

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

In the Matter of)
July 1, 2023) WC Docket No. 23-9
Annual Access Charge Tariff Filings)

ORDER

Adopted: April 3, 2023

Released: April 3, 2023

By the Chief, Pricing Policy Division:

15-DAY TARIFF FILINGS: June 16, 2023
EFFECTIVE: July 1, 2023
PETITIONS: June 23, 2023
REPLIES: June 27, 2023

7-DAY TARIFF FILINGS: June 26, 2023
EFFECTIVE: July 3, 2023
PETITIONS: June 29, 2023 (due no later than 12:00 p.m. (noon) Eastern Time)
REPLIES: June 30, 2023 (due no later than 12:00 p.m. (noon) Eastern Time)

I. INTRODUCTION

1. In this Order, we establish procedures for the 2023 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 incumbent 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, 2023 for 2023 annual access charge tariff filings submitted on 15-days’ notice; (2) sets a modified effective date of July 3, 2023 for 2023 annual access charge tariff filings submitted on 7-days’ notice pursuant to a limited waiver; (3) establishes the dates for filing petitions to suspend or reject an incumbent LEC’s tariff filing and replies to such petitions;² (4) addresses service of the petitions and replies; and (5) reminds carriers that the Commission adopted new tariff filing fees which took effect on March 2, 2023.³

3. 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

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 47 CFR § 1.1105; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission’s Rules, MD Docket No, 20-270, Report and Order, 2022 WL 17886514, FCC 22-94 (Dec. 16, 2022) (2022 Application Fees Order); FCC, Schedule of Application Fees, 88 Fed. Reg. 6169 (Jan. 31, 2023).

transition ended in 2020.⁴ The Commission also established Eligible Recovery which enables incumbent LECs to recover a decreasing portion of their lost revenue attributable to the required switched access rate decreases.⁵ We rely on TRP⁶ worksheets submitted by filing carriers to confirm that the annual adjustments to incumbent LECs' Eligible Recovery have been implemented in accordance with the Commission's rules.⁷ All correspondence and comments in connection with these filings should refer to the caption of this proceeding, *July 1, 2023 Annual Access Charge Tariff Filings*, WC Docket No. 23-9.

II. DISCUSSION

A. Tariff Effective Dates and Tariff Filing Dates

4. The Commission's rules generally require incumbent LECs to file annual access charge tariffs with a scheduled effective date of July 1.⁸ The Commission's rules, however, do not preclude the filing of revisions to annual tariffs effective on dates other than July 1.⁹ An incumbent LEC may submit their annual tariff filings on a streamlined basis pursuant to section 203(a)(3) of the Communications Act of 1934, as amended, 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.¹⁰ Unless the Commission takes action during the relevant statutory notice periods, rates contained in annual tariff filings filed 15 days (for rate increases) or 7 days (for rate reductions) prior to the effective date are "deemed lawful."¹¹ Incumbent LECs filing tariffs on 15-days' notice must submit their annual tariff filings on June 16, 2023 to be effective July 1, 2023. Incumbent LECs filing tariffs on 7-days' notice must submit their annual tariff filings on June 26, 2023 to be effective July 3, 2023.

5. To establish an effective date of July 3, 2023 for 7-days' notice tariff filings, we grant a limited waiver of sections 69.3(a), 69.3(f), 51.907, and 51.909 of the Commission's rules to the extent

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 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 Commission staff works with industry to prepare updated TRP worksheets every year. TRP worksheets display cost support in a consistent manner, facilitating review by Commission staff and interested parties. Carriers are free, however, to create and use their own TRPs, as long as those TRPs comply with the Commission's rules. See *July 1, 2022 Annual Access Charge Tariff Filings*, WC Docket No. 22-108, Order, DA 22-494, 2022 WL 1528248, at *2, para. 2 (PPD May 9, 2022).

⁷ 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*).

⁸ See 47 CFR §§ 69.3(a), 51.907, 51.909.

⁹ 47 CFR § 69.3(b).

¹⁰ 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).

