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

In the Matter of	)	
National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5	)	Transmittal No. 1358

PETITION OF AT&T CORP.
FOR SUSPENSION AND INVESTIGATION

Pursuant to section 204(a)(1) of the Communications Act, 47 U.S.C. § 204(a)(1), and section 1.773 of the Commission's Rules, AT&T Corp. ("AT&T") respectfully requests that the Commission suspend for one day, investigate, and issue an accounting order for the interstate access tariff filed by the National Exchange Carrier Association ("NECA") on August 24, 2012.[1]

NECA has made an extraordinary off-cycle tariff submission that seeks to increase special access rates by 5.4 percent.[2] According to NECA, these rate increases account for two recent events: (1) the withdrawal from the NECA pool of fifteen rate of return study areas that are affiliated with three price cap companies,[3] and (2) Eastex Telephone Cooperative's ("Eastex") reallocation of costs between jurisdictional cost categories. But NECA's filing does not provide sufficient justification tying these events to its proposed rate increases. The data NECA provides concerning the impact of the exit of the Withdrawing Carriers is inconsistent

[1] In particular, the Commission should suspend for one day and investigate the following tariff: NECA Transmittal No. 1358, F.C.C. Tariff No. 5, filed on August 24, 2012 ("NECA Tariff").

[2] Description and Justification, NECA Transmittal No. 1358, F.C.C. Tariff No. 5 (August 24, 2012) ("NECA D&J").

[3] NECA D&J, at 1-3. The 15 withdrawing carriers (collectively "Withdrawing Carriers") are affiliates of the following three companies: Frontier Communications Corporation, Consolidated Communications, Inc., and Windstream Corporation.

with information those carriers have submitted in support of their own tariff filings. Further, as the Commission has recognized, the Eastex reallocation should result in increases to NECA's special access revenue requirement and decreases in NECA's switched access revenue requirement.[4] But NECA's filing does not include these offsetting changes to its traffic sensitive pooled revenue requirement.[5] Moreover, as the Commission has pointed out, absent an adjustment to Eastex's interstate switched access revenue requirement, Eastex would be able to recover from the interstate recovery mechanism costs that it has moved out of the interstate switched access categories pursuant to the waiver.[6] Thus, NECA's tariff seeks to immediately implement rate increases for special access services only – pursuant to a deemed lawful tariff – without including adjustments that may offset those increases with lower switched access rates, and may otherwise be needed to avoid over-recovery.[7]

In short, NECA essentially asks the Commission to approve on a stand-alone basis one small piece of a much larger complex and interrelated picture. The Commission should not adopt this piecemeal approach. As demonstrated below, these issues raise significant questions of lawfulness, reasonableness and just treatment of ratepayers. Accordingly, NECA's tariff should be suspended for one day and set for investigation.

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[4] Order, Petition by Eastex Telephone Cooperative, Inc. Pursuant to 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191, and 36.372-382 for Category Relationships, CC Docket No. 80-286 (June 25, 2012) ("*Eastex Order*").

[5] For this reason, it is difficult to comprehensively assess the reasonableness of the proposed special access price increases without a complete picture of the cost reallocation's impact on the pool. Unfortunately, NECA failed to show the impact of the fifteen study areas exiting the pool on its interstate switched access revenue requirement and rates in its Transmittal No. 1353. Instead, it chose to show only the pooled special access revenue shortfall in Transmittal No. 1358.

[6] *Eastex Order* ¶ 18.

[7] For example, the Eastex waiver and rate changes may have an effect on Eastex's Eligible Recovery, and thus on its Access Recovery Charge ("ARC") and Connect America Fund ("CAF") support.

1. NECA's Rate Increases Related To The Withdrawing Carriers. NECA seeks significant increases in special access rates that it claims are necessary to account for the "exit of fifteen rate of return carriers affiliated with three price cap companies from the NECA pools."[8] These proposed rate increases are largely undocumented, however, and the few details that NECA does provide raise significant questions as to whether NECA's proposed rates are inflated above lawful levels.

