

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

July 1, 2010

Annual Access Charge Tariff Filings

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WCB/Pricing File No. 10-03

PETITION OF AT&T CORP.

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June 22, 2010

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PETITION OF AT&T CORP.

Pursuant to section 204(a)(1) of the Communications Act, 47 U.S.C. § 204(a)(1), section 1.773 of the Commission’s Rules, 47 C.F.R. § 1.773, and the Commission’s Order, DA 10-505, released March 31, 2010,¹ AT&T Corp. (“AT&T”) respectfully requests that the Commission suspend for one day, investigate, and issue an accounting order for the individual interstate access tariffs filed by the National Exchange Carrier Association (“NECA”) and South Dakota Network, LLC (“SDN”), because the interstate access tariffs filed by these carriers raise substantial questions as to their lawfulness.²

INTRODUCTION AND SUMMARY

NECA has now extended to 16 years its streak of overearnings by again reporting estimated earnings for 2009 that far exceed the Commission-prescribed level, and by finalizing earnings for prior years that also significantly exceed the Commission-prescribed level,

¹ Order, *July 1, 2010 Annual Access Charge Filings*, WCB/Pricing File No. 10-03, DA 10-505 (rel. March 31, 2010) (setting procedures and filing dates for the 2010 annual access charge filings).

² In particular, the Commission should suspend for one day and investigate the following tariffs: NECA Transmittal No. 1278, FCC Tariff No. 5 and SDN Transmittal No. 6, FCC Tariff No. 1. See Attachment 1, hereto. Suspension and investigation are appropriate where a tariff raises “substantial questions of lawfulness . . . that warrant further investigation.” Order, *July 2007 Annual Access Tariff Filings*, 22 FCC Rcd. 11619, ¶ 3 (2007).

notwithstanding its claims last year that these returns would likely comply with the Commission's prescription. In 2004, the Bureau suspended and investigated NECA's tariff, finding that such systematic and unexplained overearnings raise "significant questions" about the "methodology" used by NECA to compute rates and whether that methodology will produce "unjust and unreasonable" rates in the future.³ The case for suspension here is even stronger given that the methodology used by NECA to compute rates has continued to produce systematic overearnings since then.

SDN is a central access provider with a history of periodic extreme overearnings (as high as 65.45%) caused by traffic stimulation schemes of local exchange carriers ("LECs") that use SDN's network. To protect ratepayers against similar overcharges in future periods, the Bureau should suspend SDN's July 1, 2010 tariff for one day, and require SDN to modify its tariff to include terms (provided below) that will help protect ratepayers against future overcharges caused by traffic stimulation activities, just as the Commission did in 2007 in very similar circumstances.

The Bureau has ample authority to suspend and investigate the NECA and SDN tariffs and to adopt the remedies proposed herein. Section 204 of the Communications Act (47 U.S.C. § 204) grants the Commission broad authority, on its own initiative or upon request, to suspend and investigate tariff filings that propose rates that are of questionable lawfulness. As the Commission has recognized, suspension and investigation of tariffs is an especially essential element of the core mandate to ensure just and reasonable rates where highly suspect tariffs that

³ Order Designating Issues for Investigation, *July 1, 2004 Annual Access Charge Tariff Filings*, 19 FCC Rcd. 18593, ¶ 5 (2004) ("2004 NECA Designation Order").

raise substantial questions of lawfulness are filed on a streamlined basis.⁴ As such, the Bureau (see §§ 0.91, 0.291), acting on delegated authority, clearly has independent authority pursuant 47 U.S.C. § 204 to suspend and investigate tariffs on its own motion where, as here, there are significant questions concerning the lawfulness of the tariffs.⁵

The Bureau also has authority to suspend and investigate tariffs under Rule 1.773(a)(1)(iii), 47 C.F.R. § 1.773(a)(1)(iii), if it determines (1) “there is a high probability that the tariff would be found unlawful after investigation”; (2) “any unreasonable rate would not be corrected in a subsequent filing”; (3) “irreparable injury will result if the tariff is not suspended”; and (4) “the suspension would not otherwise be contrary to the public interest.” 47 C.F.R. § 1.773(a)(1)(iii). These elements are clearly satisfied here. First, as demonstrated below, there is an exceedingly high probability that these tariffs will be found to be unlawful. Second, these filers’ prior practices show that these unreasonable rates are not likely to be corrected in a subsequent filing. Third, irreparable injury will result if the tariffs are not suspended because the excessive rates will be “deemed lawful,” which may foreclose refunds for excessive charges.⁶ Fourth, suspension is clearly in the public interest because it will help to prevent millions of dollars in overcharges that are ultimately borne by consumers.

