

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544**

In the Matter of

July 2008 Annual Access Charge  
Tariff Filings

National Exchange Carrier Association  
Tariff FCC No. 5

WCB/File No. Pricing 08-14

Transmittal No. 1214

**PETITION OF VERIZON TO SUSPEND NECA TARIFF F.C.C. NO. 5, TRANSMITTAL  
NO. 1214**

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SERVICE, TRANSMITTAL NO. 1214**

Pursuant to Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, and Section 204 of the Communications Act, Verizon respectfully requests that the Commission suspend and investigate the annual interstate access services tariff filed by the National Exchange Carrier Association ("NECA") on June 16, 2008. As explained below, the Commission should investigate NECA's tariff filing given NECA's continuing pattern of substantial rate increases year after year. In addition to investigating the rates generally, the Commission should examine NECA's proposed increases to the switched access rates for its "Band 8" carriers, in light of the proliferation of traffic-pumping arbitrage schemes among carriers charging the Band 8 rate. Finally, the data that NECA has supplied with its annual filing does not support its demand projections and the projected increase in NECA's switched access revenue requirement. The Commission should not allow NECA's tariff to take effect until it has investigated these issues.

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<sup>1</sup> The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

## **I. NECA'S REPEATED AND SUBSTANTIAL INCREASES TO ITS SWITCHED ACCESS RATES CAST DOUBT AS TO THE RATES' LAWFULNESS**

The rate increase proposed in this year's filing is the latest in a series of NECA rate hikes that have increased NECA's composite switched access rate by a total of 33 percent in just three years. In its 2006 annual filing, NECA raised its composite switched access rate from \$0.0188 per minute to \$0.0199; in its 2007 annual filing, NECA raised its composite rate again, to \$0.0223 per minute. Now, NECA proposes to raise its composite switched access rate yet again – by another 4.6 percent – to \$0.025 per minute. The level of NECA's repeated rate increases alone raises substantial questions as to the rates' reasonableness, and the tariff should be suspended and investigated.

NECA's pattern of annual rate increases, along with the resulting high access rates, demonstrate the urgent need for the Commission to reform its rules governing rural LECs' access charges. For example, NECA's proposed rates stand in stark contrast to the market-based rates of the CALLS regime.<sup>2</sup> NECA's proposed composite switched access rate of \$0.0250 per minute would be *more than two-and-a-half times* the target rate of \$0.0095 per minute established under the CALLS regime for rural price cap LECs. *See CALLS I Order*<sup>3</sup> ¶ 142 & n. 303. And the rate is *more than quadruple* the target rate established for the Bell operating companies and GTE (\$0.0055 per minute) and *more than three-and-a-half times* the target rate for all other price cap LECs (\$0.0065 per minute). *See id.* These comparisons alone raise

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<sup>2</sup> Comments of Verizon, *National Exchange Carrier Association, Inc.'s Proposed 2007 Modification of Average Schedule Formulas*, WC Docket 06-223 (Feb. 13, 2007).

<sup>3</sup> Sixth Report and Order in CC Docket Nos. 96-262 and 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) ("CALLS I Order"), *aff'd in part, remanded in part, Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

substantial questions as to the reasonableness of NECA's proposed rates. Indeed, there is little (if any) difference in the work performed by rural price cap and rural rate-of-return carriers; there is no justification for non-price cap carriers to charge more than twice as much for that work. The Commission should not allow to take effect — without serious investigation — further NECA increases that move its rates further away from the CALLS standard.

## **II. NECA'S UNREASONABLY HIGH "BAND 8" RATES PROVIDE FINANCIAL INCENTIVES FOR TRAFFIC-PUMPING ARBITRAGE SCHEMES**

High NECA rates for its "Band 8" carriers have fueled the explosion in traffic pumping arbitrage schemes by "rural CLECs" whose rates are benchmarked to those "Band 8" rates, *see* 47 C.F.R. § 61.26(e), raising additional questions as to the lawfulness of those rates. Under these traffic-pumping schemes, a LEC pays one or more "free" chat-line providers or conference service providers to be its "customer" in order to generate traffic on its network, and thereby inflate the access charges that the LEC can impose on other carriers such as Verizon. These payments are indirectly funded by the high rural access charges paid by Verizon and other carriers. Traffic pumping schemes are thus dependent on a carrier's access rates being high enough to be "shared" with the chat line or conference provider – and have thus proliferated among rural carriers with high access rates.

