

United States Code Annotated [Currentness](#)

Title 47. Telegraphs, Telephones, and Radiotelegraphs

Chapter 5. Wire or Radio Communication ([Refs & Annos](#))

▣ [Subchapter II. Common Carriers](#) ([Refs & Annos](#))

▣ [Part I. Common Carrier Regulation](#)

➔ **§ 204. Hearings on new charges; suspension pending hearing; refunds; duration of hearing; appeal of order concluding hearing**

(a)(1) Whenever there is filed with the Commission any new or revised charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof; and pending such hearing and the decision thereon the Commission, upon delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such charge, classification, regulation, or practice, in whole or in part but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearing the Commission may make such order with reference thereto as would be proper in a proceeding initiated after such charge, classification, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of the suspension, the proposed new or revised charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed charge for a new service or a revised charge, the Commission may by order require the interested carrier or carriers to keep accurate account of all amounts received by reason of such charge for a new service or revised charge, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such charge for a new service or revised charges as by its decision shall be found not justified. At any hearing involving a new or revised charge, or a proposed new or revised charge, the burden of proof to show that the new or revised charge, or proposed charge, is just and reasonable shall be upon the carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

(2)(A) Except as provided in subparagraph (B), the Commission shall, with respect to any hearing under this section, issue an order concluding such hearing within 5 months after the date that the charge, classification, regulation, or practice subject to the hearing becomes effective.

(B) The Commission shall, with respect to any such hearing initiated prior to November 3, 1988, issue an order concluding the hearing not later than 12 months after November 3,

1988.

(C) Any order concluding a hearing under this section shall be a final order and may be appealed under [section 402\(a\)](#) of this title.

(3) A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as is appropriate.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commission may allow part of a charge, classification, regulation, or practice to go into effect, based upon a written showing by the carrier or carriers affected, and an opportunity for written comment thereon by affected persons, that such partial authorization is just, fair, and reasonable. Additionally, or in combination with a partial authorization, the Commission, upon a similar showing, may allow all or part of a charge, classification, regulation, or practice to go into effect on a temporary basis pending further order of the Commission. Authorizations of temporary new or increased charges may include an accounting order of the type provided for in subsection (a) of this section.

CREDIT(S)

(June 19, 1934, c. 652, Title II, § 204, 48 Stat. 1071; Aug. 4, 1976, [Pub.L. 94-376, § 2, 90 Stat. 1080](#); Nov. 3, 1988, [Pub.L. 100-594, § 8\(b\), 102 Stat. 3023](#); Oct. 27, 1992, [Pub.L. 102-538, Title II, § 203](#), 106 Stat. 3542; Feb. 8, 1996, [Pub.L. 104-104, Title IV, § 402\(b\)\(1\)\(A\)](#), 110 Stat. 129.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1976 Acts. [House Report No. 94-1315](#), see 1976 U.S. Code Cong. and Adm. News, p. 1926.

1988 Acts. [Senate Report No. 100-142](#) and Statement by Legislative Leader, see 1988 U.S. Code Cong. and Adm. News, p. 4103.

1996 Acts. [House Report No. 104-204](#) and [House Conference Report No. 104-458](#), see 1996 U.S. Code Cong. and Adm. News, p. 10.

Amendments

1996 Amendments. Subsec. (a)(2)(A). [Pub.L. 104-104, § 402\(b\)\(1\)\(A\)\(i\)](#), substituted "5 months" for "12 months" the first place the latter appeared.

[Pub.L. 104-104, § 402\(b\)\(1\)\(A\)\(ii\)](#), struck out provisions relating to deadlines for concluding hearings raising complex questions of fact.

Subsec. (a)(3). [Pub.L. 104-104, § 402\(b\)\(1\)\(A\)\(iii\)](#), added par. (3).

1992 Amendments. Subsec. (a)(1). [Pub.L. 102-538, Title II, § 203](#), substituted references to revised charges, or new or proposed charges, for references to increased charges, or charges sought to be increased.