⁴ See, e.g., Memorandum Opinion and Order, *July 1, 2004, Annual Access Charge Tariff Filings*, 19 FCC Rcd. 23877, ¶ 7 (2004) (“*2004 NECA Tariff Investigation Order*”) (“When tariffs . . . are filed pursuant to the ‘deemed lawful’ provisions of the statute . . . it is incumbent upon us to suspend and investigate the tariff filing if it may reflect unjust and unreasonable rates”).

⁵ See Memorandum Opinion and Order, *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, FCC 84-70, 1983 FCC LEXIS 396, ¶ 8 n.6 (1983) (rejecting argument that a “request for suspension should be denied as premature and not in compliance with Section 1.773” and finding that the Commission “need not reach these arguments, since the Commission has the authority on its own motion to suspend and investigate tariffs, 47 U.S.C. § 204(a), and we [the Commission] have concluded that the circumstances of this case warrant such suspension”).

⁶ *2004 NECA Tariff Investigation Order*, ¶ 7 (“Rates that are ‘deemed lawful’ are not subject to refund”).

I. NECA HAS EXTENDED TO 16 YEARS ITS TREND OF PRODUCING RETURNS THAT EXCEED 11.25%, AND THE COMMISSION SHOULD SUSPEND AND INVESTIGATE NECA'S TARIFF TO ADDRESS THE PROBLEMS THAT ARE CAUSING THESE SYSTEMATIC OVEREARNINGS.

There continues to be something seriously wrong with the method used by NECA to compute traffic sensitive rates. In sixteen of the past seventeen years since 1993, the methodology used by NECA to set traffic sensitive rates has resulted in returns that exceed the Commission-prescribed 11.25% by very substantial amounts, resulting in industry-wide overearnings of more than \$315 million dollars.⁷ NECA's latest tariff includes another quite extraordinary industry-wide rate increase of \$24.48 million.⁸ NECA's historical track record of substantial overearnings raises serious questions as to whether NECA's new rate increases are unjust and unreasonable in violation of Section 201(b) of the Communications Act of 1934, 47 U.S.C. § 201(b). Accordingly, the Bureau should suspend for one day and investigate NECA's July 1, 2010 tariff filing, and order an accounting.

This is precisely what the Commission did in 2004, when it was confronted with NECA's systematic excessive returns and a new tariff filing with a rate *decrease*. In 2004, NECA filed tariffs seeking to decrease access rates by about \$30.3 million on an industry-wide basis. At that time, AT&T argued that this reduction was not sufficient and demonstrated that "NECA's 2004 access filing exceeds the authorized earnings level because it is based on the same kind of faulty forecasting and rate development methodology that has produced consistent overearnings for the

⁷ See Exhibit A, attached hereto.

⁸ See NECA Transmittal 1278, FCC Tariff No. 5, Table Titled 'Derivation of Switched Access Proposed Rate Change,' Row 7. The table shows a switched access rate change adjusted for a billing effect to be 9.41%. *Id.*, at Row 1. The Total Test Period Revenue at Current Rates is \$482.646 million which includes the \$222.541 million for Local Switching Support. *Id.*, at Row 2. NECA is thus raising switched access rates by $.0941 * (482.646 - \$222.541) = \24.48 million.

past nine years.”⁹ The Bureau agreed with AT&T and “designate[d] for investigation whether the revised rates in NECA’s annual access tariff are unjust or unreasonable in violation of section 201 of the Act, particularly whether NECA’s rate development methodology has resulted in consistent overearnings, such that this methodology produces access rates that are unjust or unreasonable.”¹⁰ The *2004 Designation Order* required NECA to submit to the Commission information sufficient for the Commission to accurately measure NECA’s historical returns and to evaluate the methodology used by NECA to develop rates.¹¹ As the Commission explained, “[t]hough not as rigorous as an audit, the opportunity for careful review of this information is essential to determining the reliability of NECA’s claimed rates of return.”¹²