As Verizon and numerous other carriers have demonstrated, following the Commission's investigation of numerous rate-of-return ILEC tariffs in 2007, traffic pumping schemes have shifted from rural ILECs to CLECs – often, to CLECs that are affiliated with ILECs.<sup>4</sup> Indeed, the leadership of at least one traffic-pumping carrier has openly stated the company shifted its

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<sup>4</sup> *See, e.g.*, Ex Parte Letter from Norina Moy, Sprint Nextel, to Marlene Dortch, FCC, WC Docket 07-135 (June 9, 2008) attaching *USA Today* article; Ex Parte Letter from Donna Epps, Verizon, to Marlene Dortch, FCC, WC Docket 07-135 (June 4, 2008); Ex Parte Letter from Brian Benison, AT&T, to Marlene Dortch, FCC, WC Docket 07-135 (April 25, 2008).

traffic-pumping activities from its ILEC to its affiliated CLEC in an effort to side-step the Commission's 2007 rulings.<sup>5</sup> Claiming to be "rural" CLECs, these traffic-pumping CLECs invoke Commission Rule 61.26(e) to tariff high interstate access rates by "benchmarking" to NECA's Band 8 rates. NECA's tariff for Band 8, therefore, effectively sets the rates for these traffic-pumping CLECs. Traffic pumping CLECs claiming the "rural exemption" now bill carriers for hundreds of millions of minutes per month at high Band 8 access rates, kicking back a portion of those revenues to the conference and chat line providers that drive the increase in traffic. These schemes raise substantial questions regarding the traffic pumping CLECs' claim to the rural exemption and the lawfulness of their conduct, which Verizon and numerous other carriers have discussed at length in other Commission proceedings.

These traffic-pumping schemes also call NECA's interstate access rates into question. The very existence of traffic-pumping schemes by CLECs claiming the rural exemption – and benchmarking to NECA Band 8 rates – raises substantial questions as to the reasonableness and lawfulness of those rates. The Commission has already tentatively concluded that it is unreasonable for a carrier to set access rates at a high level in order to fund these kickback payments.<sup>6</sup> NECA's current Band 8 rates are, apparently, high enough to fund such kickbacks.

Yet, NECA's tariff filing proposes to raise Band 8 rates *even higher – by almost 15%*. Transmittal No. 1214 would increase the "Band 8" local switching rate from \$0.024435 per minute to \$0.028085 per minute. Such a substantial increase to this rate would only increase further the already-high financial incentives for rural CLECs to engage in traffic pumping

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<sup>5</sup> See, e.g., Ex Parte Letter from Norina Moy, Sprint Nextel, to Marlene Dortch, FCC, WC Docket 07-135 (June 9, 2008) attaching *USA Today* article.

<sup>6</sup> See Notice of Proposed Rulemaking, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, 22 FCC Rcd 17989, ¶¶ 18-19 (2007); see also Order Designating Issues for Investigation, *Investigation of Certain 2007 Annual Access Tariffs*, 22 FCC Rcd 16109, ¶¶ 1, 13-14 (2007).

arbitrage schemes. Moreover, the fact that the Band 8 rates are high enough to fund such kickback schemes raises substantial questions as to the rates' lawfulness. The Commission should not allow NECA's Band 8 rate increases to take effect without first suspending and thoroughly investigating these issues.

### **III. NECA'S RATE INCREASES ARE NOT SUPPORTED BY THE SUBMITTED DATA**

#### **A. NECA's Demand Projections Are Not Supported By NECA's Demand Data**

The increases to NECA's transport and local switching rates that are proposed in its tariff filing are not supported by NECA's own demand data.