1988 Amendments. Subsec. (a). [Pub.L. 100-594](#) designated existing provisions as par. (1) and added par. (2).

1976 Amendments. Subsec. (a). [Pub.L. 94-376](#) designated existing provisions as subsec. (a), and as so designated, substituted "any new or revised charge" for "any new charge", "in whole or in part but not for a longer period than five months" for "but not for a longer period than three months", "after such charge, classification, regulation, or practice had become effective" for "after it had become effective", "the proposed new or revised charge" for "the proposed change of charge", "but in case of a proposed charge for a new service or an increased charge" for "but in case of a proposed increased charge", "by reason of such charge for a new service or increased charge" for "by reason of such increase", "such portion of such charge for a new service or increased charges" for "such portion of such increased charges", "burden of proof to show that the increased charge, or proposed charge" for "burden of proof to show that the increased charge, or proposed increased charge", and struck out "after the organization of the Commission" preceding "the burden of proof".

Subsec. (b). [Pub.L. 94-376](#) added subsec. (b).

Effective and Applicability Provisions

1996 Acts. Section 402(b)(4) of [Pub.L. 104-104](#) provided that: "The amendments made by paragraph (1) of this subsection [amending sections 204 and 208 of this title] shall apply with respect to any charge, classification, regulation, or practice filed on or after one year after the date of enactment of this Act [Feb. 8, 1996]."

Forbearance Authority Not Limited

Section 402(b)(3) of [Pub.L. 104-104](#) provided that: "Nothing in this subsection [amending sections 204 and 208 of this title and enacting provisions set out as notes under sections 204 and 214 of this title] shall be construed to limit the authority of the Commission to waive, modify, or forbear from applying any of the requirements to which

reference is made in paragraph (1) [amending sections 204 and 208 of this title] under any other provision of this Act [Telecommunications Act of 1996, [Pub.L. 104-104](#), Feb. 8, 1996, 110 Stat. 56, for distribution of which see Short Title of 1996 Amendments note set out under section 609 of this title] or other law."

CROSS REFERENCES

Carriers within section, see [47 USCA § 152](#).
Delegation of functions, see [47 USCA § 155](#).
Petition for reconsideration of order concluding hearing under this section, time for grant or denial, see [47 USCA § 405](#).

CODE OF FEDERAL REGULATIONS

Access charges, see [47 CFR § 69.1](#) et seq.
Frequency allocation and radio treaty matters, see [47 CFR § 2.1](#) et seq.
Miscellaneous rules relating to common carriers, see [47 CFR § 64.1](#) et seq.
Radio broadcast services, see [47 CFR § 73.1](#) et seq.

LIBRARY REFERENCES

American Digest System

[Telecommunications](#) ¶302, 306, 332, 411, 448, 461.
Key Number System Topic No. [372](#).

Corpus Juris Secundum

[CJS Telecommunications § 74](#), Federal Law.
[CJS Telecommunications § 81](#), Schedules or Tariffs.
[CJS Telecommunications § 99](#), Administrative Proceedings.
[CJS Telecommunications § 100](#), Administrative Proceedings -- Evidence.
[CJS Telecommunications § 112](#), Refunds in Connection With Ratemaking.

RESEARCH REFERENCES

Forms

[Federal Procedural Forms § 62:143](#), Petition for Reconsideration; Contents -- Request for Hearing.

[Federal Procedural Forms § 62:254](#), Generally.

[Federal Procedural Forms § 62:262](#), Hearings on New or Revised Tariffs -- Initiation and Conduct of Hearing; Burden of Proof.

[Federal Procedural Forms § 62:264](#), Hearings on New or Revised Tariffs -- Suspension of Tariff Pending Hearing; Accounting Order.

[Federal Procedural Forms § 62:341](#), Petition -- for Suspension of Tariff on Ground of Interference With Business of Competitor -- Prohibited Attachment of Competitor's Equipment [47 U.S.C.A. § 204(A); [47 C.F.R. § 1.773\(a\)](#)].

[Federal Procedural Forms § 62:343](#), Order -- by FCC -- Suspending Proposed Tariff Changes Pending Investigation [[47 U.S.C.A. §§ 201\(B\)](#), [202\(A\)](#), 204, [205](#), [403](#); [47 C.F.R. § 1.773](#)].

[Am. Jur. Pl. & Pr. Forms Telecommunications § 81](#), Petition or Application -- to Federal Communications Commission -- by Equipment Manufacturer -- for Suspension of Tariff Interfering With Private Use of Telephone.

[Am. Jur. Pl. & Pr. Forms Telecommunications § 83](#), Petition or Application -- to Federal Communications Commission -- for Discontinuance, Reduction, or Impairment of Service.

[Am. Jur. Pl. & Pr. Forms Telecommunications § 86](#), Order -- by Federal Communications Commission -- Instituting Investigation of Proposed Rate Increase.

