

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL-5597-1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

#### B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create an unfunded federal mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

#### C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal

governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the proposed rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 9, 1998.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

**§§ 721.723, 721.1525, 721.1737, 721.1740, 721.7360 [Removed]**

2. By removing §§ 721.723, 721.1525, 721.1737, 721.1740, and 721.7360.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 61, 63, and 69

[CC Docket No. 98-131; FCC 98-164]

### 1998 Biennial Regulatory Review

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Section 11 of the Communications Act of 1934, as amended (Act), requires that the Commission, in every even-numbered year beginning in 1998, review all regulations that apply to the operations and activities of any provider of telecommunications service and determine whether any of these regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of the service. As part of this 1998 biennial regulatory review, the Commission proposes to revise part 61 to, among other things, eliminate requirements that eliminate several rules that no longer seem to serve any useful purpose, and to reorganize part 61 to clarify which rules apply to which carriers.

**DATES:** Comments are due on or before October 16, 1998. Reply comments are due on or before November 16, 1998.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or

rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. N.W., Room 222, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Steven Spaeth, Competitive Pricing Division, Common Carrier Bureau, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking adopted July 15, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M Street, N.W., Washington, D.C. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

### Regulatory Flexibility Analysis

Pursuant to section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Office of Public Affairs, Reference Operation Division, shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

**Reason for action.** The Telecommunications Act of 1996 requires the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition.

**Objectives.** To repeal or modify any rules in part 61 that are no longer necessary in the public interest, as

required by section 11 of the Communications Act of 1934, as amended.

**Legal Basis.** The proposed action is supported by section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161.

**Description, potential impact and number of small entities affected.** For purposes of this Notice, the Regulatory Flexibility Act defines a "small business" to be the same as a "small business concern" under the Small Business Act (SBA), 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Under the SBA, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. 15 U.S.C. 632. The Small Business Administration has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1500 employees. 13 CFR 121.201.

**Total number of telephone companies affected.** The proposals under consideration in this Notice, if adopted, would affect all telecommunications carriers regulated by the Commission. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3497 firms engaged in providing telephone service, as defined therein, for at least one year. United States Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size, at Firm Size 1-123* (1995). This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not independently owned or operated. 15 U.S.C. 632(a)(1).

We believe that dominant carriers are not small businesses for IRFA purposes because they are dominant in their field of operation. We have found incumbent LECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the Regulatory Flexibility Act, 5 USC

605(b), that incumbent LECs are not subject to regulatory flexibility analysis requirements because they are not small businesses. See, e.g., Expanded Interconnection with Local Telephone Companies, Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5809 (1991); MTS and WATS Market Structure, Report and Order, 2 FCC Rcd 2953, 2959 (1987) (citing MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241, 338-39 (1983)). In order to remove any possible issue of Regulatory Flexibility Act compliance, we nevertheless tentatively conclude that dominant carriers should be included in this IRFA. We seek comment on this tentative conclusion.

**Reporting, record keeping and other compliance requirements.** None of the proposed rules in this notice are intended to increase the reporting, record keeping and other compliance requirements of any telecommunications carrier.

**Federal rules which overlap, duplicate or conflict with this rule.** None.

**Any significant alternatives minimizing impact on small entities and consistent with stated objectives.** As explained above, it is not clear at this stage of the proceeding whether any of the parties that will be affected by these proposed rules, if adopted, can be considered "small entities" within the meaning of section 603(c). At this time, we have not eliminated any alternatives from our consideration.

### Summary of Report and Order

In this Notice of Proposed Rulemaking, we seek comment on the proposed rules listed below. In particular, we seek comment on the following: (1) codifying rules to be applicable to carriers submitting tariff filing fees electronically; (2) revising section 61.72, requiring issuing carriers to post their tariffs, *i.e.*, keep them accessible to the public during normal business hours; (3) reducing the minimum effective period for nondominant carriers' tariffs, from 30 days to 15 days; (4) separating our part 61 rules into subparts so carriers can determine more easily which rules apply to them; (5) clarifying the notice requirement rules; (6) eliminating an apparently inaccurate definition in the nondominant carrier tariff rules; (7) requiring carriers to maintain separate tariffs for domestic and international services; and (8) updating the Commission's price cap rules and eliminating those that are no longer applicable to any carrier, such as the interexchange carrier price cap rules.

**Ordering Clause**

Accordingly, pursuant to section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161, it is ordered that notice is hereby given of the rulemaking as described and that comment is sought on these issues.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

**List of Subjects**

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Parts 63 and 69

Communications common carriers, Tariffs.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 61, 63, and 69 of the Code of Federal Regulations as follows:

The authority citation continues to read as follows:

**Authority:** Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

**§§ 61.1 through 61.3 [Amended]**

2. Designate §§ 61.1 through 61.3 as subpart A and add a subpart heading entitled “Subpart A—General” immediately preceding § 61.1.

3. Revise § 61.2 to read as follows:

**§ 61.2 General tariff requirements.**

(a) In order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations.

(b) Tariff publications must be delivered to the Commission free from all charges, including claims of postage.

(c) Tariff publications will not be returned.

4. Remove the undesignated center heading “Definitions” immediately preceding § 61.3.

5. Amend § 61.3 by revising paragraphs (e), (w), and (y), to read as follows:

**§ 61.3 Definitions.**

\* \* \* \* \*

(e) *Base period.* For carriers subject to §§ 61.41–61.49, the 12-month period ending six months prior to the effective date of annual price cap tariffs. Base year or base period earnings shall exclude amounts associated with exogenous adjustments to the PCI for the lower formula adjustment

mechanism permitted by § 61.45(d)(1)(vii).

\* \* \* \* \*

(w) *Price Cap Index (PCI).* An index of prices applying to each basket of services of each carrier subject to price cap regulation, and calculated pursuant to § 61.45.

\* \* \* \* \*

(y) *Price cap tariff.* Any tariff filing involving a service subject to price cap regulation, or that requires calculations pursuant to §§ 61.45, 61.46, or 61.47.

\* \* \* \* \*

6. Remove the undesignated center headings “GENERAL RULES” and “Rules for Electronic Filing” immediately preceding § 61.13.

