FCC MAIL SECTION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
1998 Biennial Regulatory Review -- Part 61 of the Commission's Rules and Related Tariffing Requirements	)	CC Docket No. 98-131
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187

REPORT AND ORDER AND
FIRST ORDER ON RECONSIDERATION

By the Commission: Commissioner Furchtgott-Roth concurring and issuing a statement.

Adopted: July 13, 1999; Released: August 3, 1999

I. INTRODUCTION AND BACKGROUND

1. 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. Section 11 further instructs the Commission to "repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161. As explained recently in the *Notice*,[1] the Commission has initiated the comprehensive review of telecommunications and other regulations required by the statute. Moreover, we have not limited our review to situations where there is "meaningful economic competition," but adopt rule revisions here to promote meaningful deregulation and streamlining where competition or other considerations warrant such action.

2. As part of the 1998 biennial regulatory review, we reviewed our price cap rules, as well as other rules in Part 61, and we found a number of rules that no longer seem to serve any useful purpose. We also found several cases in which our rules were organized in a confusing manner. Accordingly, in our *Notice*, we proposed several revisions to Part 61, and to other rules located outside Part 61, but interrelated with tariffing requirements.[2] Sixteen parties filed comments on October 16,

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[1] *1998 Biennial Regulatory Review -- Part 61 of the Commission's Rules and Related Tariffing Requirements*, Notice of Proposed Rulemaking, CC Docket No. 98-131, 14 FCC 488 (1998) (*Notice*), at para. 1.

[2] *Notice*, 14 FCC Rcd at 488 (para. 2).

1998, and six filed replies on November 16, 1998. These parties are listed in Appendix A to this Order. In addition, on September 2, 1998, AT&T made an *ex parte* presentation regarding certain nondominant carrier tariff requirements.[3]

3. In most cases, the parties did not comment on the rule revisions we proposed in the *Notice*. We adopt those revisions as they were proposed. We discuss in detail below the cases in which one or more parties did comment. In addition, some commenters proposed additional rule revisions, and we also discuss those proposals below. Finally, we reconsider on our own motion one of the electronic tariff filing rules adopted pursuant to the *Streamlined Tariff Filing Order*.[4] All the rule revisions we adopt here are set forth in Appendix B to this Order.

II. ELECTRONIC FILING

A. Submitting Tariff Filing Fees Electronically

4. The Commission proposed amending Part 61 to enable carriers to submit tariff filing fees electronically.[5] All the parties commenting on this proposal support it.[6] We adopt these rule revisions as proposed in the *Notice*.

5. Ameritech notes that carriers filing electronically must occasionally refile a tariff filing when the Commission receives the tariff after the close of the business day.[7] This is because such tariffs are treated as being filed the next business day, and therefore filed on one day less than the notice required by our rules. Ameritech argues that carriers should not be required to pay a second filing fee in such cases if the delay results from errors or failures in the Commission's electronic tariff filing system (ETFS).[8] We decide against Ameritech's proposal. In many cases, it would be difficult

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[3] Letter from Michael F. Del Casino, Regulatory Division Manager, AT&T, to Magalie Roman Salas, Secretary, FCC, Sept. 2, 1998 (*AT&T Ex Parte Statement*).

[4] *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-187, 12 FCC Rcd 2170 (1997) (*Streamlined Tariff Filing Order*). The filing of a petition for reconsideration tolls the thirty-day period provided for *sua sponte* reconsideration in section 1.108 of the Commission's Rules. *See* section 1.108 of the Commission's Rules, 47 C.F.R. § 1.108; *Central Fla. Enterprises., Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979), *cert. denied*, 460 U.S. 1084 (1983); *Radio Americana, Inc.*, 44 F.C.C. 2506, 2510 (1961).

[5] *Notice*, 14 FCC Rcd at 489 (para. 4).

[6] Sprint Comments at 1-2. USTA includes provisions regarding electronic tariff filings in its proposed Part 61. USTA Comments at 5.

[7] *See* section 61.14(a). At the time Ameritech filed its comments, the "close of the business day" was 5:30 p.m. Section 1.4(f). The Commission subsequently extended the deadline to 7:00 p.m. *Amendment of the Commission's Rules of Practice and Procedure*, FCC 99-93 (released May 11, 1999).

[8] Ameritech Comments at 3-4.

or impossible to determine whether a particular delay is the result of a Commission error or failure, whether it was due to unexpected congestion on the Internet, or whether the carrier simply failed to allow enough time for ETFS to receive the tariff filing before the deadline. As a result, determining whether ETFS is at "fault" could be administratively burdensome, and could consume scarce Commission resources better used to fulfill other statutory duties. Furthermore, we note that a carrier can often avoid a second filing fee without creating additional administrative burdens, by terminating transmission if it appears that the tariff filing will not be received in time.

6. GTE argues that the ETFS system in general has been "exceptionally beneficial," and recommends extending the requirement to non-dominant carriers.[9] We decline to do so at this time. In 1996, the Commission imposed mandatory detariffing requirements on nondominant IXCs.[10] Those requirements have been stayed by the Court of Appeals for the District of Columbia Circuit pending judicial review.[11] In 1997, the Commission adopted a notice of proposed rulemaking seeking comment on complete mandatory detariffing for non-incumbent LEC providers of interstate exchange access services.[12] That proceeding is still pending, and will not be completed until after the court of appeals completes its review of our 1996 detariffing orders. It is possible that mandatory electronic tariff filing requirements for nondominant carriers could become moot for some or all such carriers shortly after the requirement was imposed.[13] If necessary, we will consider imposition of a mandatory electronic tariff filing requirement on nondominant carriers after the conclusion of the pending mandatory detariffing proceedings.

B. Electronic Signatures

7. Bell Atlantic claims that the proposed rules in the *Notice* would require incumbent LECs electronically submitting tariff fees to continue to file a paper copy of a tariff transmittal letter and Form 159. Bell Atlantic argues further that it is burdensome to file paper copies in that situation, and that the Commission should accept "electronic signatures" as provided in section 1.52 of its rules.[14] We agree that requiring a paper copy of the transmittal letter and Form 159 when a carrier submits

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[9] GTE Comments at 11-12.

[10] *See Competition in the Interstate, Interexchange Marketplace*, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880 (1991); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Mandatory Detariffing Second Report and Order*); *recon.*, 12 FCC Rcd 15014 (1997) (*Mandatory Detariffing Reconsideration Order*); *stayed sub nom.* MCI Telecommunications Corp. v. FCC, No. 96-1459 (D.C. Cir. 1997).

[11] MCI Telecommunications Corp. v. FCC, No. 96-1459 (D.C. Cir. 1997).

[12] *Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, Notice of Proposed Rulemaking, CC Docket No. 97-146, 12 FCC Rcd 8596, 8613 (paras. 33-34) (1997).

[13] *See* Electronic Tariff Filing System (ETFS), 13 FCC Rcd 12335, 12336 (para. 5) (Com. Car. Bur., 1998) (*ETFS Order*).

[14] Bell Atlantic Comments at 12.

fees electronically unnecessarily increases the burdens placed on those carriers. In addition, requiring paper copies in this context tends to undercut the Commission's goals in adopting ETFS. We therefore amend section 61.14(b) of the rules as shown in Appendix B, to permit electronic signatures as Bell Atlantic suggests.

C. Electronic Cover Letters

8. Section 61.33(a) of the Commission's rules establishes certain format requirements for transmittal letters accompanying dominant carriers' tariff filings.[15] Some incumbent LECs claim that section 61.33(a) does not accommodate electronic filings, and propose revising section 61.33(a) to be applicable to electronic filings.[16] We disagree that the requirements in section 61.33(a) should be extended to electronic tariff filings. The rules for carriers filing tariff cover letters electronically are set forth in section 61.15. Currently, all the electronic filing requirements are grouped together in sections 61.13 through 61.17, and it would be unnecessarily confusing to create other electronic filing requirements elsewhere in Part 61. We agree, however, that section 61.33(a) is unclear because it is not expressly limited to carriers that do not file tariffs electronically. Accordingly, we revise section 61.33(a) as set forth in Appendix B.

III. POSTING

9. Section 61.72 requires issuing carriers to post their tariffs, *i.e.*, keep them accessible to the public during normal business hours. In any state or territory of the United States in which the carrier has chosen to maintain a business office or offices open to the public, the carrier must post its tariffs in at least one of those business offices.[17] In addition, a carrier must 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.[18] In the *Notice*, we noted that customers now have several alternatives available for getting answers to questions about their service, such as ETFS.[19] The Commission therefore invited comment on revising section 61.72 to require that carriers only provide a telephone number for public inquiries about information contained in their tariffs.[20]

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[15] 47 C.F.R. § 61.33(a).

[16] US West Comments, Att. A at 1; Bell Atlantic Comments, Att. at 1; Frontier Comments at 2.

[17] Section 61.72(a)(1) of the Commission's Rules, 47 C.F.R. § 61.72(a)(1).

[18] Section 61.72(a)(2) of the Commission's Rules, 47 C.F.R. § 61.72(a)(2).

[19] *Notice*, 14 FCC Rcd at 490 (para. 6). ETFS makes all interstate tariffs of the incumbent LECs available to the public at the Commission's Internet web site. *ETFS Order*, 13 FCC Rcd at 12336 (para. 3).

[20] The Commission also emphasized that it will keep tariffs available for public inspection in the Commission's Public Reference Room, regardless of any revisions to our tariff posting requirements we may adopt in this proceeding.

10. Currently, only incumbent LECs must comply with the mandatory electronic tariff filing requirements, and thus only incumbent LEC tariffs appear on the Commission's web site.[21] The Commission sought comment on whether other carriers should be required to post their tariffs on their own Internet web sites.[22]

11. All the parties commenting on our proposal to eliminate the requirement to post tariffs at business offices support it.[23] Several incumbent LECs advocate replacing the current requirement that they post tariffs in their business offices with an Internet posting requirement.[24] TRA, however, argues that some small carriers do not maintain web sites, and that any Internet posting requirement should be limited to those carriers that have chosen to establish web sites.[25] Sprint also opposes a mandatory Internet posting requirement, because its tariff is over 13,000 pages, and therefore of limited usefulness to a customer looking for specific tariff pages.[26]

12. We agree with the incumbent LECs supporting an Internet posting requirement. This benefits customers by creating an alternative method to obtain answers to tariff questions. Many incumbent LECs have voluntarily posted their tariffs on their web sites. In addition, because incumbent LECs are required to file tariffs electronically, they have already converted their tariffs to some electronic format. Therefore, most incumbent LECs that have not yet posted their tariffs on their web sites should be able to do so with little effort.[27] We disagree with Sprint's contention that carriers with long tariffs should not be required to post their tariffs on the Internet. A tariff posted on the Internet is more accessible for most customers than a tariff posted in a business office, and therefore more "useful," regardless of the tariff's length. Sprint does not provide a sufficient reason for treating long tariffs and short tariffs differently. On the basis of the record before us, it appears that the only incumbent LECs that might have difficulty developing web sites are carriers that have chosen not to develop web sites.[28] We therefore amend section 61.72 to eliminate the current business office posting

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[21] 47 C.F.R. § 61.13(b).