NECA did not comply with the information requests set forth in the *2004 Designation Order*.¹³ Instead, NECA argued “that the information that it was directed to produce on earnings levels for prior periods relate to prior tariff rates, not the rates proposed in NECA’s annual access filing, and are, therefore, not relevant here.”¹⁴ The Commission “disagree[d],” explaining that “[p]rior period earnings are relevant in determining whether there is a pattern of overearnings, and, if so, whether the rate development methodology that NECA uses is flawed and may

⁹ *2004 NECA Designation Order*, ¶ 7.

¹⁰ *Id.*, ¶ 1; *see also id.*, ¶ 5 (“Significant questions were raised concerning whether NECA’s rate development methodology has resulted in consistent overearnings over the past nine years, indicating that this methodology may produce access rates that are unjust or unreasonable”); *2004 NECA Tariff Investigation Order*, ¶ 6 (“Significant questions were raised by AT&T and GCI concerning whether NECA’s rate development methodology has resulted in consistent overearnings over past years, indicating that the methodology NECA used in setting its 2004 rates may be flawed and produce access rates that are unjust and unreasonable.”).

¹¹ *See 2004 NECA Designation Order*, ¶¶ 13-23.

¹² *2004 NECA Tariff Investigation Order*, ¶ 14.

¹³ *See id.*, ¶¶ 24-25.

¹⁴ *Id.*, ¶ 15.

produce rates in the 2004 annual access filing that are unjust or unreasonable.”¹⁵ The Commission thus “agree[d] with AT&T and GCI that if there is sufficient evidence that a particular methodology for projecting revenue requirements and demand designed to achieve a targeted rate of return is consistently producing overearnings, that methodology may also produce overearnings in the future.”¹⁶

Because NECA failed to produce the “essential” information designated by the Commission, the Commission could not address – and certainly could not fix – any of the underlying systemic problems with NECA’s rate-making methodology. Instead, the Commission refused to grant NECA’s rates “deemed lawful” status, thus ensuring that carriers could obtain refunds in the event that NECA’s rates again exceeded permissible levels.¹⁷

NECA clearly has not addressed the systemic problems with its rate-making methodology. As AT&T predicted, NECA’s switched traffic sensitive rates have continued to produce substantial overearnings in 2004 (13.07%), 2005 (11.56%), 2007 (11.40%), 2008 (16.29%), and 2009 (13.44%).¹⁸ All of these values are the returns reported by NECA.¹⁹

Last year, NECA told the Commission not to worry about its post-2004 returns because they were only “preliminary” and its final returns would be much lower. In fact, all of the

¹⁵ *Id.*

¹⁶ *Id.* Here, for example, NECA is increasing its revenue requirements for the transport rate element, even though its own analysis predicts declines. NECA Transmittal No. 1278, Volume 2: “Development Of Access Element Revenue Requirements,” Section 3, Subsection 2, Revenue Requirement Trend Approach. According to NECA, its transport investments and expenses will somehow increase, notwithstanding its predicted declines in end user lines and switching volumes. *See* NECA Transmittal 1278, Volume 3, Development of Baseline Demand and Revenues, Chart 1, Access Lines and LS MOU.

¹⁷ *See 2004 NECA Tariff Investigation Order*, ¶ 26.

¹⁸ *See* Exhibit A, attached hereto.

¹⁹ *See id.*

switched access returns that NECA has finalized since then have turned out to *exceed* the prescribed 11.25% return. NECA admitted last year that its 2005 switched access returns turned out to be 11.56%. NECA also admitted last year that its final 2007 switched access returns would likely be excessive at 11.36%, and since then it has reported that its actual 2007 switched access returns are actually higher at 11.40%.²⁰ NECA further admitted last year that its best projection for its 2008 switched access returns was 12.02%, and it has since filed an update significantly *increasing* that estimate to 16.29%.²¹ And, NECA's latest preliminary return for 2009 is 13.44% (also up from 13.08%).²²

There is thus a much stronger case today to suspend, investigate, and order an accounting of NECA's 2010 tariffs than there was for NECA's 2004 tariffs (or for NECA's 2009 tariffs). There are now six additional years (2004-2009) of substantial overearnings to further confirm that NECA's rate making methodology is fundamentally flawed, and this year NECA is seeking a substantial rate *increase*, whereas in 2004 it was seeking a rate decrease.