**§§ 61.13 through 61.17 [Amended]**

7. Designate §§ 61.13 through 61.17 as subpart B and add a subpart heading entitled “Subpart B—Rules for Electronic Filing” immediately preceding § 61.13.

8. Remove the undesignated center heading “General Rules for Domestic and International Nondominant Carriers” immediately preceding § 61.20.

**§§ 61.20–61.24 [Amended]**

9. Designate §§ 61.20 through 61.24 as subpart C and add a subpart heading entitled “Subpart C—General Rules for Nondominant Carriers” immediately preceding § 61.20.

10. Add § 61.18 to subpart C to read as follows:

**§ 61.18 Scope.**

The rules in this subpart apply to all nondominant carriers.

**§§ 61.20 through 61.24 [Redesignated as §§ 61.19 through 61.23]**

11. Redesignate §§ 61.20 through 61.24 as §§ 61.19 through 61.23.

12. In newly redesignated § 61.19, revise paragraphs (b) and (c) to read as follows:

**§ 61.19 Detariffing of domestic, interstate, interexchange services.**

\* \* \* \* \*

(b) Carriers that are nondominant in the provision of domestic, interstate, interexchange services are permitted to file tariffs for dial-around 1+services. For the purposes of this paragraph, dial-around 1+calls are those calls made by accessing the interexchange carrier through the use of that carrier’s carrier access code.

(c) Carriers that are nondominant in the provision of domestic, interstate, interexchange services are permitted to file a tariff for such interstate service applicable to those customers who

contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. Such tariff will enable the interexchange carrier to provide service to the customer until the interexchange carrier and the customer consummate a written agreement, but in no event shall the interexchange carrier provide service to its customer pursuant to such tariff for more than 45 days.

13. In newly redesignated § 61.20, revise paragraphs (b)(1) and (c) to read as follows:

**§ 61.20 Method of filing publications.**

\* \* \* \* \*

(b)(1) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariff fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked “reserved.” Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

\* \* \* \* \*

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one 3½ inch diskette or CD-ROM containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette or CD-ROM of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff and Pricing Analysis Branch. The latter should be clearly labeled as the “Public Reference Copy.” The issuing carrier should file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a) of this section. In cases where the a single diskette or CD-ROM does not provide sufficient capacity for the carrier’s entire tariff filing, the issuing carrier may submit two or more diskettes, or two or more CD-ROMs, as necessary.

14. In newly redesignated § 61.21, revise paragraph (a)(1) to read as follows:

**§ 61.21 Cover letters.**

(a)(1) Except as specified in § 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8.5 by 11 inches (21.6 cm × 27.9 cm) in size, and must be plainly printed in black ink. All transmittal letters should briefly explain the nature and purpose of the filing and indicate the date and method of filing of the original cover letter, as required by § 61.20(b)(1) of this part.

\* \* \* \* \*

15. Immediately after newly redesignated § 61.21, remove the undesignated center heading "Specific Rules For Domestic and International Nondominant Carriers".

16. In newly redesignated § 61.22, revise paragraph (a), redesignate paragraph (c) as paragraph (c)(1), and add paragraphs (c)(2) and (e) to read as follows:

**§ 61.22 Composition of tariffs.**

(a) The tariff must be submitted on a 3½ inch (8.89 cm) diskette, or a 5 inch CD-ROM, formatted in an IBM-compatible form using either WordPerfect 5.1 or Microsoft Word 6 software. Neither diskettes nor CD-ROMs shall contain more than one tariff. The diskette or CD-ROM must be submitted in "read only" mode. The diskette or CD-ROM must be clearly labelled with the carrier's name, Tariff Number, software used, and the date of submission. When multiple diskettes or CD-ROMs are submitted, the issuing carrier shall clearly label each diskette in the following format: "1 of \_\_\_\_", "2 of \_\_\_\_", etc.

\* \* \* \* \*

(c) \* \* \*

(2) Any issuing carrier submitting tariffs on ten or more diskettes that wishes to revise its tariff is permitted to do so by refiling only those diskettes on which the changed material is located. Any such carrier shall file a current effective version of their entire tariff on the first business day of each month. For purposes of this paragraph, "business day" is defined in § 1.4(e)(2) of this chapter.

\* \* \* \* \*

(e) For contract-based tariffs defined in § 61.3(m), a separate letter of transmittal must accompany each tariff filed. The transmittals must be numbered in a series separate from transmittals for non-contract tariff filing. Numbers must appear on the face of the transmittal and be in the form of "CTT

No. \_\_\_\_", using CTT as an abbreviation for contract-based tariff transmittals. Contract-based tariffs must also be numbered in a series separate from non-contract-based tariffs. Numbers must be in the form of "CT No. \_\_\_\_", using CT as an abbreviation for contract-based tariffs. Each contract-based tariff must be assigned a separate number. Transmittals and tariffs subject to this paragraph shall be filed beginning with the number "1" and shall be numbered consecutively.

17. In newly redesignated § 61.23, revise paragraph (c) to read as follows:

**§ 61.23 Notice requirements.**

\* \* \* \* \*

(c) All tariff filings of domestic and international non-dominant carriers must be made on at least one day's notice.

18. Add new § 61.24 to subpart C to read as follows:

**§ 61.24 Effective period required before changes.**

(a) Except as provided in § 61.23(c)(3) or except as otherwise provided by the Commission, new rates or regulations must be in effect for at least 15 days before a nondominant carrier will be permitted to make any change.

(b) Changes to rates and regulations that have not yet become effective, *i.e.*, are pending, may not be made unless the effective date of the proposed changes is at least 15 days after the scheduled effective date of the pending revisions.

19. Add § 61.25 to subpart C to read as follows:

**§ 61.25 References to other instruments.**

A non-dominant carrier may cross-reference in its tariff publication only the rate provisions of another carrier's FCC tariff publication, provided that the following conditions are met:

(a) The tariff being cross-referenced must be on file with the Commission and in effect;

(b) The issuing carrier must specifically identify in its tariff the cross-referenced tariff by Carrier Name and FCC Tariff Number;

(c) The issuing carrier must specifically identify in its tariff the rates being cross-referenced so as to leave no doubt as to the exact rates that will apply, including but not limited to any applicable credits, discounts, promotions; and

(d) The issuing carrier must keep its cross-references current.