[22] *Notice*, 14 FCC Rcd at 490 (para. 7).

[23] GTE Comments at 8; Bell Atlantic Comments at 12; Sprint Comments at 2-3.

[24] NECA Comments at 3; USTA Comments at 5; Ameritech Comments at 4-5.

[25] TRA Comments at 2-4. *See also* GTE Comments at 8. GTE nevertheless argues that it would be easy for nondominant carriers to post their tariffs on the Internet, because they now file tariffs on disk or CD-ROM, and so should be encouraged to do so. GTE Comments at 8.

[26] Sprint Comments at 3.

[27] *See* GTE Comments at 8.

[28] *See* TRA Comments at 2-4.

requirement for all carriers filing tariffs, and to require any incumbent LEC with a web site to post its tariffs on its site.[29]

13. GTE maintains that the Commission should maintain a complete list of carriers' telephone numbers, e-mail addresses, and website Uniform Resource Locators (URLs).[30] At this time, it does not appear necessary to specify a particular method that carriers must use to inform their customers of the method to obtain answers to tariff questions. Accordingly, we will not require carriers to submit their current telephone numbers, e-mail addresses, and website information to the Commission. We may consider imposing such a requirement in the future if it appears that customers are experiencing difficulty in obtaining answers to their questions. We will, however, list on our website the telephone number or e-mail address of any carrier that so requests.

14. We note that the Commission has recently released an order requiring all nondominant interexchange carriers to make available to the public their rates, terms and conditions in a location accessible during regular business hours.[31] Nondominant IXCs are not required to file tariffs electronically.[32] As a result, while incumbent LEC tariffs are available for examination on the Commission's web site through ETFS, nondominant IXC tariffs are not. Because customers of nondominant IXCs cannot get answers to questions about their service from ETFS, it is appropriate to require nondominant IXCs to publicly disclose rate and service information in at least one location. Conversely, because incumbent LECs must file tariffs through ETFS, we need not continue to require incumbent LECs to post their tariffs in a business office.[33]

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[29] This Internet posting requirement is consistent with the public disclosure requirement we recently adopted for nondominant IXCs. *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended,* Second Order on Reconsideration and Erratum, CC Docket No. 96-61, FCC 99-47 (released Mar. 31, 1999) (*Mandatory Detariffing Second Reconsideration Order*), at para. 18.

[30] GTE Comments at 8.

[31] *Mandatory Detariffing Second Reconsideration Order* at paras. 15-18.

[32] *See* 47 C.F.R. § 61.13(a), (b).

[33] In the *Mass Media Application Streamlining Order*, the Commission required parties filing broadcast applications electronically to maintain public files of paper copies of those applications, to help ensure that those applications are publicly available after applicants are no longer required to file paper copies of applications with the Commission. *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, MM Docket No. 98-43, 13 FCC Rcd 23056, 23064-65 (para. 18), 23065 n.38 (1998) (*Mass Media Application Streamlining Order*). We decide against requiring common carriers to maintain public files of paper copies of tariffs, because those tariffs will continue to be available for copying in the Commission's Public Reference Room, and customers can obtain paper copies of any carrier's tariff from the Commission's copying contractor. *See Notice*, 14 FCC Rcd at 490 (paras. 6-7) and n.10.

IV. MINIMUM TARIFF EFFECTIVE PERIOD

A. Background

15. Under our current rules, a tariff must be in effect for at least 30 days before the issuing carrier is permitted to revise it.[34] In the *Notice*, we explained that this rule limits rate churn.[35] We explained further that rate churn can be disruptive for consumers because it can make it difficult to determine what rates are applicable at any given time.[36] We also recognized that this rule could delay non-dominant carriers' responses to market pressures, and so invited comment on reducing the minimum effective period to 15 days for nondominant carriers.[37] Because dominant carriers do not face effective competition, we proposed retaining the 30-day minimum effective period for dominant carriers.[38]

B. Non-dominant Carriers

16. AT&T argues that nondominant carriers should not face any minimum effective period requirement, because any customer that believes that a carrier revises its rates too frequently can switch to another carrier.[39] No one opposed removing this requirement for IXCs. We find AT&T persuasive on this issue, and accordingly, we eliminate the minimum effective period for nondominant carriers proposed in the *Notice*.

C. Dominant Carriers

17. A number of commenters advocate eliminating minimum effective periods for both dominant and non-dominant carriers.[40] Sprint advocates reducing the minimum effective period for

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[34] *See* section 61.59 of the Commission's Rules, 47 C.F.R. § 61.59.

[35] "Rate churn" is rapid rate increases or decreases in a short period. *Notice*, 14 FCC Rcd at 491 (para. 8).

[36] *Notice*, 14 FCC Rcd at 491 (para. 8); *citing Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915 (1998); *AT&T Corporation's Petition for Waiver of Section 61.47(f)(2) of the Commission's Rules*, Order, 10 FCC Rcd 12440, 12447 (para. 16) (Com. Car. Bur., 1995); *Amendment of Parts 1 and 61 of the Commission's Rules*, CC Docket No. 83-992, Report and Order, 98 FCC 2d 855, 873 (paras. 64-65) and n.37 (1984).

[37] *Notice*, 14 FCC Rcd at 491 (para. 8).

[38] *Notice*, 14 FCC Rcd at 491 (para. 9).

[39] AT&T Comments at 5-6. *See also* Bell Atlantic Comments at 5; Sprint Comments at 3-4.

[40] GTE Comments at 9; NTCA Comments at 2; Ameritech Comments at 5-6; USTA Comments at 5.

dominant carriers from 30 to 15 days.[41] We conclude that we should retain the 30-day minimum effective period for dominant carriers.

18. Several commenters maintain that the customers of dominant incumbent LECs are generally large and sophisticated, and do not need protection from rate churn.[42] Ameritech argues that the tariff notice period provides all the stability required.[43] As we explained in the *Notice*, the Commission has long been concerned with rate churn.[44] If there is excessive churn, it could be difficult to determine what rates are in effect on a given day. This, in turn, could make it difficult for a customer to file a complaint against a carrier, which could prove problematic where there is little competition to discipline the frequency with which carriers change their rates. The minimum effective period thus helps the Commission fulfill its consumer protection function. This function is necessary with respect to both large and small consumers.

19. Several incumbent LECs argue that the required effective period is no longer necessary, based on growing competitive and market pressures in the local exchange market.[45] By definition, however, dominant carriers have market power, and face little effective competition or market pressure relative to nondominant carriers. The record in this proceeding does not support a conclusion that all carriers throughout their service areas face sufficient competition that their customers can switch to another carrier if they believe that a carrier revises its rates too frequently.

20. Several incumbent LECs argue that a minimum effective period is inconsistent with section 204(a)(3), which permits carriers to file tariff revisions on 7 or 15 days' notice.[46] The minimum effective period does not require incumbent LECs to give more than 7 or 15 days' notice for a tariff revision; it requires only that the rate remain in effect for at least 30 days before it is revised. Accordingly, we find nothing inconsistent between the minimum effective period and the notice periods mandated by the 1996 Act.

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[41] Sprint Comments at 3-4.

[42] Bell Atlantic Comments at 5; NECA Comments at 2; Ameritech Comments at 6; NTCA Comments at 2. *See also* GTE Comments at 9.

[43] Ameritech Comments at 5.

[44] *Notice*, 14 FCC Rcd at 491 (para. 8).

[45] Bell Atlantic and Sprint argue that the required effective period inhibits price competition. Bell Atlantic Comments at 5; Sprint Comments at 5. NECA argues that incumbent LECs are unlikely to revise their rates more often than once a month, except in response to market pressure. NECA Comments at 2. According to NTCA, the Commission is mistaken in assuming that dominant incumbent LECs face no competition. NTCA Comments at 2.

[46] Ameritech Comments at 5-6; USTA Comments at 5, *citing* section 204(a)(3) of the Communications Act, 47 U.S.C. § 204(a)(3).

21. Sprint asserts that the Commission "routinely" waives this rule, in particular for corrections of typographical errors.[47] Sprint is mistaken, both in asserting that corrections of typographical errors require a waiver of the minimum effective period, and that the Commission routinely grants waivers of the minimum effective period. The Commission does not waive the minimum effective period rule for corrections of typographical errors; the rules already permit such corrections to be made on three days' notice, regardless of the amount of time that the tariff has been in effect.[48] Thus, no rule revision is necessary to address Sprint's concern regarding corrections. Furthermore, when the minimum effective period does delay a tariff revision, it is because the revision in question is substantive, and therefore raises the rate churn issues discussed above. The Commission does not grant such waivers "routinely" as Sprint asserts. For these reasons, we find that Sprint has not provided sufficient cause for revising the minimum effective period for dominant carriers.

V. REORGANIZATION OF PART 61

22. In the *Notice*, the Commission proposed establishing subparts within Part 61, and moving certain sections, to make it clearer which rules apply to which class of carriers.[49] Several incumbent LECs support the Commission's reorganization of Part 61,[50] and none of the commenters oppose it. We therefore adopt it.

23. USTA recommends moving all the provisions of Parts 61 and 69 applicable only to price cap carriers to a new part USTA calls "Part XX."[51] We will not adopt USTA's proposal at this time. First, it is clearer to retain all the tariff and cost support requirements in Part 61, and all the access charge rate structure rules in Part 69. Second, USTA's proposed reorganization appears intertwined with several other proposals, such as immediate nondominant treatment for all incumbent LECs.[52]

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[47] Sprint Comments at 4. Similarly, GTE recommends revising the minimum effective period rule so that it does not apply to corrections. GTE Comments at 9.