For these reasons, there is unquestionably a high probability that the tariffs will be found unlawful after investigation, that the unreasonable rates in those tariffs will not be corrected in a subsequent filing, and that suspension, investigation and entry of an appropriate accounting order are necessary to protect the public interest and prevent irreparable harm to ratepayers.

II. THE COMMISSION SHOULD REQUIRE SDN TO MODIFY ITS TARIFF TO PROTECT RATEPAYERS AGAINST EXCESSIVE CHARGES FROM TRAFFIC STIMULATION ACTIVITIES BY LECS THAT USE SDN FACILITIES.

South Dakota Network, LLC ("SDN") is a centralized equal access provider that operates a tandem switch and transport facilities that connect to local exchange carriers located

²⁰ *See id.*

²¹ *See id.*

²² *See id.*

throughout South Dakota. SDN uses these facilities to provide interexchange carriers (“IXCs”) with a centralized location (SDN’s tandem switch) where they can deliver and receive calls to and from local exchange carriers (“LECs”) throughout South Dakota.

SDN provides this centralized equal access service pursuant to tariff, and it bills IXCs, among other things, a per minute Centralized Equal Access Service rate²³ to deliver calls to and from South Dakota LECs. The per minute Equal Access Service rate is computed by dividing SDN’s revenue requirement by the total number of minutes of traffic delivered to and from South Dakota LECs. In other words, SDN’s Equal Access rate is driven in large part by the amount of traffic generated by the LECs that use SDN’s network, with higher traffic volumes producing lower rates and lower traffic volumes producing higher rates.

Over the past several years, various LECs that use the SDN network have implemented traffic stimulation schemes. As the Commission and Bureau are well aware, LECs that engage in traffic stimulation schemes typically partner with calling service providers that offer free (or low cost) conferencing, chat (often pornographic), long distance calling, and other services to customers that call telephone numbers associated with the LECs’ exchanges. These traffic stimulation schemes typically result in enormous increases in interstate calls to those telephone numbers.

Several LECs that use the SDN network engage in such schemes, resulting in large ebbs and flows in traffic on the SDN network as those LECs implement such schemes, get caught, shut down, and try again at a later date.²⁴ For example, in 2006, SDN reported 663,142,784

²³ SDN also charges an Access Transport rate that will generate annual revenues of approximately \$16,573. See SDN Description and Justification, at 3.

²⁴ See, e.g., *Northern Valley Comm’ns. LLC v. AT&T Corp.*, Civ No. 09-04006, (D.S.D.); *Sanscom v. AT&T*, Civ No. 08-4211, (D.S.D.); *Sancom Inc. v. Qwest Comm’ns. Corp.*, Civ. No.

minutes of use on its network for calls to and from the South Dakota LECs that use SDN's network.²⁵ Those minutes more than doubled in 2007 to 1,327,775,942 minutes as a result of traffic stimulation schemes, and remained at similar levels through 2008.²⁶ In 2009, the traffic stimulation activities ebbed (after IXC's initiated legal action), returning to 2006 levels.²⁷

This traffic stimulation causes substantial overearnings for SDN.²⁸ For example, SDN's 2006/2007 Equal Access rate was based on annual traffic volume projections of about 542,000,000 minutes, which was in line with its historic traffic volumes.²⁹ Therefore, SDN's 2006/2007 Equal Access rate was set at a level to fully recover SDN's costs (plus an 11.25% return) when billed against 542,000,000 minutes of use. But due to traffic stimulation, that rate was actually applied to nearly a billion minutes per year on average for 2006 and 2007, resulting in returns for SDN of 65.45%,³⁰ far above the 11.25% level prescribed by the Commission. As

07-4147-KES, (D.S.D.); *Northern Valley Comm'ns. LLC v. MCI Comm'ns. Servs., Inc.*, Civ No. 07-1016, (D.S.D.).