NECA predicts that the Withdrawing Carriers would have contributed about $67 million to the NECA pool and would have withdrawn approximately $33 million form the pool during the 2012/2013 tariff period, and thus NECA seeks to increase its special access rates to recover the net reduction to NECA pool revenues.[9] But, according to the Withdrawing Carrier's own recent submissions, during the last tariff period (2011/2012) they contributed only about $45 million to the NECA pool and withdrew approximately $32 million form the pool.[10] NECA provides no documentation or other explanation supporting its claim that revenues contributed by the Withdrawing Carriers' would have increased by an extraordinary *50 percent* from one year to the next. This unexplained assumption is especially suspect when compared to the special access growth projections used in NECA's annual filing for the same period, none of which exceeds 20 percent and several of which are even negative – notwithstanding the fact those other forecasts

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[8] NECA D&J, at 1. These companies include Frontier Communications Corporation, Consolidated Communications, Inc., and Windstream Corporation (collectively the "Withdrawing Carriers").

[9] NECA D&J, Exhibit 1.

[10] Description and Justification, Consolidated Communications, Inc., Tariff F.C.C. No. 2, Transmittal No. 41, Exhibit 2, Column Q (July 17, 2012) ($9,305,588); Description and Justification, Frontier Communications Corporation Tariff F.C.C. No. 10, Transmittal No. 28, Exhibit SW/SP-RRQ, Col. Q (July 17, 2012) ($25,554,558); Description and Justification, Windstream Corporation Tariff F.C.C. No. 7, Transmittal No. 57, NECA Settlements, Column Q (July 17, 2012) ($10,613,900).

include the projected growth in demand NECA associates with existing study areas affiliated with the Withdrawing Carriers. This would suggest that the expected growth for the carriers remaining in the NECA pool is far less than the 50 percent NECA now attributes to the Withdrawing Carriers.

For these reasons, NECA's tariff raises significant questions of lawfulness, and it should be suspended and investigated. AT&T notes, moreover, that suspension and investigation of NECA's tariff filing would be consistent with the fact that the Commission has already suspended the tariffs of the Withdrawing Carriers[11] and NECA's annual tariff filing.[12] Suspension of this NECA tariff will ensure that the Commission is resolving all of these matters in a coordinated and coherent manner, and that ratepayers will not be harmed by these complex and interrelated changes to the rates implicated by the Withdrawing Carrier's proposed exit from the NECA pool.

2. NECA's Proposed Rate Increases Related To Eastex. NECA's proposal reflects an $8.1 million increase to its revenue requirement for special access services associated with jurisdictional cost category reallocations by Eastex. This increase also raises significant questions of lawfulness, and thus provides a second independent basis for suspending and investigating NECA's tariff.

[11] *See* Order, Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief (WC Docket No. 12-63), Consolidated Communications Companies Tariff FCC No. 2 (Transmittal No. 41), Frontier Telephone Companies Tariff FCC No. 10 (Transmittal No. 28), Windstream Telephone System Tariff FCC No. 7 (Transmittal No. 4) (rel. July 31, 2012).

[12] Order, *July 3 Annual Access Charge Tariff Filings*, DA 12-1037, WCB/Pricing No. 12-09 (July 2, 2012).

Eastex is a rate-of-return incumbent local exchange carrier serving 11 counties in East Texas (about 25,000 lines) that continues to participate in the NECA pool.[13] In May, 2011, Eastex petitioned the Commission for a waiver to permit it to revise its jurisdictional cost category allocations in a manner that would result in greater allocations to the interstate jurisdiction.[14] In granting this waiver, the Commission determined that "unfreezing Eastex's category relationships will result in some costs shifting within the NECA pool, however, the increase in special access costs will be offset to some extent by the decrease in switched access costs and, in both instances, the total shift represents a very small amount of NECA pool costs."[15] The Commission explained that "the net shift in allocated costs permitted by this order will have only a *de minimis* effect on overall pool costs"[16] and that overall the waivers would result in only "an additional $2,577,407 in cost-based-settlements" from the NECA pool.[17]

In contrast to the Commission's expectation that its grant of the Eastex waiver petitions would have a *de minimis* impact on rates, and Eastex's assurance that the waiver would increase its payments from the NECA pool by only about $2.5 million, NECA is now seeking an $8.1 million increase in its revenue requirement (which translates into an $8.1 million rate increase). The Commission should suspend NECA's tariff and investigate this increase for two reasons.