*First*, NECA's demand projections for tandem-switched transport-related elements – transport mileage, transport terminations, and tandem switching minutes – are inconsistent with NECA's submitted data. As in NECA's recent annual access tariff filings, the cost studies accompanying Transmittal No. 1214 purport to calculate transport demand for the 2008-2009 tariff year by simply assuming that tandem-switched transport demand will decline at the same rate as local switching demand. Specifically, Transmittal No. 1214 assumes that tandem-switched transport demand will decline at an annualized rate of 11.9 percent between the base year (2007) and the tariff year (2008/2009) – the same rate of decline that NECA projects for local switching minutes.

Even assuming that NECA's projections of local switching demand are reasonable (and as discussed below, NECA's filing provides no support for such an assumption), NECA's assumption that tandem-switched transport demand will decline at the same steep rate as local switching demand is not supported by NECA's own demand data. To the contrary, NECA's data, provided with its annual access tariff filings and summarized in the table below, show that NECA tandem-switched transport demand is decreasing more slowly than local switching

demand *or may even be increasing*. Transport mileage, in particular, decreased only 1.6 percent between 2006 and 2007, and has actually increased since 2005.

	2005 (MOU or MOU- mile, billions)	2006 (MOU or MOU- mile, billions)	2007 (MOU or MOU- mile, billions)	% Change 2005-2006	% Change 2006-2007	% Change 2005-2007
Local Switching	19.3	17.1	15.1	-11.3%	-11.7%	-21.7%
Transport Termination	27.3	29.9	27.3	9.5%	-8.6%	0%
Transport Facility (Mileage)	294.1	310.6	305.7	5.6%	-1.6%	3.9%
Tandem switching	3.6	5.3	4.7	47.2%	-11.3%	30.6%

**Source:** Volume 3, exhibit 1, workpaper 2 (NECA Transmittal Nos. 1129, 1172, 1214)

There are several reasons why the pool's tandem-switched transport demand is not falling as fast as the pool's local switching demand. First, tandem-switched transport demand is likely to be concentrated in smaller end offices that may be less exposed to competition, and thus are experiencing a smaller demand decline than the pool as a whole. Second, there may be end offices in which interexchange carriers are grooming traffic from dedicated transport to tandem-switched transport as long distance minutes decline.<sup>7</sup> Third, many NECA LECs are making significant changes to their transport networks in order to increase transport mileage (and therefore, revenues from transport charges). In many cases, there appears to be *no* legitimate network management or service quality reason for making such a change, other than to drive up transport mileage and revenues. As just one example, Skyline Telecom, Central Utah, and other NECA LECs in Utah re-homed their end offices to a different tandem at the beginning of 2008

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<sup>7</sup> NECA's data appears to show a steep decline in dedicated transport demand. Compare Transmittal No. 1214, Volume 5, Exhibit 12, workpaper 7 with Transmittal No. 1172, Exhibit 12, workpaper 8.

and, as a result, increased the transport mileage for which they are billing by as much as 50 miles. As a result of network changes such as these, transport demand is much more stable than local switching demand, as illustrated by NECA's own data. In these circumstances, it is unreasonable for NECA to project transport demand for the 2008/2009 tariff year by simply assuming that transport demand will decline at the same 11.9 percent rate as local switching demand.

The Commission should suspend Transmittal No. 1214 and require NECA to recalculate its tandem switching, transport termination, and transport mileage rates using projected demand figures that reflect the actual trend in NECA LECs' transport demand, rather than (incorrectly) assuming that transport demand will decline at the same rate as local switching demand. The Bureau has previously suspended NECA's annual access tariff filing where, as here, there are "question[s] [about] whether NECA correctly forecasts its minutes-of-use demand projections." Order, *2002 Annual Access Tariff Filings*, 17 FCC Rcd 12842, ¶ 4 (2002).