[48] *See* 47 C.F.R. § 61.58(a)(3).

[49] *Notice*, 14 FCC Rcd at 491-92 (para. 10).

[50] *See, e.g.*, Ameritech Comments at 6, 8; Sprint Comments at 5; NECA Comments at 3.

[51] USTA Comments at 6. *See also* GTE Comments at 3-7; Bell Atlantic Comments at 10-11. GTE supports the Commission's proposed reorganization of the Part 61 and 69 rules, but asserts that USTA's proposal would be a better alternative. GTE Comments at 10. On September 30, 1998, USTA filed a petition for rulemaking, proposing all the revisions to Parts 61 and 69 that it proposes in its comments in this proceeding, as well as a comprehensive review of several other Parts of the Commission's rules. The Commission has invited parties to comment on USTA's petition, but requested parties to refrain from filing comments that are redundant or duplicative of the comments they filed in this and other biennial review proceedings. Public Notice, United States Telephone Association Files Petition for Rulemaking for 1998 Biennial Regulatory Review, 13 FCC Rcd 21857 (1998).

[52] *See, e.g.*, USTA Comments, explanation for proposed section 61.10.

Such proposals would be better considered in the context of the *Access Reform* pricing flexibility proceeding.[53]

VI. NOTICE REQUIREMENTS

A. Reorganization of Notice Requirements

24. In the *Notice*, the Commission observed that many notice requirements for dominant carriers in section 61.58 appear inconsistent, because it includes both the 7-or-15-day notice requirements adopted pursuant to the 1996 Act,[54] and the longer notice periods in effect prior to adoption of the 1996 Act.[55] The Commission also explained that this inconsistency could be resolved only if section 61.58 is read in conjunction with section 61.51(b), which states that section 61.58 also establishes notice periods for incumbent LECs choosing not to take advantage of the 7-or-15-day notice requirements.[56] The Commission proposed to simplify the notice requirements for dominant carriers by moving them all into section 61.58.[57] No commenter opposed this proposal. We adopt these revisions as proposed in the *Notice*.

B. Retention of Two Notice Requirements

25. The *Notice* also invited comment on revising section 61.58 so that it does not specify any notice periods for incumbent LECs choosing not to take advantage of the shorter periods permitted by section 204(a)(3) of the Communications Act.[58] Bell Atlantic and NECA argue that retaining two sets of notice requirements is confusing, and recommends deleting the notice requirements other than the 7-or-15-day requirements specified in section 204(a)(3) of the Act.[59] Similarly, Sprint argues that requiring price cap LECs to file new service tariffs on either 15 or 45 days' notice is too inflexible, and makes it difficult for incumbent LECs to make the introduction of services coincide with the start

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[53] *See Access Charge Reform*, Notice of Proposed Rulemaking, CC Docket No. 96-262, 11 FCC Rcd 21354, 21421-23 (paras. 149-55) (1996) (*Access Reform NPRM*).

[54] Specifically, section 204(a)(3) of the Communications Act permits incumbent LECs to file rate decreases on 7 days' notice, and rate increases on 15 days' notice. 47 U.S.C. § 204(a)(3).

[55] *Notice*, 14 FCC Rcd at 492-93 (para. 12).

[56] *Notice*, 14 FCC Rcd at 492-93 (para. 12).

[57] *Notice*, 14 FCC Rcd at 492-93 (para. 12).

[58] *Notice*, 14 FCC Rcd at 492-93 (para. 12).

[59] Bell Atlantic Comments at 13; NECA Comments at 2-3.

of a billing cycle.[60] We find these arguments persuasive. We revise section 61.58 accordingly, as shown in Appendix B.[61]

C. Notice Requirements of Rate-of-Return LECs

26. USTA recommends permitting rate-of-return carriers to file tariffs for new services on 15 days' notice.[62] Under the 1996 Act and our current rules, all incumbent LECs, including rate-of-return carriers, can already file tariffs for new services on 15 days' notice.[63]

D. Alascom

27. Alascom is a dominant IXC providing service in Alaska. The *Notice* noted that Alascom currently files tariffs for its common carrier services in its Tariff F.C.C. No. 11 on 90 days notice pursuant to section 69.3(a) of the Commission's Rules, and the 1995 Commission Order implementing the Federal-State Alaska Joint Board recommended decision.[64] We proposed amending section 61.58 so that it properly reflects the notice requirements applicable to Alascom.[65]

28. ANS and ATU argue that section 61.58(e)(3) codifies a Commission policy adopted in the *Alaska Market Structure Order*, and that retention of this policy is important for the development of competition in Alaska because other telecommunications service providers in Alaska depend on Alascom's facilities to provide service.[66] ANS and ATU maintain that Alascom's cost support is

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[60] Sprint Comments at 6-7.

[61] As a result of this decision, we need not address several commenters' proposals, including USTA's proposal to lower the notice period for above-cap filings from 120 days to 45 days. *See* USTA Comments at 6.

[62] USTA Comments at 6-7.

[63] *See Streamlined Tariff Filing Order*, 12 FCC Rcd at 2203 (para. 68).

[64] *Notice*, 14 FCC Rcd at 493 (para. 13), *citing* section 69.3(a) of the Commission's Rules, 47 C.F.R. § 69.3(a); *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, CC Docket No. 83-1376, Memorandum Opinion and Order, 9 FCC Rcd 3023, 3027 (para. 23) (1994); *Investigation of Alascom, Inc., Interstate Transport and Switching Services*, CC Docket No. 95-182, Order, 12 FCC Rcd 3646, 3649 (para. 7) (Com. Car. Bur., Comp. Pricing Div., 1997). *See also Notice*, 14 FCC Rcd at 520-21 (proposed section 61.58(e)(3)).

[65] *Notice*, 14 FCC Rcd at 493 (para. 13).

[66] ANS Comments at 2-3; ATU Comments at 1, *citing Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, Memorandum Opinion and Order, 9 FCC Rcd 3023, 3027 (para. 23)(1994) (*Alaska Market Structure Order*).

complex and often requires a full 90 days for the Commission and interested parties to review.[67] On the other hand, Alascom's parent company, AT&T,[68] asserts that there is no reason to require a longer notice period for Alascom than is required for dominant LECs.[69] AT&T also maintains that the Commission could modify its policy without referral to a joint board.[70]

29. As an initial matter, we agree that we could modify the 90-day notice period without referral to a joint board. The *Alaska Market Structure Final Recommended Decision* stated that Alascom's tariff should "be evaluated under the Commission's standard tariff review process."[71] In the *Alaska Market Structure Order*, the Commission decided to apply the "standard tariff review process" as set forth in section 69.3(a) of the Commission's rules, which at the time of that Order required 90 days' notice for access tariff filings.[72] Part 61 establishes several "standard" notice periods for several different kinds of tariff filings. There is nothing in the *Alaska Market Structure Final Recommended Decision* to suggest that the Joint Board considered a 90-day notice period to be necessary for Alascom's Tariff 11.

30. Nevertheless, we disagree with AT&T, and find that there are at least three relevant distinctions between Alascom and incumbent LECs. Each of these distinctions individually warrant requiring a longer notice period for Alascom than for incumbent LECs. First, Alascom's Tariff 11 services are rate-of-return regulated wholesale services provided to other carriers providing long distance service in Alaska in competition with Alascom. Therefore, Alascom's revisions to Tariff 11 must be reviewed carefully to ensure that Alascom does not engage in a "price squeeze,"[73] thereby

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[67] ANS Comments at 3-5; ATU Comments at 2-4.

[68] AT&T acquired Alascom in 1995. *See Application of Alascom, Inc., AT&T Corporation and Pacific Telecom, Inc., For Transfer of Control of Alascom, Inc., from Pacific Telecom, Inc. to AT&T Corporation*, Order and Authorization, 11 FCC Rcd 732 (1995).

[69] AT&T Comments at 7-8.

[70] AT&T Comments at 8.

[71] *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, Final Recommended Decision, CC Docket No. 83-1376, 9 FCC Rcd 2197, 2217 (para. 143) (1993) (*Alaska Market Structure Final Recommended Decision*).

[72] *Alaska Market Structure Order*, 9 FCC Rcd at 3027 (para. 23). *See also Investigation of Alascom, Inc., Interstate Transport and Switching Services*, Order, CC Docket No. 95-182, 12 FCC Rcd 3646, 3649 (para. 7) (Com. Car. Bur., Comp. Pricing Div., 1997). In the *Notice*, we proposed eliminating the 90-day notice requirement for annual access tariffs, so that the notice period for incumbent LECs' annual access tariff filings would be governed by section 61.58 of our rules. *See Notice*, 14 FCC Rcd at 524 (proposed section 69.3(a)).

[73] In a "price squeeze," a carrier charges high rates for wholesale services provided to its competitors, and low rates for retail services provided in competition with those competitors. *See Access Reform First Report and Order*, 12 FCC Rcd at 16100-03 (paras. 275-82).

restricting the development of competition in Alaska. Incumbent LECs do not simultaneously provide facilities-based interexchange services and access services without separate subsidiaries, and so do not have opportunities to engage in price squeezes similar to Alascom. In addition, as ANS and ATU point out, Alascom's cost support can be complex. Alascom's service region is broken into two areas: "Bush," locations at which Alascom holds a facilities monopoly; and "non-Bush," all other locations.[74] Alascom is required to develop cost-based rates for transport and switching, and 7 or 15 days' notice would not be sufficient to enable us to determine whether Alascom's rates are reasonable. No incumbent LEC is required to submit detailed rate-of-return-based cost support information for different types of service areas as Alascom is. Finally, Congress expressly limited the 7-or-15 day notice requirement in section 204(a)(3) of the Communications Act to incumbent LECs, and so apparently intended to exclude IXCs such as Alascom.[75] Although we are permitted under section 203(b)(2) of the Communications Act to establish a 7-or-15 day notice period for Alascom "for good cause shown,"[76] AT&T has not demonstrated good cause here.[77]

31. Although we agree with ANS and ATU that a notice period longer than 7 or 15 days is required for Alascom's Tariff 11, we also conclude that we do not need a full 90 days to address the issues raised by Tariff 11 revisions. As explained above, the Joint Board did not find that a 90-day notice period is necessary for Alascom's Tariff 11. Rather, the 90-day notice period is a vestige of the notice periods permitted by the Communications Act prior to the 1996 amendments. Furthermore, the purpose of this proceeding is to reduce the regulatory burdens imposed by Part 61 as much as possible without unreasonably restricting our ability to perform our statutory duty. Accordingly, some reduction in Alascom's notice requirement is warranted. Currently, section 61.58(e) establishes a notice period of 35 days for any tariff filing not specifically assigned a different notice period. We find that 35 days' notice is sufficient for reviewing revisions to Alascom's Tariff 11.

