

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

In the Matter of)	
)	
National Exchange Carrier Association)	Transmittal No. 1400
Tariff F.C.C. No. 5)	
)	

**PETITION OF VERIZON, VERIZON WIRELESS, AND CENTURYLINK¹
TO SUSPEND, INVESTIGATE, AND DECLARE UNLAWFUL IN ITS CURRENT
FORM NECA TARIFF F.C.C. NO. 5, ACCESS SERVICES, TRANSMITTAL NO. 1400**

NECA’s October 23, 2013 transmittal would modify its tariffed definition of Switched Access Service so that the transport component can cross LATAs. The language NECA seeks to change, which the Commission relied upon in its *Alpine* order,² protects carriers that send traffic to NECA members to terminate against inflated mileage charges. NECA’s proposed changes create opportunities for unlawful mileage pumping, and the Commission should suspend, investigate, and declare unlawful in its current form NECA’s transmittal. At a minimum, NECA should agree to cap the transport miles it can charge under a revised tariff.

Mileage pumping is an unlawful practice in which LECs enter into and engage in arrangements designed to inflate distance-sensitive transport mileage charges. NECA’s transmittal appears to be a direct response to *Alpine*, in which the Commission found that a group of Iowa local exchange carriers had entered into arrangements with the centralized equal access provider Iowa Network Services that provided no benefits for the Iowa LECs’ end-user

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (collectively “Verizon”). CenturyLink refers to the carrier subsidiaries of CenturyLink, Inc.

² See *AT&T Corp. v. Alpine Communications, LLC, et al.*, Memorandum Opinion and Order, 27 FCC Rcd 11511 (2012) (“*Alpine*”).

customers and no benefits to the interexchange carriers that delivered access traffic to the LECs. Under those arrangements, the Iowa LECs designated points of interconnection that were far away from their local exchange territory for the sole purpose of inflating the distance-sensitive transport mileage charges that they charged the interexchange carriers that delivered traffic to the points of interconnection. The points of interconnection were so far away from their local exchange territory that they were outside the local exchange territory's LATA.

The Commission found unjust and unreasonable that form of mileage pumping.³ The Commission found the practice to violate Section 201(b) because it benefited neither consumers nor interexchange carriers and was designed only to increase LECs' switched access charges.⁴ And the Commission found that NECA's current tariff prevents LECs from moving their points of interconnection outside of the LATA in which the local exchange territory is located.⁵

The current transmittal can be read to remove that protection. The proposed tariff would modify the definition of "switched access" as defined in the NECA tariff and allow participating LECs to place their points of interconnection outside the LATA in which the LEC's local exchange territory is located and even would permit the LECs to designate the point of interconnection to be in a neighboring state.

The current tariff provides at least some limit on the distance between a LEC's local exchange territory and the point of interconnection that it designates, and therefore provides some limit on the mileage charges that it can assess. Without this limitation LECs participating in the NECA tariff could easily designate points of interconnection much farther away from their

³ See *Alpine* ¶¶ 39, 44-48.

⁴ *Id.* ¶¶ 44-48.

⁵ *Id.* ¶¶ 31-34.

local exchange territories, with no benefit to anyone except to the LECs who would be able to charge much more in transport mileage.

Suspension and investigation of a proposed tariff or tariff modification is warranted when significant questions of lawfulness arise in connection with the tariff.⁶ In this case, NECA's proposed tariff changes would undercut steps the Commission took in *Alpine* decision to curb mileage pumping by removing important safeguards.

To be sure, LATAs are becoming increasingly anachronistic, and the Commission may want to revisit and clarify the issue of access service being provided across LATA boundaries. There may, in some cases, be legitimate reasons for locating a point of interconnection outside of the LEC's local exchange territory. But those exceptional cases cannot eliminate necessary limitations on distance-sensitive charges. If the Commission were to find in its investigation that the LATA limitation is not the right limitation, it still would need some limit on transport mileage in order to protect against mileage pumping. One possible approach is to limit the number of transport miles for which the LEC can charge, regardless of the actual transport mileage. Level 3, for example, has a tariff that caps transport charges at ten miles. A similar cap is one way that the Commission could cure the problem in NECA's transmittal.

For these reasons, the Bureau should suspend, investigate and declare unlawful in its current form NECA's Transmittal No. 1400.

⁶ See *AT&T Transmittal No. 148*, Memorandum Opinion and Order, FCC 84-421; 1984 FCC LEXIS 1966; 56 Rad. Reg. 2d (P & F) 1503 (rel. Sept. 19, 1984); see also *Arrow Transportation Co. v. Southern Railway Co.*, 372 U.S. 658 (1963).

Respectfully submitted,

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October 30, 2013