Treatises and Practice Aids

[Federal Procedure, Lawyers Edition § 72:161](#), Disposition.

[Federal Procedure, Lawyers Edition § 72:300](#), Request.

[Federal Procedure, Lawyers Edition § 72:306](#), Time for Filing.

[Federal Procedure, Lawyers Edition § 72:310](#), Time for Filing.

[Federal Procedure, Lawyers Edition § 72:313](#), Generally.

[Federal Procedure, Lawyers Edition § 72:314](#), Suspension of Tariff Pending Hearing; Accounting Order.

[Federal Procedure, Lawyers Edition § 72:316](#), Burden of Proof.

[Federal Procedure, Lawyers Edition § 72:317](#), Order Concluding Hearing; Finality and Appeal.

[Federal Procedure, Lawyers Edition § 72:377](#), Proceedings to Challenge Rate Classification or Charges; Burden of Proof.

[Federal Procedure, Lawyers Edition § 72:961](#), Finality of FCC Order.

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[1.](#) Construction

Subsec. (b) of this section was designed to complement rather than to supersede subsection (a) with respect to hearing on new charges and suspension pending hearing; subsection (b) was designed to override prior provision that carrier-initiated tariffs "shall go into effect" temporarily at the end of any suspension period if the Commission has not completed its determination of their lawfulness. [MCI Telecommunications Corp. v. F. C., C.A.D.C.1980, 627 F.2d 322, 200 U.S.App.D.C. 269.](#)

[2.](#) Proceedings within section

Informal conferences held by Commission with representatives of telephone companies as part of its policy of continuing surveillance over interstate rates was not a proceeding concerning lawfulness of new rates within this section nor did Commission determine and prescribe what would be just and reasonable charges for future within meaning of this section and notice and hearing provisions of this section were inapplicable. [Public Utilities Commission of State of Cal. v. U. S., C.A.9 \(Cal.\) 1966, 356 F.2d 236,](#) certiorari denied [87 S.Ct. 35, 385 U.S. 816, 17 L.Ed.2d 54. Telecommunications ¶969](#)

[3.](#) Manner in which hearing authorized

Commission is authorized to hold hearings on investigations into newly filed charges, regulations, and practices either in response to a complaint or on its own motion, and the Colorado Public Utilities Commission is similarly authorized to conduct its investigations. [U. S. v. American Tel. & Tel. Co., D.C.D.C.1980, 498 F.Supp. 353. Telecommunications ¶630](#)

[4.](#) Prior agency approval

A tariff of a communications carrier may be rejected if it is unlawful without prior agency approval and approval has not been obtained; yet the power to require prior agency approval is itself circumscribed, for this section and [sections 202, 203, and 205](#) of this title, like the cognate sections of the Interstate Commerce Act, section 1 et seq. of Title 49, embody a considered legislative judgment that carriers should in general be free to initiate and implement new rates or services over existing communications lines unless and until the Commission, after hearing, determines that such rates or practices are unlawful, subject only to a limited period of suspension set out in the statute. [MCI Telecommunications Corp. v. F. C. C., C.A.D.C.1977, 561 F.2d 365, 182 U.S.App.D.C. 367, certiorari denied 98 S.Ct. 780, 434 U.S. 1040, 54 L.Ed.2d 790, certiorari denied 98 S.Ct. 781, 434 U.S. 1040, 54 L.Ed.2d 790. Telecommunications ¶624](#)

5. Refunds

Federal Communications Commission (FCC) had authority to order local exchange carrier (LEC) to refund money to interexchange carrier (IXC), upon finding that certain aspects of special access tariff were unreasonable, even though FCC did not rule on legality of tariff within time allotted by statute, because time limit did not act as statute of limitations, and FCC was not required to suspend tariffs before it could review them. [Southwestern Bell Telephone Co. v. F.C.C., C.A.8 1998, 138 F.3d 746. Telecommunications ¶870](#)

Federal Communications Commission's application of its legal successor test in awarding refund of overcharges for satellite services to corporation that acquired overcharged corporation in reorganization and then sold assets of overcharged customer to another firm, which in turn transferred assets to subsidiary that claimed right to refund, was not abuse of discretion on theory subsidiary would have used refund for benefit of customers. [World Communications, Inc. v. F.C.C., C.A.D.C.1994, 20 F.3d 472, 305 U.S.App.D.C. 282. Telecommunications ¶1287](#)