²⁵ See Exhibit B, attached hereto.

²⁶ See *id.*

²⁷ See *id.*

²⁸ As the Commission recognized, LECs compute rates by essentially dividing their projected revenue requirement (costs plus the Commission prescribed 11.25% rate-of-return) by their projected demand (*i.e.*, traffic volumes). Order Designating Issues For Investigation, *Investigating of Certain 2007 Access Tariffs*, 22 FCC Rcd. 16109 (2007) ("2007 Traffic Stimulation Order"). The projected demand figures are typically based on the LEC's historical demand, because for ordinary LECs demand tends to be steady over time. *Id.* But for a LEC that is engaged in traffic stimulation, its actual prospective demand will be substantially higher than any projections based on historical demand. As a result, the LEC's rates will be set too high, and the LEC will earn returns that far exceed the permissible 11.25%. As the Commission has explained, LECs that engage in traffic stimulation activities "can generate increased revenues that likely would result in rates that are unjust and unreasonable." *Id.*

²⁹ See Exhibit B, attached hereto.

³⁰ See *id.*, at 2.

such, rate payers were overcharged millions of dollars, and SDN's returns for that period were clearly unjust and unreasonable under Section 201(b) of the Act.³¹

To avoid a repeat of this problem and to protect ratepayers from again incurring such large overcharges, the Commission should adopt the same approach it adopted for certain incumbent LECs in 2007, when it appeared, as it does here, that future traffic stimulation conduct is likely to produce traffic volumes that far exceed the volumes on which rates were based. In particular, the Commission should suspend SDN's tariff for one day, and require SDN to modify its tariff to include the following language:

If the monthly interstate local switching minutes of the issuing carrier exceeds 100% of the interstate local switching demand in the same month of the previous year (refile trigger), the issuing carrier will file revised local switching and transport tariff rates within 60 days of the end of the month in which the issuing carrier met the refile trigger.³²

The Bureau has ample authority to adopt this remedy. As noted, the Bureau clearly has independent authority pursuant 47 U.S.C. § 204 to suspend and investigate tariffs on its own motion where, as here, there are significant questions concerning the lawfulness of the tariffs.³³ The Bureau also has authority to suspend and investigate SDN's tariffs under Rule 1.773(a)(1)(iii), 47 C.F.R. § 1.773(a)(1)(iii). Indeed, the Bureau exercised this authority in 2007 when it suspended and investigated the tariffs of more than 30 LECs when it appeared that their

³¹ As the Commission has recognized, where a network carries traffic being generated by traffic stimulation activities, "at some point, an increase in . . . demand will result in . . . rates that are no longer just and reasonable." *2007 Traffic Stimulation Order*, ¶ 19.

³² *2007 Traffic Stimulation Order*, ¶ 20.

³³ See Memorandum Opinion and Order, *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, 1983 FCC LEXIS 396, ¶ 8 n.6 (1983).

predicted traffic volumes would increase substantially above their projected levels due to traffic stimulation activities.³⁴

³⁴ See Order, *July 1, 2007, Annual Access Charge Tariff Filings*, 22 FCC Rcd. 11619 (2007); *2007 Traffic Stimulation Order*, ¶ 20.

CONCLUSION

For the reasons stated above, the Commission should suspend for one day and investigate the tariff revisions filed by NECA and SDN as detailed in Attachment 1, hereto, and impose an accounting order.

Respectfully submitted,

AT&T Corp.

By /s/ M. Robert Sutherland

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Dated: June 22, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2010, I caused true and correct copies of the foregoing Petition of AT&T Corp. to be served on all parties as shown on the attached Service List.

Dated: June 22, 2010
Washington, D.C.