20. Add a subpart D to part 61, consisting of § 61.28, to read as follows:

**Subpart D—General Tariff Rules for International Dominant Carriers**

**§ 61.28 International dominant carrier tariff filing requirements.**

(a) Any carrier classified as dominant for the provision of particular international communications services on a particular route due only to a foreign carrier affiliation pursuant to § 63.10 shall file tariffs for those services on at least one day's notice without cost support.

(b) Any carrier classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 shall file tariffs for those services pursuant to the notice and cost support requirements for tariff filings of dominant domestic carriers, as set forth in subpart E of this part.

(c) For all tariff filing requirements other than notice and cost support requirements, any carrier classified as dominant for the provision of particular international communications services on a particular route shall file tariffs for those services pursuant to the general rules for nondominant carriers set forth in subpart C of this part.

21. Designate §§ 61.32 through 61.52, 61.54, 61.58, and 61.59 as subpart E and add a subpart heading entitled "Subpart E—General Rules for Dominant Carriers" immediately preceding § 61.32.

22. Add § 61.31 to subpart E to read as follows:

**§ 61.31 Scope.**

The rules in this subpart apply to all dominant carriers.

23. Amend § 61.32 by revising paragraph (b) to read as follows:

**§ 61.32 Method of filing publications.**

\* \* \* \* \*

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the transmittal letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariff fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved." Issuing carriers should

submit these fee materials on the same date as the submission in paragraph (a).

\* \* \* \* \*

24. In § 61.33, revise the first sentence of the introductory text of paragraph (a) and the first sentence of § 61.33(h)(2) to read as follows:

**§ 61.33 Letters of transmittal.**

(a) Except as specified in § 61.32(b), all publications filed with the Commission must be numbered consecutively by the issuing carrier beginning with Number 1, and must be accompanied by a letter of transmittal, (21 cm × 29.7 cm) or 8½ by 11 inches (21.6 cm × 27.9 cm) in size. \* \* \*

\* \* \* \* \*

(h) \* \* \*

(2) For contract-based tariffs defined in § 61.3(m), a separate letter of transmittal may accompany each tariff filed, or the above format may be modified for filing as many publications as may be desired with one transmittal letter. \* \* \*

**§ 61.35 [Removed]**

25. Remove § 61.35.

**§ 61.36 [Removed]**

26. Remove § 61.36.

27. Amend § 61.38 by revising paragraph (a), removing and reserving paragraph (b)(3), and adding paragraph (g) to read as follows:

**§ 61.38 Supporting information to be submitted with letters of transmittal.**

(a) *Scope.* This section applies to dominant carriers whose gross annual revenues exceed \$500,000 for the most recent 12 month period of operations or are estimated to exceed \$500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42(d), (e), and (g).

\* \* \* \* \*

(g) Above the bottom margin of each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

28. Amend § 61.39 by revising paragraph (a) and by adding paragraph (f) to read as follows:

**§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.**

(a) *Scope.* This section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

\* \* \* \* \*

(f) Above the bottom margin of each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

**§ 61.41 [Amended]**

29. In § 61.41, remove and reserve paragraph (a)(1).

30. Amend § 61.42 by removing and reserving paragraphs (a), (b) and (c), by adding a sentence at the end of paragraphs (d)(1), (d)(2), (d)(3), (d)(4), and (d)(6), and by revising the first sentence of paragraph (g) to read as follows:

**§ 61.42 Price cap baskets and service categories.**

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) \* \* \*

(1) \* \* \* For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the "common line basket."

(2) \* \* \* For purposes of §§ 61.41 through 61.49, this basket shall be referred to as the "traffic-sensitive basket."

(3) \* \* \* For purposes of §§ 61.41 through 61.49, this basket shall be referred to as the "trunking basket."

(4) \* \* \* For purposes of §§ 61.41 through 61.49, this basket shall be referred to as the "interexchange basket."

(6) \* \* \* For purposes of §§ 61.41 through 61.49, this basket shall be referred to as the "marketing expense basket."

\* \* \* \* \*

(g) New services, other than those within the scope of paragraph (f) of this

section, must be included in the affected basket at the first annual price cap tariff filing following completion of the base period in which they are introduced.

\* \* \*

31. Revise § 61.43 to read as follows:

**§ 61.43 Annual price cap filings required.**

Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to §§ 61.45 through 61.47, and that incorporate the costs and rates of new services into the PCI, API, or SBI calculations pursuant to §§ 61.45(g), 61.46(b), and 61.47 (b) and (c). Carriers may propose rate or other tariff changes more often than annually, consistent with the requirements of § 61.59.

**§ 61.44 [Reserved]**

32. Remove and reserve § 61.44.

33. § 61.45 is amended as follows:

a. Revise paragraph (b);

b. Revise the introductory text and the definition of "R" in the formula in paragraph (c)(1);

c. Revise paragraph (c)(2);

d. Add new paragraph (c)(3);

e. Add a new sentence to the end of paragraph (d)(4);

f. In paragraph (f), remove the words "paragraph (c)" and add, in their place, the words "paragraphs (b) and (c)"; and

g. Revise paragraphs (i) and (j)(2).

**§ 61.45 Adjustments to the PCI for local exchange carriers.**

\* \* \* \* \*

(b)(1) Adjustments to local exchange carrier PCIs for the traffic-sensitive basket described in § 61.42(d)(2) shall be made pursuant to the following formula:  

$$PCI_t = PCI_{t-1} [1 + w(GDP - PI - X) + \Delta Z / R]$$

Where

GD-PI = the percentage change in the GDP-PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = 6.5%,

$\Delta Z$  = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to  $PCI_{t-1}$ , measured at base period level of operations,

R = an amount calculated by multiplying base period quantities for each rate element in the basket by the price for that rate element at the time the PCI was updated to  $PCI_{t-1}$ , summing the results, and adding the products of base period quantities for each PICC established in § 69.153 of this

Chapter and the portion of that PICC that is associated with the basket,

$w=R$ —(access rate in effect at the time the PCI was updated to  $PCI_{t-1}$ , multiplied by base period demand)+ $\Delta Z$ , all divided by  $R$ ,  
 $PCI_t$ =the new PCI value, and  
 $PCI_{t-1}$ =the immediately preceding PCI value.

