

Section 19-6-402 Definitions, except (3), (4), (8), (9), (11), (14), (15), (20), (23), and (26).

Section 19-6-402.5 Retroactive effect.

Section 19-6-403 Powers and duties of board, except (1)(a) (i) and (iv).

Section 19-6-404

Powers and duties of executive secretary, except (2)(c), (2)(f), (2)(j), and (2)(m).

Section 19-6-407 Underground storage tank registration—Change of ownership or operation—Civil penalty, except (2) and (3).

Section 19-6-413 Tank tightness test—Actions required after testing.

Section 19-6-420 Releases—Abatement actions—Corrective actions, except (1) through (3)(b), (4)(a), (5) (b) and (c), (6), and (9)(b).

(b) The regulatory provisions include:

(1) Administrative Rules of the State of Utah, Utah Administrative Code (1993):

Section R311-200-1 Definitions, except (2), (5), (8), (10), (13), (20), (29), (42) through (49), (53), and (54).

Section R311-202-1 Incorporation by Reference.

Section R311-203-1 Definitions.

Section R311-203-3 New Installations.

Section R311-203-4 Notification.

Section R311-204-1 Definitions

Section R311-204-2 Underground Storage Tank Closure Plan.

Section R311-204-3 Disposal.

Section R311-204-4 Subsequent Closure Notice.

Section R311-205-1 Definitions.

Section R311-205-2 Site Assessment Protocol.

Section R311-206-1 Definitions.

Section R311-206-2 Requirements for Issuance of Certificates, except (b) and (c).

Section R311-206-3 Application for Certificates.

Section R311-206-5 Revocation and Reissuance of Certificates, except (b), (c), (d), and the words "compliance or" in R311-206-5(a).

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 61

[CC Docket No. 94-1; FCC 95-394]

#### Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** On October 20, 1994, the Commission adopted a Memorandum Opinion and Order concluding that the basic video dialtone offerings of local exchange carriers (LECs) would be subject to the existing price cap rules. In

that the order, the Commission stated it would initiate a rulemaking proceeding on whether to create a separate price cap basket for LEC video dialtone service. On February 7, 1995 the Commission issued a notice of proposed rulemaking in this docket seeking comment on whether to establish a separate price cap basket for LEC video dialtone service. The Report and Order adopted today establishes a separate price cap basket for video dialtone. **EFFECTIVE DATE:** February 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Claudia Pabo, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-1595 or Cheryl Lynn Schneider, Tariff Division, Common Carrier Bureau, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order adopted September 14, 1995 and released September 21, 1995. The full text of the Commission's decision is available for public inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037.

#### Regulatory Flexibility Analysis

We determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to the rule amendments adopted in this Order because they do not have a significant economic impact on a substantial number of small entities, as defined by section 301(3) of the Regulatory Flexibility Act. Carriers subject to price cap regulation for local exchange access services affected by the rule amendments adopted in this Order generally are large corporations or affiliates of such corporations.

#### Paperwork Reduction Analysis

Public burden for the collection of information is estimated to average 203 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and competing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project (3060-0298), Washington, DC 20554 and to the Office

of Management and Budget, Paperwork Reduction Project (3060-0298), Washington, DC 20503.

#### Summary of Report and Order

In this Order, the Commission adopts new rules regarding the price cap treatment of video dialtone common carrier service provided by local exchange carriers (LECs). The Order amends the Commission's rules to require that basic video dialtone offerings of price cap LECs must be included in a new, separate price cap basket. The video dialtone basket may not include any other "broadband" services. The Order also establishes an initial productivity or "X-Factor" for the video dialtone basket of zero.

The initial rates to be included in the video dialtone basket will be based upon the price cap new services test, as applied to video dialtone services. Consistent with this approach, the Commission will incorporate video dialtone rates into the new price cap basket in the first annual price cap tariff filing following the calendar year in which the new service is first offered, which may occur anywhere from six to eighteen months from the introduction of service. Moreover, as it has done with other price cap baskets, the Commission will assign an initial value of 100 to the PCI and the actual price index (API) for video dialtone service prior to adjustment for inflation and productivity, corresponding to the rates in effect just prior to the effective date of the annual filing in which rates for video dialtone service are included in the new basket.