/s/ Christopher T. Shenk

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ATTACHMENT 1

**TARIFFS THAT THE COMMISSION SHOULD
SUSPEND FOR ONE DAY AND INVESTIGATE**

<u>COMPANY</u>	<u>FCC TARIFF NO.</u>	<u>TRANSMITTAL NO.</u>
National Exchange Carrier Association (“NECA”)	5	1278
South Dakota Network (“SDN”)	1	6

EXHIBIT A

NECA's 17-YEAR HISTORY OF OVER EARNINGS

Year	Actual Return	Earnings exceeding 11.25%	Cumulative Effect
1993	13.76%	\$34,615,901	\$34,615,901
1994	12.12%	\$12,106,647	\$46,722,549
1995	11.97%	\$10,391,807	\$57,114,356
1996	12.27%	\$13,401,817	\$70,516,173
1997	12.26%	\$12,523,593	\$83,039,766
1998	14.67%	\$42,023,335	\$125,063,101
1999	12.72%	\$18,273,963	\$143,337,064
2000	11.63%	\$4,851,064	\$148,188,128
2001	12.53%	\$16,719,962	\$164,908,090
2002	13.63%	\$30,974,406	\$195,882,497
2003	14.40%	\$38,690,711	\$234,573,208
2004	13.07%	\$20,308,812	\$254,882,020
2005	11.56%	\$3,183,638	\$258,065,658
2006	8.86%	\$0	\$258,065,658
2007	11.40%	\$1,243,738	\$259,309,395
2008	16.29%	\$41,230,095	\$300,539,491
2009	13.08%	\$14,506,891	\$315,046,382

NOTE: NECA's July 1, 2010 tariff filing increased the 2009 estimated return to 13.44%.
See NECA Transmittal No. 1278 Volume 1, Table 7, Col1, Rate of Return.

Source: See Exhibit A, pages 2-3 for source materials and calculations.

NECA OVEREARNINGS
NECA EARNINGS IN EXCESS OF 11.25%

Variable Information		1993	1994	1995	1996	1997	1998	1999	2000
Line #	Variable Description	NECA	NECA	NECA	NECA	NECA	NECA	NECA	NECA
1	Company Name (FCC 492 form, line 1)								
2	Period From: (mm/dd/yy) FCC 492 form, line 2(b), CFR 65.701	01/01/93	01/01/94	01/01/95	01/01/96	01/01/97	01/01/98	01/01/99	01/01/00
3	Period To: (mm/dd/yy) FCC 492 form, line 2(b), CFR 65.701	12/31/93	12/31/94	12/31/95	12/31/96	12/31/97	12/31/98	12/31/99	12/31/00
4	Multiplicative Factor*	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
5	Authorized Rate-of-Return (CFR Part 65, currently 11.25%)	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%
6	FIT Gross up (currently 35%)	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%
7	SIT Gross up (5%)	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%
Switched Traffic Sensitive									
End Office--For NECA this is all switched categories.									
8	Total Revenues (FCC 492 form, line 1, column D, cumulative)	\$ 856,234,000	\$ 826,257,000	\$ 842,335,000	\$ 849,178,000	\$ 834,604,000	\$ 882,696,000	\$ 848,143,000	\$ 844,088,000
9	Total Expenses and Taxes (FCC 492 form, line 2, column D, cumulative)	\$ 737,093,000	\$ 719,739,000	\$ 734,447,000	\$ 747,427,000	\$ 738,961,000	\$ 769,277,000	\$ 748,768,000	\$ 751,723,000
10	Operating Income (Net Return) (line 8 - line 9)	\$ 119,141,000	\$ 106,518,000	\$ 107,888,000	\$ 101,751,000	\$ 95,643,000	\$ 113,419,000	\$ 99,375,000	\$ 92,365,000
11	Rate Base (Average Net Investment) (FCC 492 form, line 4, column D)	\$ 865,644,000	\$ 879,191,000	\$ 900,949,000	\$ 829,582,000	\$ 780,195,000	\$ 773,399,000	\$ 781,243,000	\$ 793,921,000
12	Rate of Return Annualized ((line 11 / line 12) x line 4)	13.76%	12.12%	11.97%	12.27%	12.26%	14.67%	12.72%	11.63%
13	Annualized Authorized Return ((line 41 x line 5) / line 4)	\$ 97,384,950	\$ 98,908,988	\$ 101,356,763	\$ 93,327,975	\$ 87,771,938	\$ 87,007,388	\$ 87,889,838	\$ 89,316,113
14	Total Interstate Access Overearnings (line 10 - line 13)	\$ 21,756,050	\$ 7,609,013	\$ 6,531,238	\$ 8,423,025	\$ 7,871,063	\$ 26,411,613	\$ 11,485,163	\$ 3,048,888
Total Switched Overearnings									
14	Total Switched Overearnings (line 14)	\$ 21,756,050	\$ 7,609,013	\$ 6,531,238	\$ 8,423,025	\$ 7,871,063	\$ 26,411,613	\$ 11,485,163	\$ 3,048,888
Income Tax Gross-up									
15	FIT Gross-up (line 14 / (1-line 6) - line 14)	11,714,796.15	4,097,160.58	3,516,820.19	4,535,475.00	4,238,264.42	14,221,637.50	6,184,318.27	1,641,708.65
16	SIT Gross-up (line 14 / (1-line 7) - line 14)	1,145,055.26	400,474.34	343,749.34	443,317.11	414,266.45	1,390,084.87	604,482.24	160,467.76
Adjustment for Taxes									
17	Total Interstate earning in excess of 11.25% w/o Interest (line 4 - line 15 - line 16)	\$ 34,615,901	\$ 12,106,647	\$ 10,391,807	\$ 13,401,817	\$ 12,523,593	\$ 42,023,335	\$ 18,273,963	\$ 4,851,064
Cumulative Switched Annual Overearnings		\$ 34,615,901	\$ 46,722,549	\$ 57,114,356	\$ 70,516,173	\$ 83,039,766	\$ 125,063,101	\$ 143,337,064	\$ 148,188,128
* Used to annualize the Rate of Return for Cumulative Measurement Periods (1/((line 3 - line 2)/365)).									
Source: Direct Case of the National Exchange Carrier Association Inc., July 1, 2004 Annual Access Charge Filings, WT Docket No. 04-372, Exhibit 2 (filed Oct. 12, 2004).									