(2) The “w(GDP-PI-X)” component of the PCI formula specified in paragraph (b)(1) of this section shall be employed only in the adjustment made in connection with the annual price cap filing. In calculating the “w” variable in the formula detailed in paragraph (b)(1) of this section, the access costs that must be subtracted from the “R” variable shall be apportioned among the baskets specified in §§ 61.42(d)(2), (3), (4), and (6) as follows:

(i) The net change in total non-traffic sensitive access costs for all capped services (in all baskets), calculated at base period demand, shall be allocated among the baskets in proportion to each basket’s share of total base period non-traffic sensitive minutes of access (both originating and terminating);

(ii) The net change in total traffic sensitive access costs for all capped services (in all baskets), calculated at base period demand, shall be allocated among the baskets in proportion to each basket’s share of total base period traffic sensitive minutes of access;

(iii) Changes in special access costs, calculated at base period demand, shall be assigned directly to the trunking basket specified in § 61.42(d)(3).

(3) Adjustments to local exchange carrier PCIs for the trunking basket designated in § 61.42(d)(3) shall be made pursuant to the formula set forth in paragraphs (b)(1) and (2) of this section.

(4) Adjustments to local exchange carrier PCIs for the interexchange basket designated in § 61.42(d)(4) shall be made pursuant to the formula set forth in paragraphs (b)(1) and (2) of this section. Notwithstanding that formula, the value of X for this basket shall be 3.0 percent.

(5) [Reserved]

(6) Adjustments to local exchange carrier PCIs for the marketing expense basket designated in § 61.42(d)(6) shall be made pursuant to the formula set forth in paragraphs (b)(1) and (2) of this section.

(c)(1) In the event that local exchange carrier imposes a per-minute carrier common line charge pursuant to § 69.154 of this chapter, and subject to paragraphs (c)(2) and (c)(3) of this section, adjustments to local exchange

carrier PCIs for the common line basket designated in § 61.42(d)(1) shall be made pursuant to the following formula:

$R$ =an amount calculated by multiplying base period quantities for each rate element in the basket by the price for that rate element at the time the PCI was updated to  $PCI_{t-1}$ , summing the results, and adding the products of base period quantities for each PICC established in § 69.153 of this Chapter and the portion of that PICC that is associated with the common line basket,

(2) The “w[ (GDP-PI-X-(g/2))/(1+(g/2)) ]” component of the PCI formula contained in paragraph (c)(1) of this section shall be employed only in the adjustment made in connection with the annual price cap filing.

(3) The formula set forth in paragraph (c)(1) of this section shall be used by a local exchange carrier only if that carrier is imposing a carrier common line charge pursuant to § 69.154 of this chapter. Otherwise, adjustments to local exchange carrier PCIs for the common line basket designated in § 61.42(d)(1) shall be made pursuant to the formula set forth in § 61.45(b).

(4) \* \* \* For purposes of this Chapter, exogenous cost changes that are not targeted to a specific price cap service category or subcategory pursuant to Commission Rule or Order shall be referred to as “untargeted exogenous cost changes.”

(i)(1) Notwithstanding the provisions of paragraphs (b) and (c) of this section, and subject to the limitations of paragraph (j) of this section, any price cap local exchange carrier that charges a per-minute interconnection charge pursuant to § 69.124 or § 69.155 of this chapter during the base year shall not make any reductions to its PCIs associated with its common line and traffic-sensitive baskets in its annual access filing for that year. The PCI reductions for the common line and traffic sensitive baskets that otherwise would be required by paragraphs (b) and (c) of this section shall be applied to the trunking basket. These PCI reductions shall be made after the PCI for the trunking basket described in § 61.42(d)(3) using the PCI formula in § 61.45(b).

(2) Notwithstanding the provisions of paragraph (b) of this section, and subject to the limitations of paragraph (j) of this section, any price cap local exchange carrier that charges a per-minute interconnection charge pursuant to

§ 69.155 of this chapter during the base year shall not make any reductions to its PCI associated with its marketing expense basket in its annual access filing for the tariff year. That carrier shall apply the PCI reductions that otherwise would be required for the marketing expense basket pursuant to paragraph (b) of this section to the trunking basket. This reduction is to be made after any adjustment made pursuant to paragraph (i)(1) of this section.

(3) [Reserved]

(4) Effective January 1, 1998, the reduction in the PCI for the trunking basket designated in § 61.42(d)(3) that results from paragraphs (i)(1) and (i)(2) of this section shall be determined by multiplying the PCI for the trunking basket by one minus the ratio of the dollar effect of the PCI reductions otherwise applicable to the common line, traffic-sensitive, and marketing expense baskets, to the dollar effect of the PCI reduction for the trunking basket.

(j) \* \* \*

(2) exclude the amount of any exogenous adjustments permitted or required for the common line and traffic sensitive baskets, defined in §§ 61.42(d)(1) and (d)(2), from the retargeting adjustment to the PCI for the trunking basket defined in § 61.42(d)(3).

34. Amend § 61.47 to revise paragraph (e), remove and reserve paragraph (f), and to revise paragraphs (i)(1) and (i)(2) to read as follows:

**§ 61.47 Adjustments to the SBI; pricing bands.**

\* \* \* \* \*

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Except as provided in paragraphs (g) and (h) of this section, each band shall limit the pricing flexibility of the service category or subcategory, as reflected in the SBI, to an annual increase of five percent, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. For local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x), there shall be no lower pricing band for any service category or subcategory.