First, NECA has provided no data to support its proposed $8.1 million increase. NECA merely asserts that its $8.1 million increase to its revenue requirement is based on "revised

[13] Order, Petition by Eastex Telephone Cooperative, Inc. Pursuant to 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191, and 36.372-382 for Category Relationships, CC Docket No. 80-286 (June 25, 2012) ("*Eastex Order*").

[14] *See id.* ¶¶7-11.

[15] *Id.* ¶ 1.

[16] *Id.* ¶ 14.

[17] *Id.* ¶ 10.

special access cost forecast . . . from Eastex."[18] NECA has not made that revised access cost forecast available to ratepayers, or, so far as AT&T is aware, to the Commission, to review, making it impossible to verify whether this increase is warranted.

Second, NECA is seeking to implement the $8.1 million increases to special access rates caused by the Eastex waiver, *without* making the corresponding filing to reduce Eastex's Eligible Recovery to ensure Eastex does not double recover through the Commission's transitional recovery mechanism.[19] As noted, the Commission in granting the Eastex waiver petition predicted the change would likely have an overall *de minimis* impact on switched and special access rates. NECA's tariff submission, however, seeks, inappropriately, to saddle ratepayers with the rate increases caused by the Eastex waiver without providing the reductions necessary to ensure Eastex does not double recover the costs that were allowed to shift between categories. If NECA's tariff is permitted to take effect without suspension, it will presumably attain "deemed lawful" status, and it may not then be possible to properly compensate ratepayers based on NECA's later submission relating to the impact on its switched access baseline. In contrast, by suspending and investigating NECA's tariff, the Commission can assure that all rate impacts associated with the Eastex waiver are addressed in a coordinated and comprehensive manner, that NECA will promptly make the offsetting reduction to the interstate switched access revenue requirement, that the reduction is retroactively given to ratepayers (if any required adjustments by the Access Recovery Charge and Connect America Fund support is returned to USAC) as of the date when the special access rate increase takes effect, and that the special access rate increases are no more than necessary to reflect the true impact of the Eastex waiver.

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[18] NECA D&J, at 2.

[19] *Id.* at 5 ("The revised 2011 forecast adjustment to the switched access baseline in 2012 will be reflected in an upcoming revised Switched Access Filing").

3. The Commission Has Authority To Suspend And Investigate NECA's Tariff. 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 tariffs that raise substantial questions of lawfulness are filed on a streamlined basis.[20] The Commission also has authority to suspend and investigate tariffs under Rule 1.773, 47 C.F.R. § 1.773, 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. These elements are clearly satisfied here. There is a high probability that these tariffs will be found to be unlawful; there is no indication that NECA's rates are likely to be corrected; irreparable injury will result if the tariffs are not suspended because the excessive rates will be "deemed lawful"; and suspension is clearly in the public interest because it will help to prevent millions of dollars in overcharges that are ultimately borne by consumers.

[20] *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"); 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").

CONCLUSION

For the foregoing reasons, the Commission should suspend and investigate NECA's Tariff FCC No. 5 as submitted in Transmittal No. 1358.

Respectfully Submitted,

/s/ Robert C. Barber

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Dated: August 31, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2012, I caused true and correct copies of the foregoing Petition of AT&T To Suspend And Investigate to be served on all parties as shown on the attached Service List.

Dated: August 31, 2012
Washington, D.C.

/s/ Christopher T. Shenk

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