*Second*, the Commission should investigate NECA's projected decline in local switching demand. NECA projects that local switching demand will decline at an annual rate of 11.9 percent between 2007 and the 2008/2009 tariff year. The data submitted by NECA shows, however, that NECA experienced only a 9.1 percent decline that between 2006 and 2007.<sup>8</sup> NECA therefore predicts a substantially larger decline in the coming year than its own historical data seems to suggest, yet NECA provides no explanation as to why its tariff filing projects such a substantial change in its predicted rate of decline. Although it appears likely that NECA's local switching minutes will continue to decline, NECA's filing does not provide adequate

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<sup>8</sup> Transmittal No. 1214, Volume 1 at 35, Table 10.



support for its prediction of an 11.9 percent drop. For this reason as well, the Commission should suspend NECA's tariff and investigate NECA's demand projections.

**B. NECA Has Failed To Support Its Projected Revenue Requirement**

Finally, the Commission should suspend and investigate Transmittal No. 1214 and require NECA to provide complete support for its projected revenue requirement for the 2007-2008 tariff year. At the same time that it is projecting an unprecedented 11.9 percent decrease in access minutes, NECA is projecting only a 3.9 percent decrease in its switched access revenue requirement – a smaller decrease than the NECA pool experienced in the 2007-2008 tariff year.<sup>9</sup> In fact, NECA is projecting only a 2.7 percent decline in cost companies' switched access revenue requirement.<sup>10</sup> NECA is projecting that most categories of cost companies' expenses assigned to the local switching category will remain unchanged from their 2007 levels, including customer operations expenses, corporate operations expenses, and general support expenses.<sup>11</sup>

It is impossible for the Commission or interested parties to meaningfully evaluate NECA's revenue requirement projection for cost companies using the information provided with Transmittal No. 1214. NECA has only provided cost support data for the pool as a whole, not the underlying LEC-by-LEC data. As the Commission recognized in its most recent investigation of NECA's rates, however, the underlying LEC-specific data is essential to any evaluation of the pool revenue requirement.<sup>12</sup> For example, the Commission cannot determine

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<sup>9</sup> Transmittal No. 1214, Volume 1 at 39.

<sup>10</sup> Transmittal No. 1214, Volume 1 at 38, Table 11.

<sup>11</sup> Transmittal No. 1214, Volume 2, Exhibit 2, comparing 2007 historical period with 2008/2009 test year forecast.

<sup>12</sup> See, e.g., Memorandum Opinion and Order, *Annual Access Charge Tariff Filings*, 19 FCC Rcd 23877 (2004), ¶ 14 ("It is necessary to examine company-specific, disaggregated earnings data because we must determine the validity of previous years' 'final' returns that

from the pool-level data alone whether NECA's revenue requirement reflects the proper application of the Commission's Part 32, 36, 64, and 69 rules by individual NECA LECs. Similarly, the Commission cannot determine from the pool-level data whether NECA's revenue requirement includes anomalous investment or expense amounts for individual NECA LECs.


Given that Section 61.38 of the Commission's rules requires rate of return tariff filings to include "complete explanations of the bases for the estimates,"<sup>13</sup> and given that the underlying LEC-specific information is necessary to explain NECA's pool-level revenue requirement, the Commission should suspend NECA Transmittal No. 1214 and require NECA to provide historical and projected cost data for individual cost companies in the NECA pools.

### CONCLUSION

For the foregoing reasons, the Bureau should suspend NECA's Transmittal No. 1214 and set it for investigation.

Respectfully submitted,

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NECA has not previously provided to the Commission but upon which it now relies to counter concerns that the rates contained in its 2004 annual access filing would result in overearnings.")

<sup>13</sup> 47 C.F.R. 61.38(b)(1).

## **CERTIFICATE OF SERVICE**

I hereby certify that, on June 23, 2008, a copy of the foregoing Petition of Verizon to Suspend NECA Tariff F.C.C. No. 5, Transmittal No. 1214 was sent to the parties listed below by electronic mail or by facsimile and U.S. first-class mail.

/s/ Jennifer Pelzman

Jennifer Pelzman

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