

$$h = \frac{\text{CCL MOU}_1}{\text{CCL MOU}_0} - 1$$

And where:

*CCL Rev Req* = carrier common line settlement for the most recent 24-month period;

*CCL MOU<sub>b</sub>* = carrier common line minutes of use for the most recent 24-month period;

*CCL MOU<sub>i</sub>* = carrier common line minutes of use for the most recent 12-month period; and

*CCL MOU<sub>o</sub>* = carrier common line minutes of use for the 12-month period preceding the most recent 12-month period.

(5) For End User Common Line charges included in a tariff pursuant to this Section, the local exchange carrier must provide supporting information for the two-year historical period with its letter of transmittal in accordance with § 61.38.

(c) *Maximum allowable rate of return.* Local exchange carriers filing tariffs under this section are not required to comply with §§ 65.700 through 65.701, inclusive, of the Commission's Rules, except with respect to periods during which tariffs were not subject to this section. The Commission may require any carrier to submit such information if it deems it necessary to monitor the carrier's earnings. However, rates must be calculated based on the local exchange carrier's prescribed rate of return applicable to the period during which the rates are effective.

(d) Rates for a new service that is the same as that offered by a price cap regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rates established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap regulated local exchange carrier; and

(2) Data to establish compliance with this subsection that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange car-

rier. Compliance may be shown through submission of applicable tariff pages of the adjacent carrier; a showing that the serving areas are adjacent; any necessary explanations and work sheets.

(e) Average schedule companies filing pursuant to this section shall retain their status as average schedule companies.

[52 FR 26682, July 16, 1987, as amended at 53 FR 36289, Sept. 19, 1988; 55 FR 42382, Oct. 19, 1990; 58 FR 36147, July 6, 1993; 62 FR 31004, June 6, 1997]

#### § 61.40 Private line rate structure guidelines.

(a) The Commission uses a variety of tools to determine whether a carrier's private line tariffs are just, reasonable, and nondiscriminatory. The carrier's burden of cost justification can be reduced when its private line rate structures comply with the following five guidelines.

(1) Rate structures for the same or comparable services should be integrated;

(2) Rate structures for the same or comparable services should be consistent with one another;

(3) Rate elements should be selected to reflect market demand, pricing convenience for the carrier and customers, and cost characteristics; a rate element which appears separately in one rate structure should appear separately in all other rate structures;

(4) Rate elements should be consistently defined with respect to underlying service functions and should be consistently employed through all rate structures; and

(5) Rate structures should be simple and easy to understand.

(b) The guidelines do not preclude a carrier, in a given case when a private line tariff does not comply with these guidelines, from justifying its departure from the guidelines and showing that its tariff is just, reasonable, and nondiscriminatory.

#### § 61.41 Price cap requirements generally.

(a) Sections 61.42 through 61.49 shall apply as follows:

(1) To dominant interexchange carriers, as specified by Commission order;

(2) To such local exchange carriers as specified by Commission order, and to all local exchange carriers, other than average schedule companies, that are affiliated with such carriers; and

(3) On an elective basis, to local exchange carriers, other than those specified in paragraph (a)(2) of this section, that are neither participants in any Association tariff, nor affiliated with any such participants, except that affiliation with average schedule companies shall not bar a carrier from electing price cap regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files a price cap tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file price cap tariffs in all their study areas.

(c) The following rules apply to telephone companies subject to price cap regulation, as that term is defined in § 61.3(w), which are involved in mergers, acquisitions, or similar transactions.

(1) Any telephone company subject to price cap regulation that is a party to a merger, acquisition, or similar transaction shall continue to be subject to price cap regulation notwithstanding such transaction.

(2) Where a telephone company subject to price cap regulation acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company that is not subject to price cap regulation, the latter telephone company shall become subject to price cap regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file price cap tariffs to be effective no later than that date in accordance with the applicable provisions of this part 61.

(3) Notwithstanding the provisions of § 61.41(c)(2) above, when a telephone company subject to price cap regulation acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company that qualifies as an 'average schedule' company, the latter company may retain its 'average schedule' status or become sub-

ject to price cap regulation in accordance with § 69.3(i)(3) and the requirements referenced in that section.

(d) Local exchange carriers that become subject to price cap regulation as that term is defined in § 61.3(w) of this chapter shall not be eligible to withdraw from such regulation.

[55 FR 42382, Oct. 19, 1990; 55 FR 50558, Dec. 7, 1990, as amended at 56 FR 55239, Oct. 25, 1991]

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

(a) Each dominant interexchange carrier subject to price cap regulation shall establish three baskets as follows:

- (1) A residential services basket;
- (2) An 800 service basket; and
- (3) A business services basket.

(b)(1) The residential basket shall contain such services as the Commission shall permit or require, including the following service categories:

- (i) Domestic day MTS;
- (ii) Domestic evening MTS;
- (iii) Domestic night/weekend MTS;
- (iv) International MTS;
- (v) Operator and credit card services; and
- (vi) Reach Out America.

(2) The 800 service basket shall contain 800 Directory Assistance.

(3) The business services basket shall contain analog private lines, including analog voice grade private line, unless provided under contract to a government entity, and terrestrial television transmission service.

(c) Dominant interexchange carriers subject to price cap regulations shall exclude the following offerings from their price cap baskets:

- (1) Special construction services relating to services in § 61.42 (b)(1), (b)(2), and (b)(3);
- (2) All other special construction services;
- (3) American Telephone and Telegraph Company Tariff F.C.C. No. 11 services;
- (4) American Telephone and Telegraph Company Tariff F.C.C. No. 12 services;
- (5) American Telephone and Telegraph Company Tariff F.C.C. No. 16 services;
- (6) Services subject to below-the-line accounting;