

WC 10-46

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

In the Matter of _____)
)
)
United States Telecom Association Petition for _____)
Waiver of Rule 61.49(k)'s Non-Exogenous Cost _____)
Data Requirements for the Short Form Tariff _____)
Review Plan and for Waiver of Rule 61.49(k)'s _____)
Deadline for Filing the Exogenous Cost Data _____)
Requirements of the Short Form Tariff Review _____)
Plan _____)
_____)

FILED/ACCEPTED

FEB - 4 2010

Federal Communications Commission
Office of the Secretary

**PETITION OF THE UNITED STATES TELECOM ASSOCIATION FOR
WAIVER OF RULE 61.49(K)'S NON-EXOGENOUS COST DATA
REQUIREMENTS FOR THE SHORT FORM TARIFF REVIEW PLAN AND
FOR WAIVER OF RULE 61.49(K)'S DEADLINE FOR FILING THE
EXOGENOUS COST DATA REQUIREMENTS OF THE SHORT FORM TARIFF
REVIEW PLAN**

The United States Telecom Association (USTelecom)¹ files this petition on behalf of its price cap members that are required under 47 C.F.R. 61.49(k) to submit Tariff Review Plans (TRP) via a Short Form TRP to the Commission. This petition seeks a permanent waiver of Rule 61.49(k)'s non-exogenous cost data filing requirements for the Short Form TRP and also seeks a permanent waiver of Rule 61.49(k)'s deadline for filing the exogenous cost data requirements of the Short Form TRP.² As explained fully

¹ The United States Telecom Association is the premier broadband trade association representing service providers and suppliers for the telecom industry. USTelecom represents companies offering a wide range of services across communications platforms, including voice, video and data over local exchange, long distance, wireless, Internet and cable services.

² For the 2009 annual access charge filing, the Short Form TRP consisted of a partly filled out IND-1 Form (which displays price cap indices, actual price indices, service band indices and upper SBI limits), a partly filled out PCI-1 form (which shows the calculation of the Price Cap Indices), a partly filled out TGT-1 Form and where applicable the TGT-2 Form (which show the calculations necessary to arrive at an ATS target), and the completely filled out EXG-I Form (which provides exogenous cost information) and exogenous cost working papers. See *Material to be Filed In Support of 2009 Annual Access Charge Tariff Filings*, Tariff Review Plans, 24 FCC Rcd 3668, ¶ 5 (2009) ("2009 TRP Requirements").

below, good cause exists for waiving the non-exogenous cost requirements of the Short Form TRP and the deadline for filing the exogenous data requirements of the Short Form TRP. In addition, special circumstances warrant the waiver of these requirements, and waiving these requirements is in the public interest and would not undermine the policy objectives of these requirements.

In filing this petition, USTelecom requests that all price cap LECs receive a waiver from the requirement that they submit PCI-1 and IND-1 forms as part of the Short Form TRP. It also requests that price cap LECs that have reached their Average Traffic Sensitive (ATS) rate target receive a waiver from the requirement that they submit the TGT-1 and TGT-2 Forms as part of the Short Form TRP. However, those carriers would continue to file the EXG-1 Form and their exogenous cost work papers. Price cap LECs that have not reached their ATS rate targets would continue to file the TGT-1, TGT-2 and EXG-1 Forms and exogenous cost work papers. This petition also requests that the deadline for filing the exogenous cost data requirements, and where applicable the TGT-1 and TGT-2 Forms, of the Short Form TRP be moved to May 17 to give price cap carriers additional time to prepare their exogenous cost data and any demand data underlying the development of the TGT-1 and TGT-2 Forms. Waiving the non-exogenous cost data requirements of the Short Form TRP and the deadline for filing exogenous cost data is in the public interest and would not interfere with the ability of the Commission or other interested parties to review annual access charge tariff filings.

The Commission has discretion to waive its rules “for good cause shown.” 47 C.F.R. § 1.3. Generally, the waiver of a Commission rule is appropriate “when granting such relief would not undermine the rule’s policy objective and would better serve the

public interest than requiring strict compliance.”³ The D.C. Circuit has further explained that waiver of the Commission’s rules “is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”⁴ In evaluating whether to exercise its discretion under Rule 1.3, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵ The Commission has previously granted waiver petitions filed by industry groups where these criteria have been satisfied.⁶

The waiver criteria are satisfied here, and the Commission should, therefore, grant this petition. Waiving the non-exogenous cost data requirements of the Short Form TRP is in the public interest because it would allow price cap carriers to prepare more efficiently their annual access charge filings and would also facilitate the ability of the Commission and interested parties to review annual access charge filings. In addition, special circumstances warrant the waiver of the non-exogenous cost data requirements of the Short Form TRP. Currently, as part of the Short Form TRP requirements, price cap carriers file partially filled out versions of the IND-1, PCI-1 and TGT-1 and TGT-2

³ See *TerreStar Networks Inc.; Application for Blanket Authority to Operate Ancillary Terrestrial Component Base Stations and Dual-Mode MSS-ATC Mobile Terminals in the 2 GHz MSS Bands*, Order and Authorization, File Nos. SES-LIC-20061206-02100, et al., DA 10-60, ¶ 22 (Jan. 13, 2010).

