

WC 12-22

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

FILED/ACCEPTED

JAN 24 2012

Federal Communications Commission  
Office of the Secretary

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

**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) files this petition on behalf of its price cap members who 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 waiver of Rule 61.49(k)'s non-exogenous cost data filing requirements for the Short Form TRP and also seeks a waiver of Rule 61.49(k)'s deadline for filing the exogenous cost data requirements of the Short Form TRP. As explained fully 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. Similar petitions were filed in 2010 and 2011. There were no

objections to or comments filed on those petitions, and the Commission granted each for one year. Since the same circumstances that motivated the 2010 and 2011 petitions continue to be present, this petition should be similarly granted and the waiver extended for another year.

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, 2012 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.” 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." 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. The Commission has previously granted waiver petitions filed by industry groups where these criteria have been satisfied.

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. 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 Forms. 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. This information would have been previously provided to the Commission in the tariff filing that changed the price cap indices 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. 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 indices for the price cap baskets. 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 are 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.

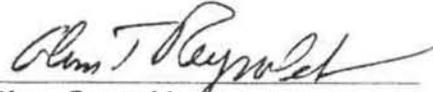
Moving this deadline to May 17 would not interfere with the ability of the Commission to review the development of exogenous cost data submitted as part of the Short Form TRP before the July 1 effective date for annual access charge filings. Indeed, in recent years, the Commission has traditionally waived Rule 61.49(k)'s requirement that Short Form TRPs be filed 90 days before July 1 and has instead allowed price cap carriers to submit the Short Form TRP on May 1. In 2010 and 2011, the deadline was moved to May 17 without substantive issue. If this deadline is moved to May 17 again this year, 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 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 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 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, as they were waived in 2010 and 2011.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Glenn Reynolds", written over a horizontal line.

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