¹¹ 47 U.S.C. § 204(a)(3).

that those rules would otherwise require rates to be effective July 1, 2023.¹² Absent a waiver, carriers filing on 7-days' notice would need to submit their annual tariff filings on June 24, 2023, a Saturday, to be effective July 1, 2023. A filing received by the Commission on a Saturday, a holiday on which the Commission is technically closed, would be counted as filed on the next business day, June 26, 2023,¹³ which is less than 7 days before the July 1, 2023 effective date. Waiver is necessary to allow incumbent LECs reducing their rates to avail themselves of the 7-days' notice streamlined tariff filing procedures established pursuant to section 204(a)(3) of the Act. Under this limited waiver, incumbent LECs that want to submit their annual tariff filings on 7-days' notice must submit their annual tariff filings on June 26, 2023, with an effective date of July 3, 2023.¹⁴

6. Incumbent LECs that file tariffs under the price cap ratemaking methodology are required to file revised annual access charge tariffs every year.¹⁵ 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.¹⁶ Ordinarily, rate-of-return incumbent LECs subject to section 61.38 of the Commission's rules¹⁷ would not be required to file annual access charge tariffs this year, because they file revisions in even-numbered years.¹⁸ Pursuant to the *USF/ICC Transformation Order*, however, rate-of-return incumbent LECs subject to section 61.38 of the Commission's rules must submit tariff filings this year to comply with the requirements of sections 51.917(d)(1)(iv), and 51.917(e) of the Commission's rules.¹⁹

7. 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 beginning July 1, 2021.²⁰ As the final step in this transition, this year incumbent LECs are required to refile their interstate switched access tariff and any state tariff to remove any intercarrier charges for intrastate or interstate originating end office access service for toll free calls.²¹ This year, incumbent LECs are also required to reduce intrastate and interstate toll free database query

¹² 47 CFR §§ 69.3(a), 69.3(f), 51.907, 51.909. 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). 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. *Id.* The Commission may, on an individual basis, consider evidence of hardship, equity, and more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹³ See 47 CFR § 1.4(e)(1), (j), (k)(1).

¹⁴ See *July 1, 2017 Annual Access Charge Tariff Filings*, WC Docket No. 17-65, Order, 32 FCC Rcd 1918, 1918, 1923, paras. 2 n.2, 15 (PPD 2017) (waiving Commission rules that otherwise would require rates filed on 7-days' notice to be effective on July 1 because the 7-days' notice filing deadline fell on a Saturday).

¹⁵ 47 CFR § 61.43.

¹⁶ 47 CFR §§ 61.39, 69.3(f)(2).

¹⁷ 47 CFR § 61.38.

¹⁸ 47 CFR § 69.3(f)(1).

¹⁹ 47 CFR § 51.917(d)(1)(iv), (e).

²⁰ 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.

²¹ 47 CFR §§ 51.907(k)(1), 51.909(o)(1).

charges to a transitional rate of no more than \$0.0002 per query.²² Carriers are ordinarily required to implement these rate transitions beginning July 1, 2023. As explained above, however, we waive sections 51.907 and 51.909 of the Commission's rules to the extent necessary to establish an effective date of July 3, 2023 for filings made on 7-days' notice. We maintain the July 1, 2023 effective date for 15 days' notice tariff filings.

B. Tariff and Tariff Review Plan Filing Instructions

8. Incumbent LECs must file all of their tariff materials through the Commission's Electronic Tariff Filing System (ETFS).²³ 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, 2023 and before 7:00 p.m. Eastern Time on June 16, 2023 for the filing to be considered officially received on June 16, 2023. Incumbent LECs' 7-days' notice tariff filings must be received after 7:00 p.m. Eastern Time on June 25, 2023 and before 7:00 p.m. Eastern Time on June 26, 2023 for the filing to be considered officially received on June 26, 2023.

9. The public and interested parties may obtain copies of tariffing materials through ETFS. For more information, please contact either Christopher S. Koves, Pricing Policy Division, Wireline Competition Bureau, Christopher.Koves@fcc.gov, or Richard Kwiatkowski, Economic Analysis Division, Office of Economics and Analytics, Richard.Kwiatkowski@fcc.gov.

