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47 CFR Ch. I (10–1–16 Edition)

§51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of Non-Access Telecommunications Traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of Non-Access Telecommunications Traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to §51.301.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of Non-Access Telecommunications Traffic at symmetrical rates.

(1) In a state in which the state commission has established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.

(2) In a state in which the state commission has not established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall set interim transport and termination rates either at the default ceilings specified in §51.705(c) or in accordance with a bill-and-keep methodology as defined in §51.713.

(3) In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in §51.707, an incumbent LEC shall set interim transport and termination rates at the

default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in §51.707(b)(2)).

(c) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of telecommunications traffic subject to the interim arrangement:

(1) A voluntary agreement has been negotiated and approved by a state commission;

(2) An agreement has been arbitrated and approved by a state commission; or

(3) The period for requesting arbitration has passed with no such request.

(d) If the rates for transport and termination of Non-Access Telecommunications Traffic in an interim arrangement differ from the rates established by a state commission pursuant to §51.705, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equalled the rates later established by the state commission pursuant to §51.705.

[61 FR 45619, Aug. 29, 1996, as amended at 76 FR 73856, Nov. 29, 2011]

§51.717 [Reserved]

Subpart I—Procedures for Implementation of Section 252 of the Act

§51.801 Commission action upon a state commission's failure to act to carry out its responsibility under section 252 of the Act.

(a) If a state commission fails to act to carry out its responsibility under section 252 of the Act in any proceeding or other matter under section 252 of the Act, the Commission shall issue an order preempting the state commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the state commission under section 252

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of the Act with respect to the proceeding or matter and shall act for the state commission.

(b) For purposes of this part, a state commission fails to act if the state commission fails to respond, within a reasonable time, to a request for mediation, as provided for in section 252(a)(2) of the Act, or for a request for arbitration, as provided for in section 252(b) of the Act, or fails to complete an arbitration within the time limits established in section 252(b)(4)(C) of the Act.

(c) A state shall not be deemed to have failed to act for purposes of section 252(e)(5) of the Act if an agreement is deemed approved under section 252(e)(4) of the Act.

§ 51.803 Procedures for Commission notification of a state commission's failure to act.

(a) Any party seeking preemption of a state commission's jurisdiction, based on the state commission's failure to act, shall notify the Commission in accordance with following procedures:

(1) Such party shall file with the Secretary of the Commission a petition, supported by an affidavit, that states with specificity the basis for the petition and any information that supports the claim that the state has failed to act, including, but not limited to, the applicable provisions of the Act and the factual circumstances supporting a finding that the state commission has failed to act;

(2) Such party shall ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition required in paragraph (a)(1) of this section on the same date that the petitioning party serves the petition on the Commission; and

(3) Within fifteen days from the date of service of the petition required in paragraph (a)(1) of this section, the applicable state commission and parties to the proceeding may file with the Commission a response to the petition.

(b) The party seeking preemption must prove that the state has failed to act to carry out its responsibilities under section 252 of the Act.

(c) The Commission, pursuant to section 252(e)(5) of the Act, may take no-

tice upon its own motion that a state commission has failed to act. In such a case, the Commission shall issue a public notice that the Commission has taken notice of a state commission's failure to act. The applicable state commission and the parties to a proceeding or matter in which the Commission has taken notice of the state commission's failure to act may file, within fifteen days of the issuance of the public notice, comments on whether the Commission is required to assume the responsibility of the state commission under section 252 of the Act with respect to the proceeding or matter.

(d) The Commission shall issue an order determining whether it is required to preempt the state commission's jurisdiction of a proceeding or matter within 90 days after being notified under paragraph (a) of this section or taking notice under paragraph (c) of this section of a state commission's failure to carry out its responsibilities under section 252 of the Act.

§ 51.805 The Commission's authority over proceedings and matters.

(a) If the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, the Commission shall retain jurisdiction over such proceeding or matter. At a minimum, the Commission shall approve or reject any interconnection agreement adopted by negotiation, mediation or arbitration for which the Commission, pursuant to section 252(e)(5) of the Act, has assumed the state's commission's responsibilities.

(b) Agreements reached pursuant to mediation or arbitration by the Commission pursuant to section 252(e)(5) of the Act are not required to be submitted to the state commission for approval or rejection.

§ 51.807 Arbitration and mediation of agreements by the Commission pursuant to section 252(e)(5) of the Act.

(a) The rules established in this section shall apply only to instances in which the Commission assumes jurisdiction under section 252(e)(5) of the Act.

(b) When the Commission assumes responsibility for a proceeding or matter