NECA OVEREARNINGS
NECA EARNINGS IN EXCESS OF 11.25%

Variable Information

Line #	Variable Description	2001	2002	2003	2004	2005	2006	2007	2008	2009
		NECA	NECA	NECA	NECA	NECA	NECA	NECA	NECA	NECA
1	Company Name (FCC 492 form, line 1)									
2	Period From: (mm/dd/yy) FCC 492 form, line 2(b), CFR 65.701	01/01/01	01/01/02	01/01/03	01/01/04	01/01/05	01/01/06	01/01/07	01/01/08	01/01/09
3	Period To: (mm/dd/yy) FCC 492 form, line 2(b), CFR 65.701	12/31/01	12/31/02	12/31/03	12/31/04	12/31/05	12/31/06	12/31/07	12/31/08	12/31/09
4	Multiplicative Factor*	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
5	Authorized Rate-of-Return (CFR Part 65, currently 11.25%)	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%
6	FIT Gross up (currently 35%)	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%	35.00%
7	SIT Gross up (5%)	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%	5.00%

Switched Traffic Sensitive

End Office--For NECA this is all switched categories.										
8	Total Revenues (FCC 492 form, line 1, column D, cumulative)	\$ 869,705,000	\$ 715,022,000	\$ 730,743,000	\$ 702,157,000	\$ 660,067,000	\$ 623,858,000	\$ 590,189,000	\$ 618,360,000	\$ 545,841,000
9	Total Expenses and Taxes (FCC 492 form, line 2, column D, cumulative)	\$ 766,679,000	\$ 603,704,000	\$ 619,581,000	\$ 610,549,000	\$ 586,059,000	\$ 572,220,000	\$ 530,135,000	\$ 534,591,000	\$ 480,654,000
10	Operating Income (Net Return) (line 8- line 9)	\$ 103,026,000	\$ 111,318,000	\$ 111,162,000	\$ 91,608,000	\$ 74,008,000	\$ 51,638,000	\$ 60,054,000	\$ 83,769,000	\$ 65,187,000
11	Rate Base (Average Net Investment) (FCC 492 form, line 4, column D)	\$ 822,378,000	\$ 816,450,000	\$ 771,955,000	\$ 700,835,000	\$ 640,063,000	\$ 583,083,000	\$ 526,865,000	\$ 514,275,000	\$ 498,395,000
12	Rate of Return Annualized ((line 11 / line 12) x line 4)	12.53%	13.63%	14.40%	13.07%	11.56%	8.86%	11.40%	16.29%	13.08%
13	Annualized Authorized Return ((line 41 x line 5) / line 4)	\$ 92,517,525	\$ 91,850,625	\$ 86,844,938	\$ 78,843,938	\$ 72,007,088	\$ 65,596,838	\$ 59,272,313	\$ 57,855,938	\$ 56,069,438
14	Total Interstate Access Overearnings (line 10 - line 13)	\$ 10,508,475	\$ 19,467,375	\$ 24,317,063	\$ 12,764,063	\$ 2,000,913	\$ -	\$ 781,688	\$ 25,913,063	\$ 9,117,563