E. Miscellaneous Notice Issues

32. USTA recommends reducing the notice period for corrections from three days to one day.[78] We reject USTA's proposal on this issue. The corrections for which the three-day notice period is available are corrections of spelling, punctuation, or typographical errors. We conclude that at least three days are required to allow Commission staff to ascertain that the LEC is not mischaracterizing a

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[74] *Alaska Market Structure Final Recommended Decision*, 9 FCC Rcd at 2206 n.74.

[75] Section 204(a)(3) of the Communications Act, 47 U.S.C. § 204(a)(3).

[76] Section 203(b)(2) of the Communications Act, 47 U.S.C. § 203(b)(2). Section 203(b)(2) enables the Commission to adopt any notice period less than 120 days.

[77] In 1995, the Bureau suspended an Alascom Tariff 11 filing, and that proceeding is still pending. *See* Alascom, Inc., Tariff F.C.C. No. 11, CC Docket No. 95-182, 11 FCC Rcd 3703 (Com. Car. Bur., 1995). In this Order, we conclude only that the issues discussed in this section do not warrant continuing to require Alascom to file revisions to its Tariff 11 on 90 days' notice. We do not intend to prejudge any issues that may be designated for investigation in CC Docket No. 95-182.

[78] USTA Comments at 7. *See also* GTE Comments at 9.

substantive revision as a "correction," thereby circumventing the minimum 7- or 15-day notice requirements established by Congress in the 1996 Act.

33. Section 61.58(a)(4) requires dominant carriers to notify their customers of any increased rate or reduction in service "in a form appropriate to the circumstances." Section 61.58(a)(4) states further that this notification "may include written notification, personal contact, or advertising in newspapers of general circulation."[79] NECA suggests that the Commission clarify that electronic communications and Internet website postings may meet the requirements of section 61.58(a)(4) in some circumstances.[80] NECA's suggestion does not warrant revision of section 61.58(a)(4), because the current version of that rule does not preclude such electronic communications. We decline to determine the circumstances under which such electronic communications would be "appropriate to the circumstances" within the meaning of section 61.58(a)(4). We can make that determination in the tariff review process.

VII. NONDOMINANT CARRIER FILING REQUIREMENTS

A. Generally

34. In the *Notice*, the Commission noted that it had previously decided to forbear from enforcing section 203 of the Communications Act with respect to nondominant IXCs. Accordingly, nondominant IXCs were neither required nor permitted to file tariffs for their provision of interstate interexchange services.[81] On February 13, 1997, the United States Court of Appeals for the District of Columbia Circuit stayed the rules adopted in the *Mandatory Detariffing Second Report and Order* pending judicial review.[82] As a result of the court's ruling, nondominant IXCs remain obligated to file tariffs pursuant to the tariffing rules we sought to eliminate in the *Mandatory Detariffing Second Report and Order*. In addition, because the *Mandatory Detariffing Second Report and Order* redesignated sections 61.20 through 61.23 of our rules as sections 61.21 through 61.24, each of these section numbers will refer to a different rule, depending on the outcome of the pending judicial review. The Commission found that this was potentially confusing, and so proposed to redesignate section 61.20 adopted in the *Mandatory Detariffing Second Report and Order*, imposing mandatory detariffing on nondominant IXCs, as section 61.19, and to keep the currently effective sections 61.20-23 designated as sections 61.20-23, regardless of the outcome of the pending judicial review. No one opposed this proposal. We adopt these revisions as described in the *Notice*.

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[79] 47 C.F.R. § 61.58(a)(4).

[80] NECA Comments at 4; NECA Reply at 2.

[81] *Notice*, 14 FCC Rcd at 492 (para. 11), *citing Mandatory Detariffing Second Report and Order*, 11 FCC Rcd at 20732-33 (paras. 3-5).

[82] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Guidance Concerning Implementation as a Result of the Stay Order of the U.S. Court of Appeals for the D.C. Circuit*, Public Notice, CC Docket No. 96-61, DA 97-493, 5 Com. Reg. (P&F) 505 (released Mar. 6, 1997). *See also Mandatory Detariffing Reconsideration Order*, 12 FCC Rcd at 15017-18 (para. 4).

35. In the *Notice*, the Commission also proposed several minor revisions to the rules governing nondominant carrier filings.[83] AT&T and Sprint comment on many of these proposals. For purposes of this Order, we refer to the nondominant carrier tariff rules pursuant to the section numbers as we have redesignated them here.

36. In the *Mandatory Detariffing Reconsideration Order*, the Commission created an exception to the mandatory detariffing policy it adopted for nondominant IXCs. Specifically, nondominant carriers are permitted to provide service to end users under tariff for 45 days, while those IXCs and their customers negotiate contractual agreements. AT&T recommends extending this period from 45 days to 90 days, to give IXCs and their customers sufficient time to consummate their agreements. Also, AT&T maintains that this period should run from the time that the IXC receives notification of a primary interexchange carrier (PIC) change from the LEC.[84] We reject AT&T's recommendation. In AT&T's pleadings addressed in the *Mandatory Detariffing Reconsideration Order* in 1997, AT&T informed the Commission that 45 days should be sufficient time to establish a contractual relationship with the customer in almost all cases.[85] Furthermore, the Commission determined that the time in which IXCs should be permitted to provide service under tariff should be kept to a minimum, so that the legal relationship between IXCs and their customers would more closely resemble such relationships in an unregulated environment.[86] Thus, by seeking to extend the tariff period to 90 days, AT&T in effect advocates creating a *more* regulatory environment. AT&T does not provide a sufficient reason to retreat from our deregulatory goal.[87]

37. AT&T recommends giving carriers the option of filing paper copies in an emergency, and requiring the carrier to file the tariff in question electronically within five business days.[88] We decide against AT&T's recommendation. In the 1993 *First Nondominant Tariff Filing Order*,[89] the Commission required nondominant carriers to file tariffs on disk. Specifically, the Commission found that, although paper tariff filings may be less costly for certain carriers, the reduced administrative burdens for the Commission and the benefits to the public outweigh the costs imposed on

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[83] *Notice*, 14 FCC Rcd at 494 (para. 14), and 501-05 (App. A).

[84] AT&T Comments at 2.

[85] *Mandatory Detariffing Reconsideration Order*, 12 FCC Rcd at 15038 n.132.

[86] *Mandatory Detariffing Reconsideration Order*, 12 FCC Rcd at 15040 (para. 43).

[87] *Mandatory Detariffing Reconsideration Order*, 12 FCC Rcd at 15040 (para. 43), *citing Mandatory Detariffing Second Report and Order*, 11 FCC Rcd at 20762 (para. 55).

[88] AT&T Comments at 3.

[89] *Tariff Filing Requirements for Nondominant Common Carriers*, Memorandum Opinion and Order, CC Docket No. 93-36, 8 FCC Rcd 6752 (1993) (*First Nondominant Tariff Filing Order*), *vacated on other grounds sub nom.* Southwestern Bell Corp. v. FCC, 43 F.3d 1515 (D.C. Cir. 1995) (*Southwestern Bell v. FCC*).

nondominant carriers by requiring them to file tariffs on disk.[90] AT&T provides no basis for concluding that the re-introduction of paper tariff filings, with subsequent re-filings on disk or CD-ROM, would not create burdens on the Commission and the public that would outweigh any benefits for carriers.

38. Currently, redesignated section 61.22(a) establishes requirements for tariffs filed on disk. In the *Notice*, the Commission proposed to revise section 61.22(a) to include tariffs filed on CD-ROMs.[91] AT&T notes that the proposed section 61.22(a) would require nondominant carriers to file no more than one tariff on each disk or CD-ROM. AT&T further claims that it has filed multiple tariffs on CD-ROMs in the past, and that refusing to permit it to continue to do so would force AT&T to incur additional expense of $2.5 million per year.[92] We conclude that CD-ROMs provide sufficient capacity for several tariffs, and that requiring no more than one tariff to be filed on each CD-ROM would create unnecessary expense for carriers and for interested parties making copies of nondominant tariffs. Therefore, we will permit nondominant carriers to file multiple tariffs on one CD-ROM. Disks, however, provide much less capacity than CD-ROMs, and our staff has found that it is often difficult for the public to read a carrier's tariffs when the carrier has placed more than one tariff on a disk. Therefore, we limit carriers to one tariff per disk, as we proposed in the *Notice*.

39. The *Notice* also proposed updating redesignated section 61.22(a) by specifying more recent versions of software for tariffs filed on disk.[93] AT&T argues that it should be permitted to use more current software versions than specified in the rules, as long as the diskette or CD-ROM provides the ability to be converted to the particular releases specified by the Commission.[94] Similarly, SBC recommends revising sections 61.20(c) and 61.22(a) to permit tariffs to be filed on "zip" drives.[95] The Commission has limited financial resources, and usually is not able to update its software as often as AT&T. In addition, the convertible formats suggested by AT&T do not always work as they should. In such cases, the Commission would be left unable to review the tariff filed with it, and members of the public would not be able to examine that tariff at the Commission's Public

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[90] *First Nondominant Tariff Filing Order*, 8 FCC Rcd at 6761 n.113. The court in *Southwestern Bell v. FCC* vacated the *First Nondominant Tariff Filing Order* because that Order permitted nondominant carriers to file tariffs for ranges of rates rather than specific rates. *Southwestern Bell v. FCC*, 43 F.3d at 1526. The Commission later reinstated all the rules vacated in *Southwestern Bell v. FCC* other than the range-of-rates provisions. *Tariff Filing Requirements for Nondominant Common Carriers*, Order, CC Docket No. 93-36, 10 FCC Rcd 13653, 13654-55 (paras. 8-9) (1995) (*Second Nondominant Tariff Filing Order*).

[91] *Notice*, 14 FCC Rcd at 503.

