

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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*In the Matter of:*

National Exchange Carrier Association Tariff  
F.C.C. No. 5

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) WCB/Pricing No. 13-\_\_\_\_\_  
) Transmittal No. 1400  
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**PETITION OF GCI TO REJECT OR SUSPEND AND INVESTIGATE**

General Communication, Inc. (“GCI”), by its undersigned attorneys and pursuant to Sections 201(b) and 204(a)(1) of the Communications Act of 1934 and Section 1.773 of the Commission’s rules,<sup>1</sup> hereby petitions the Commission reject, or alternatively, to suspend and investigate National Exchange Carrier Association, Inc. (“NECA”) Tariff F.C.C. No. 5, Transmittal No. 1400, which was submitted on October 23, 2013.<sup>2</sup> With no explanation of the impact of its changes on points of interconnection, ratebases, or applicable mileage-based charges, NECA proposes to eliminate the provisions of its tariff that limited its scope to transport within the same ILEC’s service area within a Local Access and Transport Area (“LATA”) or equivalent Market Area.<sup>3</sup>

In Transmittal No. 1400, NECA strikes all limitations on the scope of its tariff with respect to switched access limiting those to services provided “within a LATA,”<sup>4</sup> and expressly adding language to expand the scope of the tariff to call between an end user’s premises and a

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<sup>1</sup> 47 U.S.C. §§ 201(b) and 204(a)(1); 47 C.F.R. § 1.773.

<sup>2</sup> National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, Transmittal No. 1400 (filed October 23, 2013) (“NECA Tariff Filing”).

<sup>3</sup> The term “Market Area” appears in the deleted title, but is not defined in the tariff.

<sup>4</sup> Compare Proposed Page 6-4 with Current Page 6-4 (deleting “within a LATA” in three places).

customer designated premises “in another LATA where the customer’s traffic is routed to and/or from an access tandem located within the same state or in an adjacent state.” The only explanation NECA provides is that these revisions “enable its tariff participants to respond to evolving network trends designed to facilitate the use of more efficient network technologies,” and “would provide the tariff participant with the ability to connect its switches to a tandem provider located outside its LATA in order to exhaust problems, improve network routing efficiency, provide or enhance network backup capabilities, and/or improve the quality of billing data recordings.”<sup>5</sup>

NECA nowhere explains or answers the many questions raised by its proposed expansion of its tariff scope. While GCI believes that these changes currently may be inapplicable to Alaska – which has no access tandems and no adjacent states (at least if “adjacent” means “contiguous”) – if these are or become applicable to Alaska, they could foreclose existing interexchange competition, radically alter points of interconnection, lead to “mileage pumping”, and put substantial undersea cable facilities into the NECA ratebase. The last of these would be particularly ironic because both NECA and the Commission have expended substantial time and resources addressing Sandwich Isles, which attempted to include substantial undersea cables costs in its ratebase.<sup>6</sup>

A simple example shows how this could occur. If Washington is considered an adjacent state, then NECA’s proposed language would appear to permit an Alaska LEC to establish an access tandem in Seattle. Could a NECA LEC then build and designate a Seattle tandem as its

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<sup>5</sup> NECA Transmittal No. 1400, Cover Letter (filed October 23, 2013).

<sup>6</sup> See e.g. *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, DA 10-1880, 25 FCC Rcd. 13647 (2010).

interstate first point of switching, put those facilities into the ratebase used for NECA settlements from the traffic sensitive pool, and then charge the interexchange carrier for switched transport all the way to a final destination in Alaska – at charges rated both per minute and per mile!<sup>7</sup> The Commission is already facing substantial complaints regarding “mileage pumping”; the Commission should therefore be extremely cautious before opening the door further to “mileage pumping.”<sup>8</sup> Moreover, such a result would eliminate or substantially distort transport competition between Seattle and Alaska.

Even within Alaska, for which a LATA has never been an operational concept, NECA’s language raises the question of whether TelAlaska could establish a tandem, for example, in Seward, with Nome (served by a commonly-owned affiliate) subtending that tandem and with all interstate traffic required to be routed through that tandem and subject to per minute per mile charges between Seward and Nome, and the facilities in the settlements ratebase for the traffic sensitive pool. Such a result would eliminate transport competition between Seward and Nome. Again, it is not clear what provisions of NECA’s tariff now protect against such an outcome.

Finally, NECA provides no explanation of how its proposed changes are consistent with 47 C.F.R. 64.1903 inasmuch as an independent incumbent LEC would be providing interexchange transport from its incumbent LEC and not through a separate affiliate.

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<sup>7</sup> Section 2.1.9 requires only notice to service-affected carriers.

<sup>8</sup> *See AT&T Corp. v. Alpine Communications, LLC, Clear Lake Independent Telephone Co., Mutual Telephone Co. of Sioux Center, Iowa, Preston Telephone Co., and Winnebago Cooperative Telephone Association*, Order on Reconsideration, FCC 12-163, 27 FCC Rcd. 16606 (2012). *See also* Letter of Brian Benison, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed September 18, 2013); *cf.* Letter of Ross Buntrock, Counsel to Northern Valley Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed October 24, 2013).

NECA has not provided any substantial description and justification, or equivalent explanation of its tariff change. Accordingly, in light of substantial questions with respect to its consequences and its lawfulness, the Commission should reject, or in the alternative, suspend and investigate Transmittal No. 1400 so that it can fully evaluate the consequences of the changes NECA proposes.

Respectfully submitted,

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Dated: October 29, 2013

## **CERTIFICATE OF SERVICE**

I, John T. Nakahata, hereby certify that a copy of the foregoing Petition of GCI to Reject or Suspend and Investigate was filed by Electronic Tariff Filing System and delivered by email and, where indicated, by facsimile transmission, on the 29<sup>th</sup> day of October, 2013, to the following parties:

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