Federal Communications Commission (FCC) has no power to retroactively alter filed rates absent compliance with suspension procedures of § 204 of Communications Act, governing suspension pending hearing on new charges; when FCC investigates and remedies unreasonable rate which it has theretofore permitted to become fully effective without suspension order, it acts under [§ 205](#), authorizing prospective prescription of just and reasonable charges, and not under § 204; FCC has no authority under [§ 205](#) to order refunds contemplated only under § 204. [Illinois Bell Telephone Co. v. F.C.C., C.A.D.C.1992, 966 F.2d 1478, 296 U.S.App.D.C. 197, rehearing denied. Telecommunications ¶973](#)

Federal Communications Commission's (FCC's) order requiring local and regional telephone companies to refund overearnings in "special access" category of earning, while precluding them from setting off underearnings against overearnings, was arbitrary and capricious, as companies in long run would earn less than rate of return FCC had deemed adequate and necessary to attract investors. [Ohio Bell Telephone Co. v. F.C.C., C.A.6 1991, 949 F.2d 864. Telecommunications ¶993](#)

Communications Act gave FCC authority to require AT&T and former AT&T operating telephone companies to reduce rates to reimburse customers for earnings enjoyed in excess of prescribed rate of return. [New England Tel. & Tel. Co. v. F.C.C., C.A.D.C.1987, 826 F.2d 1101, 264 U.S.App.D.C. 85](#), certiorari denied [109 S.Ct. 1942, 490 U.S. 1039, 104 L.Ed.2d 413](#). [Telecommunications ¶997\(3\)](#)

Decision of the Commission to use 12.9% rate of return as suitable basis upon which to calculate refunds to customers of microwave common carrier and decision to distribute overcharges collected by carrier according to "refund-pool" plan was supported by substantial evidence. [Las Cruces TV Cable v. F. C. C., C.A.D.C.1981, 645 F.2d 1041, 207 U.S.App.D.C. 116](#). [Telecommunications ¶1228](#)

While there are shortcomings to accounting and refund orders, such provisions represent an accommodation between the utility industry's need for increased revenues and the public's interest in not paying excessive utility rates. [Nader v. F. C. C., C.A.D.C.1975, 520 F.2d 182, 172 U.S.App.D.C. 1](#). [Public Utilities ¶130](#)

6. Supplying of information

Carrier must supply Commission with information necessary for agency to decide whether investigation and suspension of proposed rate increases should be ordered, and this information may be sufficient even though it does not amount to prima facie case. [Associated Press v. F. C. C., C.A.D.C.1971, 448 F.2d 1095, 145 U.S.App.D.C. 172](#). [Telecommunications ¶630](#)

7. Suspension of tariffs

Once the Commission has properly exercised the limits of its suspension power, the courts cannot further enjoin the effectiveness of a tariff filed by a utility. [Nader v. F. C. C., C.A.D.C.1975, 520 F.2d 182, 172 U.S.App.D.C. 1](#). [Telecommunications ¶645](#)

When Commission has suspended tariff for maximum period allowed by statute, court of appeals has no authority to order additional suspension. [Associated Press v. F. C. C., C.A.D.C.1971, 448 F.2d 1095, 145 U.S.App.D.C. 172](#). [Telecommunications ¶645](#)

Private interim agreement between divesting telecommunications company and operating telephone companies as to compensation which local companies would receive for services in period during which access charge tariffs had been suspended by Commission, while inconsistent with divestiture decree by perpetrating partnership relationship between entities, would be permitted by waiving conflicting provisions of decree, where arrangement was for only three months, parties made effort to approximate access tariff mechanism contemplated by decree as closely as possible, and deviation from decree was, in effect, forced upon parties by Commission's failure to act on tariffs which had been timely submitted. [U.S. v. Western Elec. Co., Inc., D.C.D.C.1983, 578 F.Supp. 653](#). [Monopolies ¶28\(7.7\)](#)

8. Necessity of hearing

Authority of the Commission to determine and prescribe lawful rates is not unlimited; it may prescribe a rate only after full opportunity for hearing and after determining that the rate to be prescribed will be just and reasonable. [American Tel. & Tel. Co. v. F. C. C., C.A.2 1973, 487 F.2d 865. Telecommunications ¶694; Telecommunications ¶967; Telecommunications ¶624](#)