\* \* \* \* \*

(i)(1) In the event that a price cap local exchange carrier is imposing an interconnection charge on its access customers pursuant to § 69.124 and/or 69.155, and to the extent that §§ 61.45(b) and 61.45(i) require that local exchange carrier to reduce its PCI for its trunking basket, as defined in § 61.42(d)(3), that carrier is required to reduce its SBI for

its interconnection charge service band, as defined in § 61.42(e)(2)(vi), by an amount proportional to its trunking basket PCI reduction. This SBI reduction shall be determined by dividing the sum of the dollar amount of any PCI reduction required by § 61.45(i), by the dollar amount

associated with the SBI for the interconnection charge service band, and multiplying the SBI for the interconnection charge service band by one minus the resulting ratio.  
 (2) Any exogenous cost reduction that is untargeted within the meaning of § 61.45(d)(4) shall be reflected in other service band indices for service

categories in the traffic sensitive and trunking baskets as follows:

(i) For all service band indices other than those listed in paragraphs (ii) and (iii) of this paragraph, untargeted exogenous cost adjustments shall be reflected pursuant to the following formula:

$$SBI_{ul} = SBI_{ul(t-1)} * \left( 1 + \frac{T + \frac{R_{svc_{t-1}} * U_{bskt}}{R_{bskt_{t-1}}}}{R_{svc_{t-1}}} \right)$$

Where  
 SBI<sub>ul</sub>=the new SBI upper limit;  
 SBI<sub>ul(t-1)</sub>=the immediately preceding SBI upper limit;  
 T=the targeted exogenous cost adjustment;  
 R<sub>svc<sub>t-1</sub></sub>=R for the service category, where R is calculated by multiplying base period quantities for each rate element in the service category by the price for that rate element at the time the PCI was

updated to PCI<sub>t-1</sub>, and summing the results,  
 R<sub>bskt<sub>t-1</sub></sub>=R for the basket, where R is calculated by multiplying base period quantities for each rate element in the basket by the base period price for that rate element at the time the PCI was updated to PCI<sub>t-1</sub>, and summing the results,  
 U<sub>bskt</sub>=the untargeted exogenous cost reduction to be associated with the basket.

(ii) For the service band subindices for DS1 and DS3 services defined in §§ 61.42(e)(2)(iii) (A) and (B), the 800 data base vertical features subindex required by § 61.47(g)(4), and the density pricing zones for voice grade services and tandem-switched transport permitted by §§ 61.47(h)(1) (iii) and (iv), untargeted exogenous cost adjustments shall be reflected pursuant to the following formula:

$$SBI_{ul} = SBI_{ul(t-1)} * \left( 1 + \frac{T + \left( \frac{R_{subsvc_{t-1}} * U_{bskt}}{R_{bskt_{t-1}}} \right) + \left( \frac{R_{subsvc_{t-1}} * U_{svc}}{R_{svc_{t-1}}} \right)}{R_{subsvc_{t-1}}} \right)$$

Where  
 R<sub>subsvc<sub>t-1</sub></sub>=R for the service subcategory, where R is calculated by multiplying base period quantities for each rate element in the service subcategory by the base

period price for that rate element at the time the PCI was updated to PCI<sub>t-1</sub>, and summing the results, and  
 U<sub>svc</sub>=the untargeted exogenous cost reduction to be associated with the service category.

(iii) For the density pricing zones for DS1 and DS3 services permitted by §§ 61.47(h)(1)(i) and (ii), untargeted exogenous cost adjustments shall be reflected pursuant to the following formula:

$$SBI_{ul} = SBI_{ul(t-1)} * \left( 1 + \frac{T + \left( \frac{R_{subsvc_{t-1}} * U_{bskt}}{R_{bskt_{t-1}}} \right) + \left( \frac{R_{subsvc_{t-1}} * U_{svc}}{R_{svc_{t-1}}} \right) + \left( \frac{R_{dz_{t-1}} * U_{subsvc}}{R_{subsvc_{t-1}}} \right)}{R_{dz_{t-1}}} \right)$$

Where  
 R<sub>dz<sub>t-1</sub></sub>=R for the density pricing zone, where R is calculated by multiplying base period quantities for each rate element in the zone by the base period price for that rate element at the time the PCI was updated to PCI<sub>t-1</sub>, and summing the results, and

U<sub>subsvc</sub>=the untargeted exogenous cost reduction to be associated with the service subcategory.

\* \* \* \* \*

**§ 61.48 [Amended]**

Amend § 61.48 by removing and reserving paragraphs (a) through (h), and to remove and reserve paragraph (i)(3)(ii).

36. Amend § 61.49 to revise paragraph (a), revise paragraph (c), remove and reserve paragraph (f), remove and reserve paragraph (i)(1), and add new paragraph (l) to read as follows:

**§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.**

(a) Each price cap tariff filing must be accompanied by supporting materials

sufficient to calculate required adjustments to each PCI, API, and SBI pursuant to the methodologies provided in §§ 61.45, 61.46, and 61.47, as applicable.

\* \* \* \* \*

(c) Each price cap tariff filing that proposes rates above the applicable band limits established in §§ 61.47 (e), (g) and (h) must be accompanied by supporting materials establishing substantial cause for the proposed rates.

\* \* \* \* \*

(l) Above the bottom margin of each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

#### § 61.50 [Reserved]

37. Remove and reserve § 61.50.

38. Remove the undesignated center heading entitled "Specific Rules for Tariff Publications" immediately before § 61.51.

#### § 61.51 [Reserved]

39. Remove and reserve § 61.51.

#### § 61.53 [Redesignated]

40. Redesignate § 61.53 as § 61.83.

41. Amend § 61.54 by revising paragraph (b)(3), redesignating paragraph (c)(1) as paragraph (c)(1)(i), adding paragraph (c)(1)(ii), redesignating paragraph (c)(3) as paragraph (c)(3)(i), and adding paragraph (c)(3)(ii) to read as follows:

#### § 61.54 Composition of tariffs.

\* \* \* \* \*

(b) \* \* \*

(3) *Expiration date.* Subject to § 61.59, when the entire tariff or supplement is to expire with a fixed date, the expiration date must be shown in connection with the effective date in the following manner. Changes in expiration date must be made pursuant to the notice requirements of § 61.58, unless otherwise authorized by the Commission.

Expires at the end of \_\_\_\_\_ (date) unless sooner canceled, changed, or extended.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Alternatively, the carrier is permitted to number its tariff pages, other than the check sheet, to reflect the section number of the tariff as well as the page. For example, under this system, pages in section 1 of the tariff would be numbered 1-1, 1-2, etc., and pages in section 2 of the tariff would be numbered 2-1, 2-2, etc. Issuing carriers

shall utilize only one page numbering system throughout its tariff.