C. New Tariff Filing Fees and Payment System

10. When carriers submit their annual access charge tariff filings through ETFS, they must also pay the associated complex tariff filing fee through the Commission's Registration System (CORES).²⁴ We remind carriers that the Commission recently revised its part 1 application fees including fees related to tariff filings.²⁵ The new filing fees associated with the annual tariff filing—which is considered a “complex tariff filing”—went into effect on March 2, 2023, and the fees related to the annual tariff filing are reflected in the table below.²⁶

Tariff Filing	Forms	Fee Amount	Payment Code
Complex Tariff Filing (Large – all price cap LECs and entities involving more than 100 LECs)	Corres. & 159	\$7,300	CQL
Complex Tariff Filing (Small – other entities)	Corres. & 159	\$3,650	CQM

D. Pleading Filing Dates and Procedures

11. Petitions to suspend or reject 15 days' notice tariff filings will be due no later than 7:00 p.m. Eastern Time on June 23, 2023, and replies will be due no later than 7:00 p.m. Eastern Time on June 27, 2023. Petitions to suspend or reject 7-days' notice tariff filings will be due no later than 12:00 p.m.

²² 47 CFR §§ 51.907(k)(2), 51.909(o)(2).

²³ See 47 CFR § 61.13(b). Access to ETFS is available here: <https://apps.fcc.gov/etfs/etfsHome.action>.

²⁴ 47 CFR § 1.1105; see *FCC Announces Decommissioning of Fee Filer as Method of Payment and Replacement with New Payment Module Within CORES et al.*, Public Notice (Dec. 1, 2021), <https://www.fcc.gov/document/replacement-fee-filer-new-commission-payment-module>. For more information about the CORES Payment System, please visit: <https://www.fcc.gov/licensing-databases/fees/cores-payment-system>.

²⁵ 2022 *Application Fees Order* at *11, Appx.

²⁶ Schedule of Application Fees, 88 Fed. Reg. at 6174, Tbl. 1 to § 1.1105. For more information about the new fees related to tariff filings, please consult the Wireline Competition Bureau's public notice released March 2, 2023. *Wireline Competition Bureau Reminds Carriers of New Tariff Filing Fees Effective March 2, 2023*, WC Docket No. 23-9, DA 23-172 (WCB Mar. 2, 2023).

(noon) Eastern Time on June 29, 2023, and replies will be due no later than 12:00 p.m. (noon) Eastern Time on June 30, 2023. We waive those portions of sections 1.4(f) and 1.773 of the Commission's rules that are inconsistent with these deadlines.²⁷

12. 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 Order.²⁸ Pleadings must reference **WC Docket No. 23-9** 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.²⁹
- 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.
 - 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. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁰

13. *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.

14. *Courtesy Copies.* 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 Christopher Koves, Christopher.Koves@fcc.gov, and Richard Kwiatkowski, Richard.Kwiatkowski@fcc.gov.

15. *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.³¹ 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

²⁷ See 47 CFR §§ 1.3, 1.4(f), 1.773(a), (b).

²⁸ *Id.* §§ 1.419, 1.773.

²⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

³⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice*, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

³¹ 47 CFR § 1.1200 *et seq.*

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

16. 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 relevant tariff-filer, or the tariff-filer's attorney or other duly-constituted agent, by personal delivery, facsimile transmission, or email.³² Any party responding to a petition to suspend or reject must serve that response on the relevant petitioner, or the petitioner's 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.³³ Parties are instructed to provide contact persons, email addresses, and facsimile numbers in their filings.

III. ORDERING CLAUSES

17. 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 CFR §§ 0.91, 0.291, this Order IS ADOPTED.

18. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, sections 69.3(a), 69.3(f), 51.907, and 51.909 ARE WAIVED to the extent specified herein in paragraphs 5 and 7.

19. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that sections 1.4(f), 1.47(d), and 1.773 of the Commission's rules, 47 CFR §§ 1.4(f), 1.47(d), 1.773, ARE WAIVED for the limited purposes specified herein in paragraphs 11 and 16.

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

FEDERAL COMMUNICATIONS COMMISSION

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

³² See *id.* §§ 1.773(a)(4), (b)(3).

³³ *Id.* §§ 1.3, 1.47(d), 1.773(a)(4), (b)(3).