Total Switched Overearnings

14	Total Switched Overearnings (line 14)	\$ 10,508,475	\$ 19,467,375	\$ 24,317,063	\$ 12,764,063	\$ 2,000,913	\$ -	\$ 781,688	\$ 25,913,063	\$ 9,117,563
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Income Tax Gross-up

15	FIT Gross-up (line 14 / (1-line 6) - line 14)	5,658,409.62	10,482,432.69	13,093,802.88	6,872,956.73	1,077,414.42	-	420,908.65	13,953,187.50	4,909,456.73
16	SIT Gross-up (line 14 / (1-line 7) - line 14)	553,077.63	1,024,598.68	1,279,845.39	671,792.76	105,311.18	-	41,141.45	1,363,845.39	479,871.71

Adjustment for Taxes

17	Total Interstate earning in excess of 11.25% w/o Interest (line 46 + line 15 + line 16)	\$ 16,719,962	\$ 30,974,406	\$ 38,690,711	\$ 20,308,812	\$ 3,183,638	\$ -	\$ 1,243,738	\$ 41,230,095	\$ 14,506,891
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Cumulative Switched Annual Overearnings

		\$ 164,908,090	\$ 195,882,497	\$ 234,573,208	\$ 254,882,020	\$ 258,065,658	\$ 258,065,658	\$ 259,309,395	\$ 300,539,491	\$ 315,046,382
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* Used to annualize the Rate of Return for Cumulative Measurement Periods (1/((line 3 - line 2)/365)).

Sources:

2001: calculated from NECA Form 492, filed January 28, 2005.

2002: calculated from NECA Form 492, filed January 28, 2005.

2003: calculated from NECA Form 49, filed January 2007.

2004: calculated from NECA Form 492, filed January 2007.

2005: calculated from NECA Form 492, filed February 13, 2009.

2006: calculated from NECA Form 492, filed Feb. 13, 2009.

2007: calculated from NECA Form 492, filed September 30, 2009.

2008: calculated from NECA Form 492, filed September 30, 2009. Adjustments may be made as NECA member LECs update cost studies.

2009: calculated from NECA 492, filed March 31, 30, 2010. NECA's tariff filing (NECA Transmittal No. 1278 Volume 1, Table 7, Col1, Rate of Return), reports that,

as of April 2010, NECA's 2009 return has increased to 13.44%. Excess earning have increased by \$2,860,000 million.

Further adjustments may be made as NECA member LECs update cost studies.

EXHIBIT B

EXHIBIT B
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SOUTH DAKOTA NETWORK, LLC

INS Transmittal No.	Date Filed	Year	Actuals Filed	Yr/Yr Growth
T-5	6/24/08	2004	472,804,427	
		2005	539,148,790	14.03%
T-6	6/16/10	2006	663,142,784	23.00%
		2007	1,327,775,942	100.22%
		2008	1,036,657,734	-21.93%
		2009	643,404,512	-37.93%

Source: DMD-3, Page 3 of 3

**EXHIBIT B
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SOUTH DAKOTA NETWORK, LLC

**COS-1(H), Column T
Historical, Calendar Year 2007**

Row		Total Switched Traffic Sensitive
160	Net Revenues	\$7,746,604
300	Total Expenses & Taxes	\$4,956,336
410	Average Rate Base	\$4,197,885
420	Return (as filed)	\$2,747,480
430	Rate of Return	65.45%

Source: Transmittal No. 5, filed June 24, 2008