The Commission decided not to divide the video dialtone basket into separate subcategories at this time. Video dialtone is a nascent service for which LECs have just begun to file tariffs, and the Commission expects that the LECs will employ a variety of architectures to deliver their offerings which could lead to varying rate structures for video dialtone services. Thus, it would be difficult to create a stable set of service categories within the new video dialtone basket at this time.

The Order imposes a lower banding limit on the video dialtone basket in addition to the protection provided by the new services test. Accordingly, LEC tariff filings reducing prices in excess of 15 percent per year relative to the PCI will not carry a presumption of lawfulness. Consistent with existing procedures, filings to implement rates below this level must be made on 45 days' notice, and be accompanied by a showing that the rates exceed average variable costs consistent with the cost

support requirements specified in § 61.49(d) of the Commission's rules.

The Commission also decided to exclude video dialtone costs and revenues from the calculation of a LEC's earnings from other regulated interstate services for purposes of sharing and the low-end adjustment once video dialtone costs are no longer *de minimis*. Under this plan, price cap LECs will be allowed to include video dialtone costs and revenues with those from other baskets for purposes of sharing and low-end adjustment calculations so long as their video dialtone costs are below a specified threshold. Once a LEC's costs rise above a *de minimis* level, however, the Commission will require the LEC to exclude video dialtone costs and revenues from its interstate rate of return calculations for sharing and the low-end adjustment.

**Ordering Clause**

Accordingly, it is ordered that, pursuant to authority contained in sections 4(i), 4(j), 201-205, 215, 218, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 215, 218, 303(r), 403, and section 553 of Title 5, United States Code, part 61 of the Commission's rules, 47 CFR part 61, is amended as set forth below effective February 5, 1996.

**List of Subjects in 47 CFR Part 61**

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission, William F. Caton, Acting Secretary.

**Rule changes**

Part 61 of Title 47 of the CFR is amended as follows:

**PART 61—TARIFFS**

1. The authority citation for Part 61 continues to read as follows:

Authority: Secs. 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 303(r), 403, unless otherwise noted.

2. Section 61.42 is amended by adding a new paragraph (d)(5) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(5) To the extent that a local exchange carrier specified in §§ 61.41(a) (2) or (3) offers interstate video dialtone services, a basket for basic video dialtone services as described in § 63.54 of this chapter.

\* \* \* \* \*

3. Section 61.45 is amended by revising paragraphs (b) introductory text and (h) and adding new paragraph (b)(3) to read follows:

**§ 61.45 Adjustments to the PCI for Local Exchange Carriers.**

\* \* \* \* \*

(b) Adjustments to local exchange carrier PCIs for the baskets designated in §§ 61.42(d) (2), (3), (4), and (5), shall be made pursuant to the formula set forth in §§ 61.44 (b), and as further explained in §§ 61.44 (e), (f), (g), and (h).

\* \* \* \* \*

(3) Notwithstanding the value of X defined in § 61.44(b), the value of X applicable to the basket specified in § 61.42(d)(5) shall be 0%.

\* \* \* \* \*

(h) To the extent a local exchange carrier elects the higher productivity factor, the election must be made in all baskets, except the video dialtone services basket, as designated in § 61.42(d)(5).

4. Section 61.47 is amended by adding a new paragraph (g)(6) to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(6) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3 shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate a lower pricing band for the basket described in § 61.42(d)(5). The annual pricing flexibility for this basket, as reflected in the API, shall be limited to an annual decrease of fifteen percent, relative to the percentage change in the PCI for that basket, measured from the last day of the preceding tariff year.

\* \* \* \* \*

6. Section 61.48 is amended by adding paragraph (j) to read as follows:

**§ 61.48 Transition rules for price cap formula calculations.**

\* \* \* \* \*

(j) *Video Dialtone Services.* For local exchange carriers subject to price cap regulation, the video dialtone services basket, as designated in § 61.42(d)(5), shall be established with an initial PCI and API level of 100 in the first annual price cap tariff filing following competition of the base period in which the initial video dialtone service was introduced. The initial value of 100 for the PCI and API for video dialtone service prior to adjustment of inflation and productivity shall correspond to the rates in effect just prior to the effective date of the annual filing in which rates for video dialtone service are initially included in the video dialtone basket.