[92] AT&T Comments at 3-4.

[93] Specifically, the *Notice* sought comment on giving carriers a choice of WordPerfect 5.1 or Microsoft Word 6. *Notice*, 14 FCC Rcd at 503 (proposed section 61.22(a)).

[94] AT&T Comments at 4-5.

[95] SBC Reply at 2.

Reference Room. Nor do we have the resources necessary to enable members of the public to examine tariffs filed on "zip" drives. Therefore, we reject AT&T's and SBC's recommendations.

40. AT&T requests the Commission to clarify that the one-day notice requirement for nondominant carriers extends to tariffs correcting typographical errors and reinstatements.[96] Under our revised rules, all nondominant carriers can file any tariff revision, including corrections and reinstatements, on one day's notice.[97]

B. Contract Tariffs

41. In the *Notice*, the Commission proposed codifying certain existing format requirements for contract tariffs in a new section 61.22(e). In particular, the Commission proposed requiring carriers to identify contract tariffs by numbering them separately from non-contract-based tariffs, in the form of "CT No. ___." AT&T argues that it should be permitted to identify contract tariffs as either "CT No. __" or "Contract Tariff No. __".[98] We agree that AT&T's proposal would meet the Commission's goal just as well as the requirement proposed in section 61.22(e), and so we adopt it.

42. In an *ex parte* meeting on September 2, 1998, AT&T argued that it would be excessively burdensome to require a separate transmittal letter for each contract tariff filing as was proposed in section 61.22(e). We agree, and revise section 61.22(e) in Appendix B accordingly.

43. Sprint argues that it files all its contract tariffs as options within its Tariff F.C.C. No. 12, and that it is not aware of any customer confusion or complaints.[99] Our intent in proposing section 61.22(e) was to codify format requirements for nondominant carriers electing to take advantage of the streamlined contract tariff filing requirements spelled out currently in section 61.55 of our rules. As long as Sprint chooses to continue filing its contract tariffs in compliance with the more detailed requirements applicable to non-contract-tariff offerings, it will not be required to comply with section 61.22(e).

44. Sprint's comments bring another issue to our attention. Sections 61.3(m) and 61.55 extend contract tariff authority to all non-dominant carriers and interexchange carriers subject to price cap regulation. As explained further below, the only interexchange carrier that was ever subject to price cap regulation was AT&T, and AT&T has since been declared nondominant. Accordingly, we remove the references to IXC price cap regulation from sections 61.3(m) and 61.55. In addition, because section 61.55 as revised is applicable only to nondominant carriers, we move those

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[96] AT&T Comments at 5.

[97] *See* redesignated section 61.23(c).

[98] AT&T Comments at 5.

[99] Sprint Comments at 11-12.

requirements to Subpart C of Part 61, specifying nondominant carrier tariff rules.[100] Finally, we remove section 61.33(h)(2), specifying rules for dominant carriers' transmittal letters to accompany contract tariffs.

C. Filing Tariffs on Disk

45. Redesignated section 61.22(c) requires nondominant carriers revising a tariff to refile the entire tariff on a new disk. The *Notice* proposed creating an exception to this rule for nondominant carriers who have an individual tariff that requires ten or more disks, so that those carriers would be required only to refile the disk or disks on which changes appear.[101] Sprint argues that carriers should be permitted to file a disk containing only those tariff pages that are being revised, and file a complete new tariff at the end of each month.[102] We will not permit all nondominant carriers to file tariffs as Sprint suggests. Under Sprint's suggestion, before the end of the month, a carrier could have several versions of a certain tariff page on several disks on file with the Commission. In that case, a member of the public wishing to examine that page would be find it very difficult to determine whether he or she is looking at the tariff page actually in effect, or which version is currently pending effectiveness. On the other hand, it appears less burdensome for most carriers to refile an entire disk than to copy the pages at issue onto a new disk prior to making revisions.

46. With respect to carriers whose individual tariffs require a large number of disks, however, we find Sprint's argument to be persuasive. The Commission required nondominant carriers to file tariffs on disk in part to facilitate the public availability of those tariffs.[103] It can be very expensive for a carrier to refile several disks for each tariff revision, and for members of the public to purchase several disks to review a current copy of that carriers' tariff. We find that Sprint's proposal reduces this expense for both carriers and members of the public, and that in cases of nondominant carriers with a large number of disks, these savings outweigh the burdens associated with determining whether one is examining a current tariff page. The *Notice* proposed modifying the requirements of redesignated section 61.22(c) for carriers whose tariffs require ten or more disks. None of the commenters have provided a basis for establishing a higher or lower threshold. Accordingly, we adopt Sprint's proposal for permitting nondominant carriers to file only a disk containing revised tariff pages, but only for carriers whose individual tariffs require ten or more disks.

VIII. INTERNATIONAL TARIFFS

47. The Commission invited comment on requiring carriers to maintain separate tariffs for domestic and international services. The Commission reasoned that different rules apply to domestic

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[100] Specifically, as set forth in Appendix B, we redesignate the section 61.22(e) proposed in the *Notice* as section 61.22(e)(1), and codify sections 61.55(b) and (c) as sections 61.22(e)(2) and (3), respectively.

[101] *Notice*, 14 FCC Rcd at 503-04 (proposed section 61.22(c)(2).)

[102] Sprint Comments at 11.

[103] *First Nondominant Tariff Filing Order*, 8 FCC Rcd at 6761 (para. 43).

and international tariffs, and that separating domestic and international tariffs would facilitate review.[104]

48. AT&T asserts that separating its domestic and international tariffs would require approximately 18 person-years of labor and cause substantial customer confusion and inconvenience. AT&T also argues that these detriments outweigh the slight benefits of facilitating review of domestic and international tariffs.[105] We find AT&T's argument persuasive, and accordingly, we will not require carriers to establish separate tariffs for domestic and international services, as proposed in the *Notice*.

IX. PRICE CAP ISSUES

A. LEC PCI Formula

1. Proposals in the *Notice*

49. *Background.* In the *Notice*, the Commission proposed several revisions to the price cap rules in Part 61.[106] First, the Commission proposed to remove the price cap rules applicable to AT&T before it was found to be nondominant in 1995, including the AT&T price cap index (PCI) formula in section 61.44. The Commission also proposed to revise the LEC PCI formula in section 61.45 to remove the cross-references to section 61.44.[107]

50. The Commission also invited comment on the proper definition of the "w" term in the PCI formula.[108] The "w" term is a weighting factor to ensure that X-Factor adjustments are not applied to exogenous cost changes.[109] The Commission proposed a "w" definition, but sought comment on whether that proposed definition was appropriate for the LEC PCI formula, or appropriate only in the interexchange basket.[110]

51. *Discussion.* No one opposes our proposal to eliminate the AT&T price cap rules from Part 61. In this Order, we eliminate section 61.44, and the references to dominant IXC price cap regulation in other sections of the price cap rules.

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[104] *Notice*, 14 FCC Rcd at 494 (para. 15).

[105] AT&T Comments at 8-10. *See also* Sprint Comments at 7; GTE Comments at 10; TRA Comments at 4-5.

[106] The price cap rules are sections 61.41 through 61.49.

[107] *Notice*, 14 FCC Rcd at 495 (para. 16).

[108] *Notice*, 14 FCC Rcd at 496-97 (para. 19).

[109] *See Notice*, 14 FCC Rcd at 496 n.32.

[110] *Notice*, 14 FCC Rcd at 496-97 (para. 19).

52. Several parties argue that the proposed definition of "w" in the *Notice* is appropriate only for the interexchange basket PCI formula, because it incorporates imputed access revenues into the calculation of "w."[111] The Commission requires price cap LECs offering interexchange basket services to impute to themselves the same access charges that they impose on interexchange carriers, to maintain competitive parity among interexchange service providers.[112] Thus, while imputed access revenues are relevant for interexchange basket rates, to they are not relevant to rates for services in other baskets. Accordingly, we adopt the definition of "w" proposed in the *Notice*, but only for the interexchange basket. Parties also propose a different definition for "w" for the baskets other than the interexchange basket.[113] We have reviewed this proposed "w" definition, and we find that it is appropriate for the baskets other than the interexchange basket.

53. Currently, LECs are required to treat changes in imputed access charges like exogenous cost changes, in addition to incorporating them into the "w" calculation, so that those changes directly increase or decrease the PCI. A number of LECs assert that the PCI formula proposed in the *Notice* does not incorporate the imputation of access charges for the interexchange basket, and recommend setting forth the formula for this basket separately.[114] The Commission did not intend to change the requirement that price cap LECs impute access charges into their interexchange basket PCI calculations. From the comments, it appears that the PCI formula proposed in the *Notice* does not clearly incorporate the imputation of access charges. Therefore, to clarify that price cap LECs must impute access charge changes into their interexchange basket PCI calculations, and to accommodate the separate "w" definition for the interexchange basket, we revise section 61.45 to create a separate PCI formula for the interexchange basket, as set forth in Appendix B.

2. Other Proposals

54. Several incumbent LECs propose other changes to the LEC PCI formulas. For example, US West and Sprint claim that the definition of "R" proposed in the *Notice* might double-count the portion of primary interexchange carrier charge (PICC) revenues associated with each basket. These two carriers propose revising section 61.45(b)(1) to determine R by "including" PICC revenues rather than "adding" those revenues.[115] The *Notice* proposed defining R as follows: "R = an amount

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[111] Ameritech Comments, App. A; Frontier Comments at 2; US West Comments, Att. A. at 1; Sprint Comments, Att. A at 1; Bell Atlantic Comments, Att. at 1.

[112] *See Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, 3187 (para. 646) (1989) (*AT&T Price Cap Order*); *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, CC Docket No. 87-313, 5 FCC Rcd 6786, 6812 (para. 213) (1991) (*LEC Price Cap Order*).

[113] Ameritech Comments, App. A; Frontier Comments at 2; US West Comments, Att. A. at 1; Sprint Comments, Att. A at 1; Bell Atlantic Comments, Att. at 1.

[114] US West Comments, Att. A. at 2-3; Sprint Comments, Att. A at 2; Bell Atlantic Comments at 2. *See also* Frontier Comments at 2-3.

[115] US West Comments, Att. A. at 3; Sprint Comments, Att. A at 2-3.