\* \* \* \* \*

(3) \* \* \*

(ii) Above the bottom margin of each page, the carrier shall indicate the transmittal number under which that page was submitted.

#### § 61.55 [Redesignated]

42. Redesignate § 61.55 as § 61.85.

43. Redesignate § 61.56 as § 61.86, and revise it to read as follows:

#### § 61.86 Supplements.

A carrier may not file a supplement except to suspend or cancel a tariff publication, or to defer the effective date of pending tariff revisions.

44. Redesignate § 61.57 as § 61.87, and revise to read as follows:

#### § 61.87 Cancellation of tariffs.

(a) A carrier may cancel an entire tariff. Cancellation of a tariff automatically cancels every page and supplement to that tariff except for the canceling Title Page or first page.

(1) If the existing service(s) will be provided under another carrier's tariff, then

(i) the carrier whose tariff is being canceled must revise the Title Page or the first page of its tariff indicating that the tariff is no longer effective, or (ii) the carrier under whose tariff the service(s) will be provided must revise the Title Page or first page of the tariff to be canceled, using the name and numbering shown in the heading of the tariff to be canceled, indicating that the tariff is no longer effective. This carrier must also file with the Commission the new tariff provisions reflecting the service(s) being canceled. Both filings must be effective on the same date and may be filed under the same transmittal.

(2) If a carrier canceling its tariff intends to cease to provide existing service, then it must revise the Title Page or first page of its tariff indicating that the tariff is no longer effective.

(3) A carrier canceling its tariff, as described above, must comply with § 61.22 or §§ 61.54(b)(1) and 61.54(b)(5), as applicable.

(b) When a carrier cancels a tariff as described above, the canceling Title Page or the first page of the canceled tariff must show where all rates and regulations will be found except for paragraph (c) of this section. The Title Page or first page of the new tariff must indicate the name of the carrier and tariff number where the canceled material had been found.

(c) When a carrier ceases to provide service(s) without a successor, it must cancel its tariff pursuant to the notice

requirements of § 61.23 or 61.58, as applicable, unless otherwise authorized by the Commission.

45. Amend § 61.58 as follows:

a. Redesignate paragraph (a)(2) as paragraph (a)(2)(iii), and add new paragraphs (a)(2)(i) and (ii);

b. Revise paragraph (a)(3);

c. Remove and reserve paragraph (b);

d. Amend paragraph (c) by removing the first sentence of paragraph (c)(1); removing and reserving paragraph (c)(4); revising paragraph (c)(5); removing and reserving paragraph (c)(6); revising paragraph (c)(7); and adding paragraph (c)(8);

e. Remove and reserve paragraph (d);

f. Amend paragraph (e) by revising the paragraph heading, redesignating paragraph (e)(3) as paragraph (e)(4), and adding new paragraph (e)(3); and

g. Remove and reserve paragraph (f).

#### § 61.58 Notice requirements.

(a) \* \* \*

(2) \* \* \*

(i) Local exchange carriers may file tariffs pursuant to section 204(a)(3) of the Communications Act. Such a tariff may be filed on 7 days' notice if it proposes only rate decreases. Any other tariff filed pursuant to section 204(a)(3) of the Communications Act, including those that propose a rate increase or any change in terms and conditions, shall be filed on 15 days' notice. Any tariff filing made pursuant to section 204(a)(3) of the Communications Act must comply with the applicable cost support requirements specified in this part.

(ii) Local exchange carriers may elect not to file tariffs pursuant to section 204(a)(3) of the Communications Act. Any such tariffs shall be filed in accordance with the notice requirements specified elsewhere in this section.

\* \* \* \* \*

(3) Tariff filings proposing corrections or voluntarily deferring the effective date of a pending tariff revision must be made on at least 3 days' notice, and may be filed notwithstanding the provisions of § 61.59. Corrections to tariff materials not yet effective cannot take effect before the effective date of the original material. Deferrals must take effect on or before the current effective date of the pending tariff revisions being deferred.

\* \* \* \* \*

(b) [Reserved]

(c) \* \* \*

(1) For annual adjustments to the PCI, API, and SBI values under §§ 61.45, 61.46, and 61.47, respectively, local exchange carrier tariff filings must be made on not less than 90 days' notice.

\* \* \*

\* \* \* \* \*



(4) [Reserved]

(5) Tariff filings involving a change in rate structure of a service included in a basket listed in § 61.42(d), or the introduction of a new service within the scope of § 61.42(g), must be made on at least 45 days' notice.

(6) [Reserved]

(7) The required notice for tariff filings involving services included in § 61.42(f), or tariff filings involving changes in tariff regulations, shall be that required in connection with such filings by dominant carriers that are not subject to price cap regulation.

(8) Carriers electing price cap regulation under § 61.41(a)(3) of this part in a year after 1991 shall file cost support for its initial price cap tariffs pursuant to § 61.49(k) of this chapter at least 90 days prior to July 1, and shall file its initial price cap tariff to be effective on July 1 of the year of election. Each PCI, API, and SBI shall be assigned an initial value prior to adjustment of 100, corresponding to the costs and rates in effect as of January 1 of the year of election.

(d) [Reserved]

(e) *Non-price cap carriers and/or services.* \* \* \*

\* \* \* \* \*

(3) Alascom, Inc. shall file its annual tariff revisions for its Common Carrier Services (Alascom Tariff F.C.C No. 11) on at least 90 days' notice.

\* \* \* \* \*

(f) [Reserved]

46. Redesignate the text of § 61.59 as 61.59(a), revise redesignated paragraph (a), and add new paragraphs (b) and (c) to read as follows:

**§ 61.59 Effective period required before changes.**

(a) Except as provided in § 61.58(a)(3) or except as otherwise authorized by the Commission, new rates or regulations must be effective for at least 30 days before a dominant carrier will be permitted to make any change.

(b) Changes to rates and regulations that have not yet become effective, *i.e.*, are pending, may not be made unless the effective date of the proposed changes is at least 30 days after the scheduled effective date of the pending revisions.

(c) Changes to rates and regulations that have taken effect but have not been in effect for at least 30 days may not be made unless the scheduled effective date of the proposed changes is at least 30 days after the effective date of the existing regulations.