Court has no authority to invade province of Commission by ordering it to reject rate without hearing on ground that it is unlawfully high. [Associated Press v. F. C. C., C.A.D.C.1971, 448 F.2d 1095, 145 U.S.App.D.C. 172. Telecommunications ¶645](#)

9. Adjudicatory nature of proceeding

Commission proceeding, resulting in determination that telephone company tariff provision was discriminatory and order requiring that benefits be extended more widely, was adjudicatory, rather than legislative, even though ancillary to investigation of past practice and regulations, and fact that staff member of Commission's common carrier bureau commingled adversary and decisional functions, in that he took adversary position at hearing and then participated in decision making by advising Commission with respect to final decision, did not violate Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, or due process; dual role of staff member, however, was ill-advised. [American Tel. & Tel. Co. v. F. C. C., C.A.2 1971, 449 F.2d 439. Administrative Law And Procedure ¶445; Constitutional Law ¶298\(4\); Telecommunications ¶967](#)

10. Intervention

Commission's order permitting interim rates subject to refund did not constitute initiation of new proceeding that required Commission to allow limited intervenors to participate fully in proceeding to determine rate, where in considering question of possible refunds, Commission merely added ancillary question to be considered. [Wilson & Co. v. U. S., C.A.7 \(Ill.\) 1964, 335 F.2d 788, certiorari denied 85 S.Ct. 1082, 380 U.S. 951, 13 L.Ed.2d 968, certiorari granted 85 S.Ct. 1091, 380 U.S. 950, 13 L.Ed.2d 968, remanded 86 S.Ct. 643, 382 U.S. 454, 15 L.Ed.2d 523. Telecommunications ¶967](#)

Purpose of hearing in Commission's investigation of lawfulness of certain tariffs is not to vindicate private rights, but to advance public interest and whatever intervenor may have to contribute should be heard, even if he is not ultimately aggrieved by final order. [American Communications Ass'n v. U. S., C.A.2 1962, 298 F.2d 648. Telecommunications ¶631](#)

11. Burden of proof

Provision of this section placing the burden on the carrier of proving that the rates or practices being investigated are "just and reasonable" applies only to carrier-initiated rate revisions; until the Commission has determined that a rate is not just and reasonable, its only recourse is to suspend a tariff for up to three months and to impose an accounting

and refund order. [Nader v. F. C. C., C.A.D.C.1975, 520 F.2d 182, 172 U.S.App.D.C. 1. Telecommunications ¶962](#); [Telecommunications ¶968](#)

In proceeding to determine whether charging the press the same for certain telephone and telegraph services as other users would significantly impair widespread dissemination of news information, and, if so, what charges for press should be, this section providing that at any hearing involving charge increase, burden of showing that increase is reasonable shall be upon carrier, was not applicable and petitioners, supplemental newswire services, had burden of proving facts to justify their requested exception. [Copley Press, Inc. v. F. C. C., C.A.D.C.1971, 444 F.2d 984, 144 U.S.App.D.C. 109. Telecommunications ¶694](#); [Telecommunications ¶961](#)

12. Reopening of hearing

Even if the court of appeals concluded that the Commission had somehow violated provisions of this section imposing burden on carrier of proving that the rates and practices being investigated are "just and reasonable," or had otherwise abused its discretion, the Court could only order the Commission to reopen its hearings; the rate increases would remain in effect until the Commission determined whether they were just and reasonable. [Nader v. F. C. C., C.A.D.C.1975, 520 F.2d 182, 172 U.S.App.D.C. 1. Telecommunications ¶988](#)

13. Judicial review

Decision by Federal Communications Commission not to suspend and investigate rates under Communications Act section [47 U.S.C.A. § 204] is unreviewable, in part because anyone may still complain to the Commission under section 208 of the Act [[47 U.S.C.A. § 208](#)]. [Direct Marketing Ass'n, Inc. v. F.C.C., C.A.D.C.1985, 772 F.2d 966, 249 U.S.App.D.C. 48. Telecommunications ¶977](#)

Refusal of agency to reject tariff that conflicts with statute, agency regulation or order, or with rate fixed in contract sanctioned by statute may be reviewed by courts. [Associated Press v. F. C. C., C.A.D.C.1971, 448 F.2d 1095, 145 U.S.App.D.C. 172. Public Utilities ¶190](#)

47 U.S.C.A. § 204, 47 USCA § 204

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