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 section 69.153 of this Chapter and the portion of that PICC that is associated with the basket[.]"[116] We proposed defining "R" this way because we believed that the "portion of that PICC that is associated with the basket" is not a "rate element." We did not intend to double-count PICC revenues. Because US West's and Sprint's definition is clearer than the definition we proposed in the *Notice*, we adopt their definition.

55. Several incumbent LECs recommend revising section 61.45(c)(2), which provides the PCI formula for the common line basket, by adding the language in bold to read as follows: "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. **In non-annual price cap filings, g will be equal to 0.**"[117] Because this additional language simply clarifies the existing requirement in section 61.45(c)(2), we adopt this proposal.

56. Several carriers claim that sections 61.45(i) and (j) of the rules, requiring "targeting" of PCI reductions to the transport interconnection charge (TIC), improperly include exogenous adjustments to the common line and traffic-sensitive PCIs in the amounts to be targeted.[118] We disagree. Section 61.45(j)(2) explicitly states that exogenous adjustments shall be excluded from the amounts to be targeted to the TIC.[119] Nevertheless, we revise sections 61.45(i) and (j) to make it more clear that price cap LECs should exclude exogenous adjustments from the amounts to be targeted to the TIC.

57. Finally, some incumbent LECs claim that the proposed section 61.45(i)(4), governing the calculation of the PCI reductions to be targeted to the TIC, could drive the trunking basket PCI to 0.[120] These LECs recommend basing the TIC retargeting on the value of "R" in the trunking basket, rather than the "dollar effect of the PCI reduction" as was proposed in the *Notice*. These LECs are persuasive on this issue, and we adopt their proposed revision to section 61.45(i)(4).

B. Targeting of Exogenous Adjustments

58. *Background.* In the *Notice*, the Commission noted that the Common Carrier Bureau granted USTA a waiver of the price cap rules to specify a method for targeting exogenous changes to

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[116] *See Notice*, 14 FCC Rcd at 509-11 (proposed section 61.45(b)(1)).

[117] US West Comments, Att. A. at 3; Sprint Comments, Att. A at 3; Bell Atlantic Comments, Att. at 3.

[118] Ameritech Comments, App. A; US West Comments, Att. A. at 3-5; Sprint Comments, Att. A at 3-5; Frontier Comments at 3; Bell Atlantic Comments, Att. at 3-5.

[119] In 1997, the Competitive Pricing Division explained this in more detail. *Material to be Filed in Support of 1997 Annual Access Tariff Filings for Price Cap Companies*, 13 FCC Rcd 1674, 1675 (para. 5) (Com. Car. Bur., Comp. Pricing Div., 1997).

[120] US West Comments, Att. A. at 4; Sprint Comments, Att. A at 4; Bell Atlantic Comments, Att. at 4-5.

particular service categories, and to base PICC calculations on base period data rather than projected demand as was required in the *Access Reform First Report and Order*.[121] The Commission solicited comment on incorporating this waiver into the price cap rules.[122]

59. *Discussion.* Sprint supports our proposal to base PICC calculations on base period data rather than projected demand.[123] No one opposed it. We adopt the revisions to section 69.153 that we proposed in the *Notice*.[124]

60. Some incumbent LECs claim that the targeting formulas proposed in the *Notice* are applicable only to non-annual filings, and recommend that we add the formulas necessary for annual filing, or not adopt any formulas at all.[125] AT&T and MCI recommend that we eliminate these formulas, because the retargeting involved will not be required very much longer.[126] We agree with AT&T and MCI that it is not necessary to specify formulas in the rules when those formulas would be used for a relatively short time. Accordingly, we will not adopt the targeting formulas we proposed in the *Notice* for section 61.47(i).

C. Common Line Formula Issues

61. Part 69 of the Commission's rules apportions incumbent LEC common line costs between EUCL and CCL charges using the base factor portion (BFP) revenue requirement calculation.[127] Price cap LECs also use BFP to determine the actual price index (API) for the common line basket.[128] Bell Atlantic argues that BFP is an inefficient remnant of rate-of-return regulation, and recommends eliminating BFP from common line rate calculations for price cap carriers.[129] Alternatively, Bell Atlantic recommends basing BFP calculations on historical data rather than projections. Bell Atlantic claims that this would have little effect on rates, but would greatly reduce the burdens of common line

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[121] *Notice*, 14 FCC Rcd at 496 (para. 18), *citing United States Telephone Association, Petition for Waiver of Sections 61.47, 69.153(c)(1), 69.153(d)(1)(i), and 69.153(d)(2)(i) of the Commission's Rules*, 12 FCC Rcd 18133 (Com. Car. Bur. 1997).

[122] *Notice*, 14 FCC Rcd at 496 (para. 18).

[123] Sprint Comments at 9-10.

[124] *Notice*, 14 FCC Rcd at 496 (para. 18).

[125] Ameritech Comments, App. A; Frontier Comments, Att. 1 at 41-44; US West Comments, Att. A. at 5-7; Sprint Comments, Att. A at 5-7; Frontier Comments at 3-5; Bell Atlantic Comments, Att. at 5-7.

[126] AT&T Comments at 6-7; MCI Reply at 3.

[127] 47 C.F.R. §§ 69.501, 69.502.

[128] 47 C.F.R. §§ 61.46(d).

[129] Bell Atlantic Comments at 2-4.

calculations.[130] We agree that BFP is an inefficient remnant of rate-of-return regulation. In the *Access Reform* proceeding, the Commission required LECs to phase out their per-minute CCL rates, and to eliminate their BFP-based common line rate calculations when the maximum presubscribed interexchange carrier charge (PICC) assessed on primary residential lines, plus the maximum EUCL on those lines, recovers the full amount of their per-line common line price cap revenues.[131] We do not have a sufficient record in this proceeding, however, to determine whether we should accelerate the change in the calculation of the EUCL. We may seek comment on Bell Atlantic's suggestion in a future proceeding.

62. The common line formula in section 61.46(d)(1) includes the LEC's maximum permitted EUCL charges and its maximum permitted PICC charges, but does not define either of these terms. Frontier proposes revising section 61.46(d) to specify how those EUCL charges and PICCs should be calculated.[132] We have decided against Frontier's proposal. First, many of Frontier's definitions duplicate definitions set forth in sections 69.152 or 69.153 of the Commission's rules, and therefore are unnecessary and possibly confusing. Second, as discussed above, our rules are designed to phase out use of the formula in section 61.46(d)(1) to calculate common line rates.[133] We conclude that it is not necessary to adopt the formulas proposed by Frontier for section 61.46(d) when those formulas would be used for a relatively short time.

D. Other Price Cap Rule Proposals

63. Currently, section 61.42(d) specifies the price cap baskets, and section 61.42(e) defines the service categories. Frontier proposes combining the basket definitions in paragraph (d) with the service category definitions in paragraph (e).[134] We reject Frontier's proposed revisions to section 61.42 because we find that they make the rule less clear. Frontier and SBC also propose minor word edits to section 61.43.[135] We adopt Frontier's and SBC's revisions to section 61.43 because we find that they make the rule clearer. The revised section 61.43 is set forth in Appendix B.

64. Frontier and Sprint recommend making a separate PCI formula for each basket to be set forth in section 61.45(c)(1) through (5), and specifying the definitions of all the terms in section

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[130] Bell Atlantic Comments at 4.

[131] *Access Reform First Report and Order*, 12 FCC Rcd at 16027-28 (paras. 108-10); *Access Charge Reform*, Order on Reconsideration, CC Docket No. 96-262, 12 FCC Rcd 10119, 10124 (para. 15) (1997) (*First Access Reform Reconsideration Order*).

[132] Frontier Comments, Att. 1 at 34-37.

[133] *See* 47 C.F.R. § 61.46(d)(2).

[134] Frontier Comments, Att. 1 at 20-21.

[135] Frontier Comments, Att. 1 at 22; SBC Reply at 2-3.

61.45(c)(6).[136] We have decided against adopting these rule revisions. The Commission has always used the same PCI formula for all the baskets except for the common line basket. In the *LEC Price Cap Order*, the Commission found that the common line basket presents a special case that requires a different PCI formula to further certain Universal Service goals.[137] Later, in the *Access Reform First Report and Order*, the Commission concluded that the separate common line PCI formula would no longer be warranted when the transition away from per-minute carrier common line rates was completed.[138] In this Order, we adopt a separate PCI formula for the interexchange basket because the record in this proceeding revealed that continuing to apply the same PCI formula to the interexchange basket and other baskets was unnecessarily confusing.[139] We find that creating even more PCI formulas as Frontier or Sprint suggest would unnecessarily complicate the rules.

65. Frontier and Sprint also recommend replacing the cross-reference to section 69.612 in section 61.45(d)(1)(iv), which permits price cap LECs to make exogenous adjustments to reflect changes in Universal Service obligations, with a cross-reference to the Universal Service obligations spelled out in Part 54 of the Commission's rules.[140] We find that it is reasonable to update the exogenous cost rules to reflect the recent changes the Commission has adopted to its Universal Service rules, and therefore we adopt this revision. Alternatively, Bell Atlantic argues that Universal Service contributions should not be treated as exogenous adjustments to the PCI formula, for reasons discussed by USTA in its petition for reconsideration of the *Access Reform First Report and Order*.[141] We conclude that it would be better to consider this issue on the basis of the record developed in response to all the petitions for reconsideration of the *Access Reform First Report and Order*. Accordingly, we will not consider Bell Atlantic's and USTA's argument further in this Order.

66. Frontier and Sprint suggest removing sections 61.45(k) and (l).[142] Frontier also recommends removing sections 61.46(g) and (h).[143] Because these provisions simply restate requirements established elsewhere in the Commission's rules,[144] we agree that they should be eliminated.

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[136] Sprint Comments, Att. B; Frontier Comments, Att. 1 at 24-33.

[137] *LEC Price Cap Order*, 5 FCC Rcd at 6793-94 (para. 58).

[138] *Access Reform First Report and Order*, 12 FCC Rcd at 16027-28 (paras. 108-10).

[139] *See* section IX.A.1., *supra*.

[140] Sprint Comments, Att. B; Frontier Comments, Att. 1 at 24-33.

[141] Bell Atlantic Comments at 8-9.

[142] Sprint Comments, Att. B; Frontier Comments, Att. 1 at 24-33.

[143] Frontier Comments, Att. 1 at 38.

[144] *See* 47 C.F.R. §§ 69.153, 69.156.