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ See *Universal Service Contribution Methodology Emergency Request for Review of Universal Administrator by Level 3 Communications, LLC, et al.*, Order, WC Docket No. 06-122, DA 10-187, fn. 32 (Jan. 29, 2010).

⁶ See, e.g., *IP-Enabled Services; Implementation of Sections 225 and 251(a)(2) of the Communications Act of 1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Order and Public Notice Seeking Comment, 22 FCC Rcd. 18319, ¶ 11 (2007) (granting in part petitions filed by USTelecom and the VON Coalition to waive the 711 call handling requirements for interconnected VoIP providers).

Forms.⁷ Because price cap carriers are only required to partially fill out these forms, these forms do not meaningfully assist the Commission or other interested parties with reviewing annual price cap filings. In addition, these forms contain information that price cap carriers provided to the Commission in the previous price cap filing, and price cap carriers are required to file complete versions of these forms as part of their Long Form TRP.

For example, the IND-1 Form requires price cap carriers to provide the prior tariff filing's price cap indices, actual price cap indices, service band indices and upper service band indices.⁸ This information would have been previously provided to the Commission in the tariff filing that changed the price cap indexes prior to the annual access tariff filing and the new price cap index information for the current year is later provided in the Long Form TRP. The TGT-1 and TGT-2 Forms likewise contain duplicative information.⁹ Most price cap carriers have satisfied their ATS rate level targets. There is little practical utility for requiring carriers that have satisfied this requirement to continue filing forms concerning their ATS rate level targets. The price cap index information for the previous year was filed in the prior year's price cap filing. Given that IND-1, TGT-1 and TGT-2 Forms are later submitted in full as part of the Long Form TRP, these requirements are essentially duplicative, and waiving the requirement that price cap carriers submit these forms will not interfere with the ability of the Commission or other interested parties to review annual access charge filings. In addition, price cap carriers are only required to partially complete the PCI-1 Form, which shows the calculation of the price cap indexes

⁷ See 2009 TRP Requirements ¶ 5.

⁸ See *id.* ¶ 10.

⁹ See *id.* ¶ 11.

for the price cap baskets.¹⁰ The information provided in that form as part of the Short Form TRP is tentative, and is later finalized in the Long Form TRP submission in June. Given that the Short Form TRP's main purpose is to make sure that actual price changes are in compliance with the price cap index, the partial information provided on the PCI-1 Form as part of the Short Form TRP is meaningless.

The waiver criteria are also satisfied with respect to the deadline for filing the exogenous cost data requirements of the Short Form TRP. Waiving this deadline until May 17 would serve the public interest because it would give price cap carriers additional time to prepare the exogenous cost data requirements of the Short Form TRP. In addition, special circumstances are present that warrant waiving this deadline until May 17. To satisfy the exogenous cost data requirements of the Short Form TRP, price cap carriers must collect and review substantial amounts of demand data in a fairly short time period. Some companies have as many as eighty thousand demand elements, and the data for some demand elements is not available until late March. Granting carriers an additional sixteen days to file their exogenous cost data requirements for the Short Form TRP would give carriers additional time to review, verify and analyze their demand and exogenous cost data, reducing the risk of error.

Moving this deadline to May 17 would not interfere with the ability of the Commission to review the development of exogenous cost data submitted as part of the Short Form TRP before the July 1 effective date for annual access charge filings. Indeed, in recent years, the Commission has traditionally waived Rule 61.49(k)'s requirement that Short Form TRPs be filed 90 days before July 1 and has instead allowed price cap

¹⁰ See *id.* ¶ 13.

carriers to submit the Short Form TRP on May 1.¹¹ If this deadline were moved to May 17, and it should be, the Commission and other interested parties would still receive the same fifteen days they have today to review and comment on exogenous cost data, and where applicable, the TGT-1 and TGT-2 Forms.

CONCLUSION

For the foregoing reasons, the Commission should permanently waive the non-exogenous cost data requirements of the Short Form TRP (TGT-1, TGT-2, PCI-1 and IND-1 Forms) for price cap carriers that have met their ATS rate level target, and should also permanently waive the IND-1 Form and PCI-1 Form requirements for price cap carriers that have not met their ATS rate level target. The Commission should also permanently waive the deadline for filing the exogenous cost data requirements for the Short Form TRP (and where applicable the TGT-1 and TGT-2 Forms) and permit price cap LECs to file this information on May 17. As explained above, good cause exists and special circumstances warrant waiving these requirements.

Respectfully Submitted,



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¹¹ In 2009, the deadline for submitting the Short Form TRP was May 1, 2009, which was 45 days prior to the deadline for 15-day annual access tariff filings (or 2 months prior to the July 1 effective date of the annual access tariff). See 2009 TRP Requirements ¶ 4.