the Commission's rules are required to file annual access charge tariffs this year, an odd-numbered year.¹⁰ Ordinarily, rate-of-return incumbent LECs subject to section 61.38 of the Commission's rules¹¹ would not be required to file annual access charge tariffs this year, because they file revisions in even-numbered years.¹² 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 51.917(d)(1)(iv), and 51.917(e) of the Commission's rules.¹³ Further, all rate-of-return incumbent LECs must file a TRP this year to ensure that their rates comply with the prescribed rate of return for this tariff year, 9.75%.¹⁴

years to bill-and-keep (\$0) over a six-year period that ended in 2018. Rate-of-return incumbent LECs were required to transition certain tariffed switched access rates effective July 1 on each of those years to bill-and-keep (\$0) over a nine-year period that ended in 2020. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-96, para. 801, fig. 9; 47 CFR §§ 51.907(h), 51.909(j).

⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, 17956-96, paras. 36, 847-923; 47 CFR §§ 51.915, 51.917.

⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 18149, para. 1404 (delegating authority to the Wireline Competition Bureau, as appropriate, to implement the rules adopted in the *USF/ICC Transformation Order*).

⁷ See 47 CFR §§ 69.3(a), 51.705, 51.907, 51.909.

⁸ 47 U.S.C. § 204(a)(3) ("A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis...[which]...shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action...before the end of that 7-day or 15-day period, as is appropriate."); 47 CFR § 61.58(a)(2)(i) (pursuant to section 204(a)(3) of the Act, local exchange carriers may file streamlined tariffs on 7 days' notice if it proposes only rate decreases, and on 15 days' notice for any other streamlined tariff including those that propose rate increases).

⁹ 47 CFR § 61.43.

¹⁰ 47 CFR § 61.39; 47 CFR § 69.3(f)(2).

¹¹ 47 CFR § 61.38.

¹² 47 CFR § 69.3(f)(1).

¹³ 47 CFR § 51.917(d)(1)(iv), (e).

¹⁴ 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) (*Rate-of-Return Reform Order*).

5. In addition, all price cap and rate-of-return incumbent LECs are required to transition their interstate and intrastate toll free (or 8YY) originating end office access service rates to bill-and-keep over a three-year period.¹⁵ As an initial step, rate-of-return incumbent LECs were required to cap the rate for all intrastate originating access service rate elements for toll free calls, including toll free database query charges, as of December 28, 2020.¹⁶ As part of the transition, beginning July 1, 2021, price cap and rate-of-return incumbent LECs are required to tariff separate rate elements for toll free and non-toll free interstate and intrastate originating end office access service.¹⁷ These incumbent LECs then must reduce their intrastate toll free originating end office access service rates to interstate levels when intrastate rates exceed comparable interstate rates.¹⁸ Also, all incumbent LECs are required to tariff rate elements for interstate and intrastate non-toll free originating transport service between an end office and tandem switch and remove these rate elements from their tariffs for toll free originating traffic, consistent with a bill-and-keep methodology.¹⁹ Further, all incumbent LECs are required to tariff a single rate element of no more than \$0.001 per minute for joint tandem switched transport access service for toll free calls.²⁰ In addition, beginning July 1, 2021, incumbent LECs are required to reduce the intrastate and interstate toll free database query charges in their tariffs to no more than \$0.004248 per query.²¹ Incumbent LECs charging database query charges lower than this rate, however, may not increase their rates.²²

B. Limited Waiver of NECA Switched Access Rate Cap Adjustment Rule

6. We find that good cause exists to grant NECA, on our own motion, a limited waiver of section 51.909(a)(4) of the Commission's rules for purposes of the 2021-22 annual access tariff filing period.²³ Section 51.909(a)(4) requires NECA to adjust its switched access rate caps when carriers enter and exit the NECA tariff pools and notify carriers participating in the traffic-sensitive pool of the change by May 1.²⁴ Only six carriers elected to enter or exit the NECA tariff pools for the 2021-22 annual access

¹⁵ 47 CFR §§ 51.907(i)-(k), 51.909(l)-(o); *8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594, FCC 20-143, at 10, para. 25 (Oct. 9, 2020) (*8YY Access Charge Reform Order*); 85 Fed. Reg. 75894 (Nov. 27, 2020). The bill-and-keep methodology is defined in 47 CFR § 51.713.

¹⁶ 47 CFR § 51.909(l). Price cap incumbent LEC's interstate and intrastate originating access service were capped beginning in 2011. *USF/ICC Transformation Order*, 26 FCC Rcd at 17942, para. 818.

¹⁷ 47 CFR §§ 51.907(i)(1), 51.909(m)(1).

¹⁸ 47 CFR §§ 51.907(i), 51.909(m); *8YY Access Charge Reform Order* at 12-13, 22, paras. 28, 49.

¹⁹ 47 CFR §§ 51.907(i)(3), 51.909(m)(3); *see id.* § 51.713 (defining bill-and-keep arrangements).

²⁰ *Id.* §§ 51.907(i)(5), 51.909(m)(5).

²¹ *Id.* §§ 51.907(i)(6), 51.909(m)(6).