67. Sections 61.46(a) and 61.47(a) require price cap LECs to assign weights to their rate elements when calculating actual price indices (APIs) and service band indices (SBIs). Currently, those weights are based on the current price for each rate element, times the *base period* demand for each rate element.[145] Frontier recommends a different revenue weighting method using current year revenue divided by the base year revenue for each rate element.[146] We reject this proposal at this time. Determining the current year revenue for each rate element requires the LEC to estimate demand for that rate element. In the *AT&T Price Cap Order*, the Commission based the weights used in the price cap formulas applicable to AT&T on historical costs and demand rather than projections, to avoid the controversy and difficulty of determining whether the demand projections are accurate.[147] The *LEC Price Cap Order* also required incumbent LECs to base weights on historical demand data.[148] For particular services, which are experiencing extremely rapid changes in demand, projected demand might be more accurate than base period demand, and the benefits of this increase in accuracy might outweigh the burdens associated with demand projections. We cannot conclude on the basis of this record, however, that demand for all services is changing so rapidly as to warrant the use of projected demand in the API and SBI formulas for all baskets.

68. Frontier recommends reorganizing section 61.47, governing SBIs, to list all the rate elements with 5 percent limits, 2 percent limits, and 0 percent limits in section 61.47(e), and to eliminate sections 61.47(f) and (g).[149] We find that Frontier's proposals greatly simplify the rules governing price cap common line and SBI calculations, and so we adopt its revisions, as set forth in Appendix B.

X. PRICING FLEXIBILITY

69. In its comments in this proceeding, USTA makes several extensive recommendations for expanding the pricing flexibility available to incumbent LECs under price cap regulation. For example, USTA recommends permitting incumbent LECs to file contract tariffs.[150] USTA advocates permitting price cap LECs to file tariffs for new services on 15 days' notice without price support, and permitting LECs to provide those services outside of price cap regulation.[151] USTA further recommends making the section 61.39 cost support requirements, currently available only to carriers

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[145] 47 C.F.R. §§ 61.46(a), 61.47(a).

[146] Frontier Comments, Att. 1 at 33.

[147] *AT&T Price Cap Order*, 4 FCC Rcd at 3027 (para. 316).

[148] *See, e.g.*, *LEC Price Cap Order*, 5 FCC Rcd at 6825 (para. 319).

[149] Frontier Comments, Att. 1 at 39-41.

[150] USTA Comments at 4-5. USTA claims that the State of California permits incumbent LECs to provide service under contracts.

[151] USTA Comments at 6.

serving less than 50,000 access lines, available to any carrier with less than two percent of the nation's access lines.[152] USTA's proposals are supported generally by several incumbent LECs.[153]

70. Bell Atlantic advocates eliminating the price cap new services test, and permitting price cap LECs to offer new switched access services without obtaining permission under section 69.4(g) to create a new switched access rate element.[154] GTE recommends permissive detariffing, especially for nondominant carriers.[155]

71. Bell Atlantic suggests combining all the current price cap baskets into a single basket, and creating four service categories: (1) tandem switching and transport, (2) local switching, (3) database services, and (4) common line and marketing.[156] Bell Atlantic argues that these service categories should eliminate concerns over cross-subsidization, and would increase pricing flexibility.[157]

72. We do not adopt any of these recommendations at this time, because these pricing flexibility issues are outside the scope of this proceeding. The Commission has already forborne from enforcement of section 69.4(g) with respect to incumbent local exchange carriers that each serve less than two percent of the nation's access lines.[158] In addition, the Commission is considering pricing flexibility issues in the context of its ongoing *Access Reform* proceeding.[159] The record on these issues is much more extensive there than it is in this proceeding, and provides a better basis on which to resolve these issues. We may consider these specific pricing flexibility proposals in the context of the *Access Reform* proceeding, to the extent that they have not already been proposed in that context.

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[152] USTA Comments at 7.

[153] GTE Comments at 3, 6-7; BellSouth Comments at 1-2; Ameritech Comments at 8-11; Alltel Comments at 1-2; SBC Comments at 1-3; US West Comments at 1-2.

[154] Bell Atlantic Comments at 4-5, 7-8.

[155] GTE Comments at 12.

[156] Bell Atlantic Comments at 6.

[157] Bell Atlantic Comments at 6-7.

[158] Petition for Forbearance of the Independent Telephone & Telecommunications Alliance, Sixth Memorandum Opinion and Order, AAD File No. 98-43, FCC 99-108 (released June 30, 1999).

[159] *See Access Reform NPRM*, 11 FCC Rcd at 21426-48 (paras. 161-217).

XI. REFERENCES

73. Currently, section 61.74 prohibits references in tariffs to other documents outside the tariff, except in very limited circumstances.[160] The *Notice* proposed expanding the circumstances in which references would be permitted, to include (1) references to other tariffs on file with the Commission for purposes of determining mileage, and (2) references to technical publications, provided, among other things, the tariff explains where the technical publication can be obtained. NECA recommends revising section 61.74 to make it clear that carriers may cross-reference technical publications that are posted on Internet web sites.[161] As proposed in the *Notice*, any carrier may cross-reference any technical publication, as long as the carrier meets the requirements of section 61.74(f). A technical publication posted on the Internet may meet those requirements.[162] Stating this in the rule, however, may raise questions about cross-references to technical publications that are not posted on the Internet. Thus, NECA's proposal makes section 61.74 less clear. We therefore do not adopt it.

74. The *Notice* also proposed a section 61.25, governing references in nondominant carriers' tariffs. According to AT&T, proposed section 61.25 does not permit nondominant carriers to place cross-references in their tariffs to the same extent as dominant carriers are permitted to cross-reference under section 61.74.[163] AT&T is mistaken. In the *Notice*, section 61.74 permits both dominant and nondominant carriers to include references in their tariffs under the conditions specified in section 61.74.[164] Section 61.25 permits nondominant carriers to cross-reference in additional circumstances, under which dominant carriers are not permitted to cross-reference. In Appendix B, we revise section 61.25 to make this more clear.

XII. OTHER PROPOSED RULE REVISIONS

75. Frontier recommends replacing references to "costs" with "prices" or "revenues" in price cap-related definitions in section 61.3.[165] We agree that in the cases cited by Frontier, it makes no sense to define price cap concepts in terms of costs. SBC suggests revising section 61.3(y) to replace

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[160] Section 61.74 of the Commission's Rules, 47 C.F.R. § 61.74.

[161] NECA Comments at 3.

[162] Section 61.74(f)(3) requires carriers cross-referencing technical publications to state in the tariff where the technical publication can be obtained. Thus, at a minimum, a carrier is required to state in its tariff the web site address where the technical publication can be found.

[163] AT&T Comments at 6.

[164] *See Notice*, 14 FCC Rcd at 521 (proposed section 61.66) (explaining that the rules in proposed Subpart F, including section 61.74, are applicable to all carriers).

[165] Frontier Comments, Att. 1 at 1.

"Price cap tariff" with "Price cap tariff filing."[166] We also agree that SBC's suggestion would clarify section 61.3(y).

76. SBC maintains that the definition of "base period" in section 61.3(e) should be revised, because the definition proposed in the *Notice* would "lock the effective date of the annual filings to July 1."[167] Section 69.3(h) requires price cap LECs to file price cap tariffs to take effect on July 1, and both the current version of section 61.3(e) and the version proposed in the *Notice* is consistent with that requirement. We conclude that SBC's suggestion would not clarify section 61.3(e).

77. NECA recommends that we require rate-of-return carriers to estimate the effects of a new service on existing traffic only in cases where the new service is expected to be more than 10 percent of the carrier's total interstate revenues, or 10 percent of the pool's revenues in NECA's case. NECA argues that it is often difficult to project changes in demand, and claims that this requirement serves no purpose except where the new service can be expected to have a substantial impact.[168] Although no one commented on NECA's proposal, we conclude that it would result in substantially reducing the cost support requirements for all or practically all the new services provided by rate-of-return LECs. NECA does not provide adequate justification in its pleadings in this proceeding to permit such a dramatic relaxation in rate-of-return carriers' cost support requirements at this time.

78. USTA recommends treating rates for new services filed by rate-of-return carriers as presumed lawful if those rates do not exceed the rates for the same service offered by a price cap LEC in an adjacent area.[169] Under rate-of-return regulation, a carrier's rates are determined to be just and reasonable on the basis of *that* carrier's costs of providing the service in question. USTA provides no basis for us to conclude that the rates of a price cap carrier in an adjacent area will always be a reasonable surrogate for a given rate-of-return carrier's costs.

79. USTA argues that rate-of-return carriers filing any rate change should include an explanation of the changed matter, the reasons for the filing, the basis of the ratemaking employed and economic information to support the change, including a brief description of the costs for all elements for the most recent 12-month period, and projected costs.[170] USTA's proposed cost support requirements appear to be substantially similar to the requirements currently in place in section 61.38(b)(1), and so we adopt no changes to rate-of-return carriers' cost support requirements at this time.

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[166] SBC Reply at 2.

[167] SBC Reply at 2.

[168] NECA Comments at 5-6.

[169] USTA Comments at 6-7.

[170] USTA Comments at 7.

80. Some commenters claim that the proposed revisions in sections 61.38(g), 61.49(l), and 61.54(c)(3)(ii), to require transmittal numbers on cost support material, are burdensome, and recommend deleting these requirements or permitting carriers more flexibility in complying with them.[171] We have determined that placing transmittal numbers on cost support material can be beneficial to those members of the public who routinely make copies of tariff filings in our Public Reference Room. If the cost support becomes separated from the revised tariff pages, it can be difficult for them to determine which cost support should be associated with which revised tariff pages. We agree, however, that carriers can and should be permitted flexibility with respect to these provisions, and revise sections 61.38(g), 61.49(l), and 61.54(c)(3)(ii) accordingly, as shown in Appendix B.

81. Section 61.54(i)(1) requires carriers making tariff revisions to identify the kind of tariff change being made with specific letter codes, called "symbols" in section 61.54(i)(1).[172] NECA recommends expanding the "T" code to signify any change in tariff text, and eliminating the "C," "D," "N," and "Z" codes.[173] Under NECA's recommendation, carriers would still be required to use a code of some kind to identify tariff revisions. NECA's proposal would make it more difficult for interested parties to determine how a carrier is revising its tariff, and increase the burdens placed on interested parties, with only a negligible reduction in the burden to the carrier. We therefore decide against NECA's recommendation.