47. Designate §§ 61.67 through 61.74, and redesignated §§ 61.83, 61.85, 61.86, and 61.87, as subpart F, and add a subpart heading entitled "Subpart F—

Specific Rules for Tariff Publications of Dominant and Nondominant Carriers" immediately preceding § 61.67.

48. Add § 61.66 to subpart F to read as follows:

**§ 61.66 Scope.**

The rules in this subpart apply to all carriers, unless otherwise noted.

**§ 61.67 [Removed]**

49. Remove § 61.67.

50. Revise § 61.69 to read as follows:

**§ 61.69 Rejection.**

When a tariff publication is rejected by the Commission, its number may not be used again. This includes, but is not limited to, such publications as tariff numbers or specific page revision numbers. The rejected tariff publication may not be referred to as either cancelled or revised. Within five business days of the release date of the Commission's Order rejecting such tariff publication, the issuing carrier shall file tariff revisions removing the rejected material, unless the Commission's Order establishes a different date for this filing. The publication that is subsequently issued in lieu of the rejected tariff publication must bear the notation.

In lieu of \_\_\_\_\_, rejected by the Federal Communications Commission.

51. Revise § 61.72 to read as follows:

**§ 61.72 Public information requirements.**

(a) Issuing carriers must make available accurate and timely information pertaining to rates and regulations subject to tariff filing requirements.

(b) Issuing carriers must, at a minimum, provide a telephone number for public inquiries about information contained in its tariffs. This telephone number should be made readily available to all interested parties.

52. Add new paragraphs (e) and (f) to § 61.74 to read as follows:

**§ 61.74 References to other instruments.**

\* \* \* \* \*

(e) Tariffs may reference other FCC tariffs that are in effect and on file with the Commission for purposes of determining mileage, or specifying the operating centers at which a specific service is available.

(f) Tariffs may reference technical publications which describe the engineering, specifications, or other technical aspects of a service offering, provided the following conditions are satisfied:

(i) The tariff must contain a general description of the service offering, including basic parameters and structural elements of the offering;

(ii) The technical publication includes no rates, regulatory terms, or conditions which are required to be contained in the tariff, and any revisions to the technical publication do not affect rates, regulatory terms, or conditions included in the tariff, and do not change the basic nature of the offering;

(iii) The tariff indicates where the technical publication can be obtained;

(iv) The referenced technical publication is publicly available before the tariff is scheduled to take effect; and

(v) The issuing carrier regularly revises its tariff to refer to the current edition of the referenced technical publication.

53. Add § 61.77 to subpart F to read as follows:

**§ 61.77 Combined domestic and international tariffs prohibited.**

No tariff publication filed with the Commission may include rates, terms, or conditions for both domestic and international services.

54. Remove the undesignated center heading "Concurrences" immediately before § 61.131.

55. Designate §§ 61.131 through 61.136 as subpart G, and add a subpart heading entitled "Subpart G—Concurrences" immediately preceding § 61.131.

56. Amend § 61.132 by adding two sentences at the end of the section, to read as follows:

**§ 61.132 Method of filing concurrences.**

\* \* \* Nondominant issuing carriers shall file revisions reflecting concurrences in their tariffs on the notice period specified in § 61.23 of this part. Dominant issuing carriers shall file concurrences in their tariffs on the notice periods specified in § 61.58(a)(2) or § 61.58(e)(1)(iii) of this part.

57. Remove the undesignated center heading "Applications for Special Permission" immediately preceding § 61.151.

58. Designate §§ 61.151 through 61.153 as subpart H, and add a subpart heading entitled "Subpart H—Applications for Special Permission" immediately preceding § 61.151.

59. Amend § 61.153(b) by revising paragraph (b) to read as follows:

**§ 61.153 Method of filing applications.**

\* \* \* \* \*

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all special permission applications requiring fees as set forth in part 1, subpart G of this chapter, the issuing carrier must submit the original of the application letter (without attachments), FCC Form 159, and the

appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariff fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved." Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

\* \* \* \* \*

60. Remove the undesignated center heading "Adoption of Tariffs and Other Documents of Predecessor Carriers" immediately preceding § 61.171.

61. Designate §§ 61.171 through 61.172 as subpart I, and add a subpart heading entitled "Subpart I—Adoption of Tariffs and Other Documents of Predecessor Carriers" immediately preceding § 61.171.

62. Remove the undesignated center heading "Suspensions" immediately preceding § 61.191.

63. Designate §§ 61.191 through 61.193 as subpart J, and add a subpart heading entitled "Subpart J—Suspensions" immediately preceding § 61.191.

64. Revise § 61.191 to read as follows:

**§ 61.191 Carrier to file supplement when notified of suspension.**

If a carrier is notified by the Commission that its tariff publication has been suspended, the carrier must file, within five business days from the release date of the suspension order, a consecutively numbered supplement without an effective date, which specifies the schedules which have been suspended.

65. In addition to the amendments set forth above, in 47 CFR part 61, remove the words "Chief, Tariff Review Branch" and add, in their place, the words "Chief, Tariff and Pricing Analysis Branch" in the following places:

- a. Section 61.32(c);
- b. Section 61.33(a)(3);
- c. Section 61.38(c)(1);
- d. Section 61.49(g)(2)(i);
- e. Section 61.153(c).

**PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

66. The authority citation continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, and 533, unless otherwise noted.

67. Amend § 63.10 by revising paragraph (c)(1) to read as follows:

**§ 63.10 Regulatory classification of U.S. international carriers.**

\* \* \* \* \*

(c) \* \* \*

(1) File international service tariffs pursuant to § 61.28 of this chapter.

**PART 69—ACCESS CHARGES**

68. The authority citation continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

**§ 69.2 [Amended]**

69. In § 69.2, remove and reserve paragraph (tt).

70. Amend § 69.3 to revise paragraph (a), revise the introductory text of paragraph (e), revise paragraph (e)(6), revise paragraph (f), revise paragraph (h), revise the introductory text of paragraph (i), and to remove and reserve paragraph (j), to read as follows:

**§ 69.3 Filing of access service tariffs.**

(a) Except as provided in paragraphs (g) and (h) of this section, a tariff for access service shall be filed with this Commission for a two-year period. Such tariffs shall be filed with a scheduled effective date of July 1. Such tariff filings shall be limited to rate level changes.