²² *Id.*

²³ Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). The Commission may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall or individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

²⁴ 47 CFR §§ 51.909(a)(4), (a)(6)(ii); *see Connect America Fund et al.*, WC Docket No. 19-90 et al., Order, 28 FCC Rcd 3319, 3325-26, para. 13 (2013). Carriers entering or exiting the NECA tariff pools for the 2021-22 annual access tariff filing period were required to notify NECA of this election by March 1, 2021. *See* 47 CFR §§ 69.3(e)(6), (e)(9), (i)(1).

tariff filing period.²⁵ NECA has orally represented to Commission staff that the net effect of these elections on overall NECA tariff pool switched access rates would be approximately 0.0034% and that Connect America Fund intercarrier compensation (CAF ICC) support would increase by approximately \$9,000 if NECA complied with section 51.909(a)(4). We find that the impact of these elections on NECA's switched access rate caps and CAF ICC support would be *de minimis*. We further find that the administrative burdens on NECA to comply with section 51.909(a)(4) outweigh any benefits from such *de minimis* rate changes. Accordingly, consistent with prior precedent, we conclude that special circumstances warrant a deviation from section 51.909(a)(4) and find that granting NECA a limited waiver for purposes of the 2021-22 annual access tariff filing period will serve the public interest.²⁶

C. 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.²⁷ 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 LECs' 15 days' notice tariff filings must be received by ETFS after 7:00 p.m. Eastern Time on June 15, 2021 and before 7:00 p.m. Eastern Time on June 16, 2021 for the filing to be considered officially received on June 16, 2021. Incumbent LECs' 7 days' notice tariff filings must be received after 7:00 p.m. Eastern Time on June 23, 2021 and before 7:00 p.m. Eastern Time on June 24, 2021 for the filing to be considered officially received on June 24, 2021.

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.

D. Pleading Filing Dates and Procedures

9. Petitions to suspend or reject 15 days' notice tariff filings will be due no later than June 23, 2021, and replies will be due no later than 12:00 p.m. Eastern Time (noon) on June 28, 2021. Petitions to suspend or reject 7 days' notice tariff filings will be due no later than 12:00 p.m. Eastern Time (noon) on June 28, 2021, and replies will be due no later than 12:00 p.m. Eastern Time (noon) on June 30, 2020. We waive those portions of sections 1.4(f), 1.773(a) and 1.773(b) of the Commission's rules that are inconsistent with these deadlines.²⁸

10. Pursuant to sections 1.419 and 1.773 of the Commission's rules, interested parties may file petitions to suspend or reject tariff filings, and replies thereto, on or before the dates indicated in this document.²⁹ Pleadings must reference **WC Docket No. 21-148** and must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Pleadings may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): www.fcc.gov/ecfs.³⁰

²⁵ See Letter from Jennifer Leonard, Senior Director, NECA, to Kris Monteith, Chief, Wireline Competition Bureau, FCC (dated Mar. 22, 2021).

²⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 28 FCC Rcd 7074, 7075-76, paras. 2-5 (WCB 2013) (granting a limited waiver of section 51.909(a)(4) where the rate impact of adjusting switched access rate caps would be approximately 0.053% and CAF ICC support would increase by approximately \$138,500 on the basis that the amounts at issue were *de minimis*).

²⁷ 47 CFR § 61.13(b).

²⁸ See 47 CFR §§ 1.3, 1.4(f), 1.773(a), (b).

²⁹ *Id.* §§ 1.419, 1.773.

³⁰ 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 commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - 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 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³¹

11. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), we ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

12. In addition, on the day an electronic filing is submitted, an electronic courtesy copy of any comments, reply comments, petitions, and replies, must also be emailed to Robin.Cohn@fcc.gov and Richard.Kwiatkowski@fcc.gov.

13. *Ex Parte Rules.* The proceeding this Order initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³² 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 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.

E. 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

³¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (OMD 2020).

³² 47 CFR § 1.1200 *et seq.*

constituted agent, by personal delivery, facsimile transmission, or email.³³ 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. To effectuate these service requirements, we waive those portions of sections 1.47(d), 1.773(a)(4) and 1.773(b)(3) of the Commission's rules that are inconsistent with the requirements set forth above.³⁴ Parties are instructed to provide contact persons, email addresses, and facsimile numbers in their filings.

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, section 51.909(a)(4) of the Commission's rules, 47 C.F.R. § 51.909(a)(4), IS WAIVED for the limited purpose specified herein.

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 1.4(f), 1.773(a), and 1.773(b) of the Commission's rules, 47 C.F.R. §§ 1.4(f), 1.773(a), 1.773(b), ARE WAIVED for the limited purpose specified herein.

18. 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) of the Commission's rules, 47 C.F.R. §§ 1.773(a)(4), 1.773(b)(3), 1.47(d), ARE WAIVED for the limited purpose specified herein.

19. 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

³³ See *id.* §§ 1.773(a)(4), (b)(3).

³⁴ *Id.* §§ 1.3, 1.47(d), 1.773(a)(4), (b)(3).