

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
July 1, 2009 Annual Access Charge Tariff Filings)	WCB/Pricing File No. 09-02
)	
NECA Revisions to Tariff FCC No. 5)	Transmittal No. 1245

**PETITION TO SUSPEND AND INVESTIGATE
OF
SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”), pursuant to the Order released on March 26, 2009 (DA 09-683), hereby submits its petition to suspend and investigate the above-referenced interstate access tariff revisions filed on June 16, 2009 by the National Exchange Carrier Association (“NECA”), with a scheduled effective date of July 1, 2009. The access rates proposed by NECA appear to be overstated, which will generate overcharges to interexchange carriers such as Sprint not only for traffic originating or terminating in the territories of NECA pool members, but also for traffic handled by competitive local exchange carriers (“LECs”) who mirror the NECA rates in accordance with the benchmarking rule.¹

As can be seen in Table 1 below, NECA has proposed significant increases to certain of its local transport and local switching rates (among other rate elements):

¹ Pursuant to Section 61.26 of the Commission’s Rules (47 C.F.R. § 61.26), competitive LECs are allowed to charge interstate access rates equal to the rates charged for such services by the competing incumbent LEC, or, for rural competitive LECs competing against non-rural incumbent LECs, the rates prescribed in the NECA access tariff at the highest rate band for local switching.

Table 1
NECA Proposed Rate Increases

Tandem Switched Facility	
Rate Band 1	6.25%
Rate Band 2	11.54%
Tandem Switched Termination	
Rate Band 1	6.26%
Rate Band 2	11.52%
Tandem Switching	
Rate Band 1	13.04%
Rate Band 2	18.53%
Local Switching	
Rate Bands 1-8	17.66%

The sharp increase in proposed rates is attributable largely to NECA's forecasted 9.5% decrease in traffic sensitive minutes.² This pessimistic demand forecast is inadequately justified and exceeds NECA's forecasted 4.7% decrease in traffic sensitive revenue requirement.³ The decline in forecasted minutes appears to be due at least in part to inclusion of variables "linking the level of minutes to the volatility of minutes from month to month," and basing demand for certain pool members (study areas not in the "consistent sample") in part on their October through December 2008 minutes.⁴ It is possible that NECA pool members experienced unusually sharp demand decreases in the recent past because of the severity of the economic recession.⁵ However, there is reason to hope that the U.S. economy will revive, or at least not continue its precipitous decline,

² NECA Transmittal No. 1245, Description and Justification ("D&J") Volume 1, p. 8.

³ *Id.*, p. 6.

⁴ *Id.*, Volume 3, p. 11 and 13; *see also, id.*, p. 10 ("Any near term [minute of use] forecast should account for recent oscillations in the historical series").

⁵ According to the Bureau of Economic Analysis, the economy shrank by 6.3% in the fourth quarter of 2008 and 5.7% in the first quarter of 2009 (*see* Bureau of Economic Analysis, National Income and Product Accounts Table 1.1.1, last revised May 29, 2009).

during the upcoming tariff period (July 2009-June 2010).⁶ If this prognosis proves to be correct, a NECA demand forecast that was heavily influenced by sharply recessionary conditions could well prove to be understated.

Accurate forecasts are difficult to achieve, and Sprint is not suggesting that NECA be held to unreasonable forecasting standards. However, NECA's forecasts have resulted in recent years in earnings ranging from the very healthy to the clearly excessive: its common line and traffic sensitive pool participants earned a 13.88% rate of return for the switched traffic sensitive category for calendar years 2007-2008 (263 basis points above the 11.25% authorized rate of return), 10.27% for the 2005-2006 monitoring period; and 13.77% for the 2003-2004 monitoring period.⁷ Tariffs that are deemed lawful are not subject to overearnings refunds. Because its proposed access rate increases are excessive and may well result in over-earnings, NECA's tariff should be suspended and set for investigation, to preserve the right of refund for access customers that are assessed rates that are likely to prove to be too high.

If, as recommended above, the Commission suspends and sets for investigation the rates filed by NECA, it should also clarify that the suspension and investigation extend to the tariffs of competitive LECs that establish their switched access rates under the benchmarking rule. As the Commission is well aware, "traffic pumping" by certain incumbent and competitive LECs has been a serious and growing problem over the past

⁶ The chairman of the Federal Reserve Board has testified that he expects the US recession to end this year (*see* testimony of B. Bernanke before the Committee on the Budget, U.S. House of Representatives, Washington, D.C., June 3, 2009, "*Current economic and financial conditions and the federal budget*").

⁷ *See* NECA Form 492s, dated March 31, 2009, February 13, 2009, and January 31, 2007. Although NECA's 2005-2006 traffic sensitive rate of return was slightly below the FCC's authorized level (which was established decades ago), a 10.27% rate of return is healthy by any measure.

several years, with disputes in the hundreds of millions (or more) of dollars, billions of minutes, and dozens of law suits and complaints.⁸ Traffic pumping has been fueled by high access charges in rural areas; through the ruse of “free” calling by their partners, certain LECs have generated traffic volumes far in excess of their normal, pre-access pumping levels, and have earned rates of return that are far in excess of the authorized levels.⁹ To the extent that NECA’s rates are overstated, so too will be the charges assessed by traffic pumping LECs that set their rates pursuant to the benchmarking rule. These LECs should not be allowed to charge unjust and unreasonable rates, or to retain their excessive over-earnings. Accordingly, the Commission should not deem their tariffs to be lawful, but should instead extend the suspension and investigation of the NECA tariff to benchmarking competitive LECs.

⁸ See, e.g., Sprint comments filed in WC Docket No. 07-135 on December 17, 2007, p. 6.

⁹ As the Commission has recognized, the incremental costs associated with high volumes of pumped traffic increase at a far slower rate than the increase in minutes, enabling LECs engaged in traffic pumping to earn very high rates of return (see *Establishing Just and Reasonable Rates for Local Exchange Carriers, Notice of Proposed Rulemaking*, 22 FCC Red 17989, 17996 (paras. 14-15) (2007)).

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Charles W. McKee

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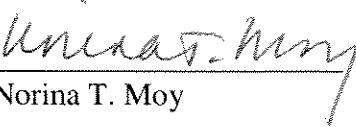
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June 23, 2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of Sprint Nextel Corp. was filed electronically or via US Mail on this 23rd day of June, 2009 to the parties listed below.


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