82. AT&T pointed out an inconsistency in the symbol requirements applicable to nondominant carriers.[174] Redesignated Section 61.22(d) states that nondominant carriers are not subject to any of the requirements of Section 61.54, including the symbol requirements. On the other hand, section 61.71 requires all carriers, including nondominant carriers, to use the "S" code for reissued matter in effect for less than 30 days. We conclude that this inconsistency can best be resolved by eliminating section 61.71. With respect to dominant carriers, section 61.71 is largely duplicative of section 61.54(i)(3), and we find that it would simplify Part 61 to consolidate all these requirements in section 61.54(i)(3). With respect to nondominant carriers, we know of no reason why this last symbol requirement remains necessary in the public interest, and so this biennial review proceeding provides a good opportunity to remove this requirement.

83. Currently, the Commissions's Rules permit carriers to file tariff supplements only to suspend or cancel a tariff publication. The *Notice* proposed extending the use of supplements to defer

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[171] US West Comments, Att. A. at 8; Bell Atlantic Comments, Att. at 8; Sprint Comments, Att. A at 8; Frontier Comments at 3; GTE Comments at 10-11.

[172] 47 C.F.R. § 61.54(i)(1).

[173] NECA Comments at 4-5. The T code currently signifies a change in text but no change in rate or regulation. The C code signifies a changed regulation. The D code signifies a discontinued rate or regulation. The N code signifies a new rate or regulation. The Z code signifies a correction. *See* 47 C.F.R. § 61.54(i)(1).

[174] *AT&T Ex Parte Statement.*

the effective date of pending tariff revisions.[175] GTE concurs with the proposed revision, but recommends that we add language to make clear that special permission is not needed for a voluntary deferral.[176] We agree that special permission is not needed for a voluntary deferral, and that the rule would be clearer if this were stated explicitly.

84. Sections 69.3(e)(6), (9) and 69.3(i) require carriers planning to enter or leave the NECA pools to notify NECA in advance. NECA requests that we clarify that, in cases where the Commission grants a carrier a waiver to permit it to enter or exit the NECA pools on less notice than required by the rules, NECA does not need to obtain a waiver of those rules as well.[177] We see no way to interpret the rules cited by NECA to require NECA to file a waiver request in the situation NECA describes. Therefore, pursuant to section 1.2 of our rules, we clarify that NECA is not required to seek such a waiver in those circumstances.

XII. RECONSIDERATION OF ELECTRONIC FILING REQUIREMENTS IN THE *STREAMLINED TARIFF FILING ORDER*

85. In 1997, the Commission adopted the *Streamlined Tariff Filing Order* to implement the streamlined tariff filing provisions of the 1996 Act.[178] That Order also delegated authority to the Common Carrier Bureau (Bureau) to establish an electronic tariff filing program.[179] Under that delegated authority, the Bureau adopted rules establishing the electronic tariff filing program in May 1998.[180] Petitions for reconsideration of the *Streamlined Tariff Filing Order* are pending, and we will address the issues raised in those petitions in a future Order.

86. On our own motion,[181] we revise one of the electronic tariff filing rules, section 61.17(c), governing electronic applications for special permission. Section 61.17(c) cross-references section 61.153(c), which requires carriers seeking special permission electronically also to file a paper copy

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[175] *Notice*, 14 FCC Rcd at 517-18 (proposed section 61.86). (Currently, this rule is found at section 61.56. The Commission proposed redesignating this rule so that it appears in the new Subpart F of Part 61, for rules applicable to all carriers.)

[176] GTE Comments at 11.

[177] NECA Comments at 6.

[178] *Streamlined Tariff Filing Order*, 12 FCC Rcd 2170.

[179] *Streamlined Tariff Filing Order*, 12 FCC Rcd at 2195 (paras. 47-48).

[180] *ETFS Order*, 13 FCC Rcd 12335.

[181] *See* 47 C.F.R. § 1.108. The filing of a petition for reconsideration tolls the thirty-day period section 1.108 provides for *sua sponte* reconsideration. *See Central Fla. Enterprises., Inc. v. FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979), *cert. denied*, 460 U.S. 1084 (1983); *Radio Americana, Inc.*, 44 F.C.C. 2506, 2510 (1961).

with the Secretary of the Federal Communications Commission.[182] We can streamline the special permission process further if we eliminate this requirement for carriers seeking special permission electronically. Accordingly, we revise section 61.17(c) as set forth in Appendix B of this Order to no longer require carriers seeking special permission electronically also to file a paper copy with the Commission's Secretary.

XIII. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

87. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Pub. L. 104-13, and does not contain new and/or modified information collections subject to Office of Management and Budget review.

B. Final Regulatory Flexibility Analysis

88. As required by the Regulatory Flexibility Act (RFA),[183] the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Notice* in this docket.[184] The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. The Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact this order might have on small entities, in conformance with the RFA.[185]

1. Need for and Objectives of Rules

89. 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.[186] Our objective is 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.[187]

2. Summary of Significant Issues Raised by the Public Comments to the IRFA

[182] 47 C.F.R. § 61.153(c).

[183] *See* 5 U.S.C. § 603. The Contract With America Advancement Act of 1996, Pub. L. No. 104- 121, 110 Stat. 847 (1996) (CWAAA), amended the RFA. Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[184] *See Notice*, 14 FCC Rcd at 498-99 (paras 23-32).

[185] *See* 5 U.S.C. § 604.

[186] *Notice*, 14 FCC Rcd at 498 (para. 24).

[187] *Notice*, 14 FCC Rcd at 498 (para. 25).

90. Only one party, NTCA, submitted comments directly in response to the IRFA. NTCA claims that the definition of "small business" in the Commission's IRFA does not comply with the RFA.[188] NTCA claims further that the Commission's IRFA resulted in inadequate consideration of whether the tariffs of small incumbent LECs should be subject to a different minimum effective period than the tariffs of large incumbent LECs.[189] We find that NTCA is mistaken on both its assertions.

91. The Commission has determined consistently that incumbent LECs are not "small entities" within the meaning of the RFA, and NTCA cites no legal authority that causes us to question this conclusion. Furthermore, regardless of the correct interpretation of the term "small entities" in this context, we included small dominant incumbent LECs in our IRFA.[190] Therefore, NTCA has no basis to assert that the IRFA was inadequate. Second, as explained in section IV.C. of this Order, all dominant LECs, including small dominant LECs, have market power by definition. As a result, these carriers do not face sufficient competition to enable their customers to switch to another carrier if they believe that they revise their rates too frequently. In addition, excessive rate churn could make it difficult or impossible for customers to determine the rates in effect on any given day, which in turn would make it difficult for a customer to file a complaint against a carrier. NTCA provides no explanation as to why rate churn caused by a small LEC affects customers any differently than rate churn caused by a large LEC.

92. Although no party other than NTCA commented directly in response to the IRFA, we have kept small entities in mind as we considered the more general comments filed in this proceeding, as discussed below.

3. Description and Estimate of Number of Small Entities to Which the Rules Will Apply

93. In the *Notice*, the Commission stated that the proposals under consideration, 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.[191] 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.[192] It seems certain that some of those 3497 telephone

[188] NTCA Comments at 2-4.

[189] NTCA Comments at 4.

[190] *Notice*, 14 FCC Rcd at 499 (para. 29).

[191] *Notice*, 14 FCC Rcd at 499 (para. 28), *citing* 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) (*1992 Census*).

[192] *Notice*, 14 FCC Rcd at 499 (para. 28).

service firms may not qualify as small entities or small incumbent LECs because they are not independently owned or operated.[193]

94. In the *Notice*, Commission also explained that dominant carriers are not small businesses for IRFA purposes because they are dominant in their field of operation.[194] 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[195] that incumbent LECs are not subject to regulatory flexibility analysis requirements because they are not small businesses.[196] In order to remove any possible issue of Regulatory Flexibility Act compliance, however, the *Notice* tentatively concluded that dominant carriers should be included in this IRFA.[197] NTCA also argues that small dominant carriers should be included in the Regulatory Flexibility Act analysis.[198] No one else commented on this issue.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

95. In this Order, we adopt several revisions to Part 61 that reduce the regulatory burdens placed on all telecommunications common carriers, including common carriers. The remaining rule revisions generally re-state existing requirements in clearer terms. Consequently, we project that this Order imposes no significant new reporting, recordkeeping, or other compliance requirements on small carriers.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

96. In this proceeding, we have taken several steps to minimize the economic impact of our existing Part 61 rules on all carriers, including small carriers. For example, we have substantially relaxed our posting requirements, we have eliminated our minimum notice requirements for nondominant carriers, and we have expanded carriers' ability to submit tariff filing fees electronically. We also decided against requiring carriers to separate their domestic and international tariffs when the record revealed that such a requirement would have been burdensome. Finally, we limited the Internet posting requirement to incumbent LECs who choose to establish web sites.

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[193] *Notice*, 14 FCC Rcd at 499 (para. 28); *citing* 15 U.S.C. § 632(a)(1).

[194] *Notice*, 14 FCC Rcd at 499 (para. 29).

[195] *See* 5 U.S.C. § 605(b).

[196] *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).

[197] *Notice*, 14 FCC Rcd at 499 (para. 29).

[198] NTCA Comments at 3.

6. Report to Congress

97. The Commission will send a copy of this order, including the FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[199] A summary of this Report and Order and this FRFA will also be published in the Federal Register,[200] and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

XIV. ORDERING CLAUSES

98. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 C.F.R. §§ 154(i), 154(j), 201-205, 303(r), 403, and section 553 of Title 5, United States Code, that revisions to Parts 61, 63, and 69 of the Commission's rules, 47 C.F.R. Parts 61, 63, 69, ARE ADOPTED as set forth in Appendix B.

99. IT IS FURTHER ORDERED, pursuant to sections 4(i), and 201-205 of the Communications Act, 47 U.S.C. §§ 154(i), and 201-205, and section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, that revisions to § 61.17(c) ARE ADOPTED as set forth in Appendix B.

100. IT IS FURTHER ORDERED that the provision of this Order will be effective 30 days after a summary of this Order is published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

[199] *See* 5 U.S.C. § 801(a)(1)(A).

[200] *See* 5 U.S.C. § 604(b).