\* \* \* \* \*

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff. Such a tariff may cross-reference the association tariff for some access elements and include separately computed charges of such company or companies for other elements. Any such tariff must comply with the requirements hereinafter provided:

\* \* \* \* \*

(6) A telephone company or companies that elect to file such a tariff shall notify the association not later than December 31 of the preceding year, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must

file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

\* \* \* \* \*

(f) (1) A tariff for access service provided by a telephone company that is required to file an access tariff pursuant to § 61.38 of this Chapter shall be filed for a biennial period and with a scheduled effective date of July 1 of any even numbered year.

(2) A tariff for access service provided by a telephone company that may file an access tariff pursuant to § 61.39 of this Chapter shall be filed for a biennial period and with a scheduled effective date of July 1 of any odd numbered year. Any such telephone company that does not elect to file an access tariff pursuant to the § 61.39 procedures, and does not participate in the Association tariff, and does not elect to become subject to price cap regulation, must file an access tariff pursuant to § 61.38 for a biennial period and with a scheduled effective date of July 1 of any even numbered year.

(3) For purposes of computing charges for access elements other than Common Line elements to be effective on July 1 of any even-numbered year, the association may compute rate changes based upon statistical methods which represent a reasonable equivalent to the cost support information otherwise required under part 61 of this chapter.

\* \* \* \* \*

(h) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x) of this chapter, shall file with this Commission a price cap tariff for access service for an annual period. Such tariffs shall be filed to meet the notice requirements of § 61.58 of this Chapter, with a scheduled effective date of July 1. Such tariff filings shall be limited to changes in the Price Cap Indexes, rate level changes (with corresponding adjustments to the affected Actual Price Indexes and Service Band Indexes), and the incorporation of new services into the affected indexes as required by § 61.49 of this chapter.

(i) The following rules apply to the withdrawal from Association tariffs under the provision of paragraph (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to paragraph (h) of this section.

\* \* \* \* \*

**§ 69.111 [Amended]**

71. Amend § 69.111(g)(4), by removing "§ 61.43(e)(2)(v)" and adding, in its place, "§ 61.42(e)(2)(v)", and by removing "§ 61.43(e)(2)(vi)" and adding, in its place, "§ 61.42(e)(2)(vi)".

**§ 69.113 [Amended]**

72. In § 69.113(c), remove the word “§ 61.3(v)” and add, in its place, the word “§ 61.3(x)”.

**§ 69.114 [Amended]**

73. In § 69.114(a), remove the word “§ 61.3(v)” and add, in its place, the word “§ 61.3(x)”.

[FR Doc. 98-24742 Filed 9-15-98; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**
**48 CFR Part 1509 and 1552**

[FRL-6158-6]

**Acquisition Regulation: Contractor Performance Evaluations**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to revise its policy and procedures regarding the evaluation of contractor performance on EPA contracts and to establish an EPAAR clause to be used in solicitations and contracts with an estimated dollar value in excess of \$100,000. This proposed rule applies to all large and small entities who perform or are interested in performing under EPA contracts.

**DATES:** Comments should be submitted not later than November 16, 1998.

**ADDRESSES:** Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street, SW, Washington, D.C. 20460. Comments will also be accepted on disks in WordPerfect 6.1 format or by electronic mail (E-mail) to: smith.frances@epamail.epa.gov. E-mail comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. No Confidential Business Information (CBI) should be submitted through E-mail.

**FOR FURTHER INFORMATION CONTACT:** Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564-4368.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This proposed rule implements the Office of Federal Procurement Policy (OFPP) Policy Letter 92-5, Past Performance Information. The OFPP Policy Letter requires Federal agencies to evaluate contractor performance on contracts over \$100,000, to use past performance information in making responsibility determinations in both sealed bid and competitively negotiated procurements, and to specify past performance as an evaluation factor in solicitations for competitively negotiated contracts expected to exceed \$100,000.

**B. Executive Order 12866**

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has reviewed and issued OMB Clearance No. 9000-0142 for agencies to adhere to the OFPP Policy Letter 92-5.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) applies to this proposed rule, and the information collection request (ICR) in this proposed rule has been evaluated by the Office of Management and Budget (OMB). The Office of Information and Regulatory Affairs within OMB has issued OMB Clearance No. 9000-0142 for the collection of contractor performance information. Comments regarding Paperwork Reduction Act concerns should be sent to OMB (Attn: EPA Desk Officer). OMB is required to make a decision concerning the collection of information contained in the proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to EPA on the proposed rule.

**D. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever EPA is required to publish notice of general rulemaking, EPA must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of the proposal on small entities, unless the Agency certifies that a proposed rule will not have a “significant economic impact on a substantial number of small entities.” As defined in RFA/SBREFA, small

entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. After consideration of the economic impacts of today’s proposed rule on small entities, the Agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule merely formalizes EPA’s contractor performance evaluation process, as an expansion of the government-wide requirements already established in the Federal Acquisition Regulation, 48 CFR Subpart 42.15. The proposed rule explains that EPA contracting officers will be recording the evaluations on simple and easy-to-understand report forms generated by the National Institutes of Health’s (NIH) Contractor Performance System. Likewise, the evaluation rating system that the contracting officers will be using is based on straightforward numerical scores with a narrative explanation to be provided by the contracting officers. An adverse economic impact upon a contractor (i.e., in the form of less future federal business) as a result of a rating assessed by an EPA contracting officer would be attributable to the contractor’s past performance itself, not to the rating system prescribed herein.

Further, the proposed rule requires no reporting or recordkeeping by contractors. Rather, the proposed rule merely provides contractors with a formal opportunity, generally one time a year per contract, to review and comment on their specific performance evaluations as conducted by the cognizant EPA contracting officers. EPA estimates that the contractor’s review and comment process will require a minimal amount of time to complete; therefore, to the extent that this does result in some contractor-incurred costs, EPA anticipates that these will be de minimus. In any event, any reasonable costs incurred by the contractor in connection with the process will be allowable and allocable to the contract under evaluation and thereby borne by EPA.

**E. Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in aggregate, or the private sector in one year. The rule is not