

§61.50 Regulation of business data services offered by rate-of-return carriers electing incentive regulation.

(a) A rate-of-return carrier, as defined in §51.903(g) of this chapter, may elect to offer its business data services subject to incentive regulation pursuant to this section. A rate-of-return carrier may elect to offer business data services subject to incentive regulation pursuant to this section only if all affiliated rate-of-return carriers meeting the requirements of paragraph (b) of this section make the election. A carrier's election under this section is irrevocable.

(b) A rate-of-return carrier is eligible to elect incentive regulation for its business data services if the carrier:

- (1) Receives universal service payments pursuant to the Alternative-Connect America Cost Model pursuant to §54.311 of this chapter;
- (2) Is an affiliate of a price cap local exchange carrier operating pursuant to a waiver of §61.41;
- (3) Receives universal service payments pursuant to §54.306 of this chapter; or
- (4) Transitions away from legacy support mechanisms in the future.

(c) A rate-of-return carrier electing to offer business data services pursuant to this section shall employ the procedures outlined in §§61.42 through 61.49 to calculate rates for its business data services and adjust its indexes for those rates to the extent those sections are applicable to business data services, except that:

- (1) Exogenous costs associated with regulated services shall be allocated to business data services based on relative regulated business data services revenues, compared to regulated revenues and related support receipts; and
- (2) An electing carrier is not required to file a short form tariff review plan as required by §61.49(k).

(d) A rate-of-return carrier electing to offer business data services pursuant to this section must remove its business data services from the NECA Traffic Sensitive Pool. Such a carrier may continue to participate in the NECA Traffic Sensitive Pool and tariff for access services other than business data services.

(e) A rate-of-return carrier offering business data services pursuant to this section may offer those business data services at different rates in different study areas.

(f) A rate-of-return carrier offering business data services pursuant to this section may make a low-end adjustment pursuant to §61.45(d)(1)(vii) unless it:

- (1) Exercises the regulatory relief pursuant to paragraph (g) of this section in any part of its service region; or
- (2) Exercises the option to use Generally Accepted Accounting Principles rather than the part 32 Uniform System of Accounts pursuant to §32.11(g) of this chapter.

(g) A rate-of-return carrier electing to offer business data services pursuant to this section may offer time division multiplexed transport and end user channel termination services at or below a DS3 bandwidth that include:

- (1) Volume and term discounts;
- (2) Contract-based tariffs, provided that:

(i) Contract-based tariff services are made generally available to all similarly situated customers; and

(ii) The rate-of-return carrier excludes all contract-based tariff offerings from incentive regulation; and

(3) The ability to file tariff revisions on at least one day's notice, notwithstanding the notice requirements for tariff filings specified in §61.58.

(h) A rate-of-return carrier electing to offer business data services pursuant to this section shall comply with the requirements of §69.805 of this chapter in its study areas deemed non-competitive pursuant to this section.

(i) The regulation of other services offered by a carrier that offers business data services pursuant to this section shall not be modified as a result of the requirements of this section.

(j)(1) The Wireline Competition Bureau will conduct an initial competitive market test for rate-of-return carriers eligible to elect incentive regulation pursuant to this section. Study areas of such carriers will be deemed competitive if 75 percent of the census blocks within the study area are reported to have a minimum of 10 Mbps download and 1 Mbps upload broadband service offered by a cable operator

based on the most current publicly available Form 477 data. A list of study areas deemed competitive by the competitive market test will be published on the Commission's website.

(2) The Wireline Competition Bureau will conduct subsequent competitive market tests for rate-of-return carriers electing incentive regulation pursuant to this section contemporaneously with the subsequent tests mandated by § 69.803 of this chapter for price cap carriers.

(3) A study area of an electing carrier deemed competitive by the competitive market test will retain its status in subsequent tests.

(k)(1) Packet-based and time division multiplexed business data services above a DS3 bandwidth offered by a rate-of-return carrier pursuant to this section shall not be subject to ex ante pricing regulation.

(2) Time division multiplexed end user channel termination business data services at or below a DS3 bandwidth offered by a rate-of-return carrier pursuant to this section in study areas deemed competitive by the competitive market test shall not be subject to ex ante pricing regulation.

(3) A rate-of-return carrier electing incentive regulation for its business data services must detariff:

(i) All packet-based and time division multiplexed business data services above a DS3 bandwidth within thirty-six months after the effective date of its election of incentive regulation; and

(ii) All time division multiplexed end user channel termination business data services at or below a DS3 bandwidth in any study area deemed competitive by the competitive market test within thirty-six months after such services shall be deemed competitive in a study area.

(1)(1) A rate-of-return carrier electing incentive regulation for its business data services effective July 1, 2019 must notify the Chief of the Wireline Competition Bureau of its election by May 1, 2019 for it to become effective concurrent with the annual access tariff filing in 2019.

(2) A rate-of-return carrier electing incentive regulation for its business data services effective July 1, 2020 must

notify the Chief of the Wireline Competition Bureau of its election by May 1, 2020 for it to become effective concurrent with the annual access tariff filing in 2020.

(3) A rate-of-return carrier accepting future offers of Alternative-Connect America Cost Model support or otherwise transitioning away from legacy support mechanisms and electing incentive regulation for its business data services must notify the Chief of the Wireline Competition Bureau of its election by May 1 following its acceptance of the offer for it to become effective concurrent with that year's annual access tariff filing.

[83 FR 67122, Dec. 28, 2018]

Subpart F—Formatting and Notice Requirements for Tariff Publications

SOURCE: 76 FR 43215, July 20, 2011, unless otherwise noted.

§ 61.51 Scope.

The rules in this subpart apply to tariffs filed by issuing carriers, with the exception of the informational tariffs filed pursuant to 47 U.S.C. 226(h)(1)(A), unless otherwise noted.

[76 FR 43215, July 20, 2011]

§ 61.52 Form, size, type, legibility, etc.

(a) Pages of tariffs must be numbered consecutively and designated as "Original title page," "Original page 1," "Original page 2," etc.

(1) All such pages must show, in the upper left-hand corner the name of the issuing carrier; in the upper right-hand corner the FCC number of the tariff, with the page designation directly below; in the lower left-hand corner the issued date; in the lower right-hand corner the effective date; and at the bottom, center, the street address of the issuing officer. The carrier must also specify the issuing officer's title either at the bottom center of all tariff pages, or on the title page and check sheet only.

(2) As an alternative, the issuing carrier may show in the upper left-hand corner the name of the issuing carrier, the title and street address of the issuing officer, and the issued date; and