

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

In the Matter of)	
)	
National Exchange Carrier Association, Inc.)	Transmittal No. 1400
(NECA) Tariff No. 5)	

**PETITION OF SPRINT COMMUNICATIONS COMPANY L.P.
TO SUSPEND AND INVESTIGATE**

Pursuant to Sections 201(b) and 204(a) of the Communications Act of 1934 and section 1.773 of the Commission's rules,¹ Sprint Communications Company L.P. ("Sprint"), by its attorneys, hereby respectfully requests that the Federal Communications Commission ("FCC" or "Commission") suspend and investigate the above-captioned tariff revisions filed by the National Exchange Carrier Association, Inc. ("NECA"). The proposed tariff is an attempt to circumvent the FCC's decision in *AT&T Corp. vs. Alpine Communications, LLC et al*, 27 FCC Rcd 11511 (2012) ("*Alpine Order*"), which limited the ability of carriers to artificially inflate their transport charges by designating distant points of interconnection, in many instances across a LATA boundary. Here, NECA is attempting to enable those carriers to continue this scheme by removing the restriction on LECs billing charges for inter-LATA transport. However, the tariff filing makes no attempt to undo the second rationale by which the FCC ruled against Alpine in that decision; specifically, that the practices outlined in that case, and that NECA attempts to ensconce in this tariff, are unreasonable under Section 201(b).

¹ 47 C.F.R. § 1.773.

Background

The Commission has recognized the negative consequences of access stimulation, or traffic pumping, a practice by which LECs enter into financial relationships with high-volume calling providers. The LECs receive above-cost terminating access fees from inter-exchange carriers (“IXC”) (such as Sprint) and share those revenues with their calling partners. Despite the “free” moniker bandied about by the LECs and their partners, the calls are in no way free—the costs are merely shifted to IXCs and their customers. The FCC’s orders in *Farmers*² and *Northern Valley*³ greatly reduced the ability of LECs to profit from such schemes. But those orders, and the new rules laid out in the *CAF Order*,⁴ did little to remove the incentives to inflate other charges imposed on IXCs in access stimulation schemes, such as tandem switching and transport costs.

One strategy devised by the LECs and their partners was to take advantage of the centralized equal access providers (“CEAP”) that operate with FCC mandates—dating from before the Telecom Act of 1996—in several states, including Iowa, South Dakota, and Indiana. In Iowa, for example, Iowa Network Services (“INS”) receives calls from IXCs at its switch in Des Moines. INS charges IXCs a high flat rate⁵ to transport the call to one of 16 locations within Iowa where the call is handed off to a LEC for termination. The LEC then charges a mileage-

² *Qwest Commc'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, Second Order on Reconsideration, 24 FCC Rcd 14801 (2009).

³ *Qwest Communications Company, LLC v. Northern Valley Communications, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 8332 (2011); *Sprint Communications Company L.P. v. Northern Valley Communications, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10780 (2011)

⁴ *Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, WC Docket No. 10-90, 26 FCC Rcd. 17663 (2011)

⁵ INS has taken the position that it is not subject to the CAF Order and recently filed a tariff raising its flat rate from \$0.006 to \$0.008.

based charge for transporting the call from the INS POI to its own switch. Several years ago, LECS—in conjunction with INS—devised an arrangement by which the LECs would purport to lease capacity on INS’s network. This arrangement allowed the LECs to bill transport by the mile all the way from Des Moines to their switch rather than just the last few miles from the nearest INS POI; however, INS continued to bill the IXC the same flat rate that they formerly paid to transport the calls most of the distance to the LEC so the IXCs were effectively double paying for the same transport.⁶

The LEC charges for transport were in direct contravention of the NECA tariff in effect at the time, which defined “Switched Access Service” as the ability to “terminate calls from a customer designated premises to an end user’s premises *in the LATA where it is provided.*” NECA Tariff No. 5, § 6.1, Original Page 6-1; *Alpine Order* ¶ 33 (emphasis added). Because Iowa contains five different LATAs, those carriers that were not in the same LATA as INS’s tandem switch in Des Moines were billing IXCs to transport calls across a LATA boundary to their own LATA, which was not allowed by the language of the tariff.

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AT&T, as an IXC, challenged this practice, first as a defense in federal court against a collection effort brought by various LECs, and then at the FCC on a primary jurisdiction referral. The FCC ruled in favor of AT&T on several grounds.⁷ One ground that led directly to the revised tariff NECA filed here was the holding that the language of the tariff did not allow LECs to charge IXCs transport costs across a LATA boundary.

⁶ While this strategy has received the most notoriety, LECs in other locations, including Michigan and Nebraska, have moved their POIs to distant locations in an attempt to increase their mileage charges billed to IXCs.

⁷ Two of these grounds are not directly implicated by NECA’s revised tariff filing. First, the FCC held that due to an ambiguous tariff, the LECs do not have an unqualified right to select a POI. *Alpine Order* ¶¶ 18-30. Second, the FCC held that the LECS had not provided proper notice of the change in POI location. *Id.* ¶¶ 35-38.

The FCC agreed with AT&T that two separate provisions of the NECA tariff prohibited inter-LATA transport by LECs. First, the title page of the NECA tariff stated that the tariff governed only “the provision of Access Services within a Local Access and Transport Area or equivalent Market Area.” NECA Tariff No. 5, 2nd Revised Title Page 1, *Alpine Order* ¶ 32. Second, the definition of Switched Access Service limited the application of charges to switched-access calls “to an end user’s premises *in the LATA where it is provided.*” NECA Tariff No. 5, § 6.1, Original Page 6-1; *Alpine Order* ¶ 33.

The FCC held that, based on the explicit language of the tariff, switched-access charges could not apply to mileage charges for calls that crossed a LATA boundary. But the FCC also found the practice unlawful for a second, independent reason: the NECA tariff is unjust and unreasonable to the extent it allows the Iowa LECs to change their POIs for the sole purpose of inflating mileage charges paid by IXC. *Alpine Order* ¶¶ 44-48. The FCC found in favor of AT&T, agreeing that the “NECA Tariff cannot reasonably authorize the Iowa LECs to change POIs and increase costs on the IXCs unless there are also significant increases in service choices or other benefits.” *Id.* ¶ 44.

NECA’s Current Revisions

The NECA tariff filing attempts to eliminate the first rationale by which the FCC ruled against NECA—that the tariff’s language does not allow LECs to charge for calls transported across LATA boundaries. This tariff filing purports to modify that. However, the tariff revisions do nothing to remedy the substantive harm that the FCC gave as an alternate reason for ruling in favor of AT&T because the designation of a distant POI solely to increase mileage charges on IXCs is inherently unreasonable.

NECA's changes are quite small and exactly tailored to the language at issue in *Alpine*. NECA admits it is seeking "to enable the provision of interstate access services connecting to a location in a different LATA in the same state or a different LATA in an adjacent state."⁸ The title page formerly said:

Regulations, Rates and Charges applying to the provision of
Access Services *within a Local Access and Transport Area (LATA)*
or equivalent Market Area for connection to interstate
communications facilities for Interstate Customers within the
operating territories of the Issuing Carriers

NECA Tariff No. 5, 2nd Revised Title Page 1 (emphasis added). The new filing strikes the language "within a Local Access and Transport Area (LATA) or equivalent Market Area."

NECA Tariff No. 5, 3rd Revised Title Page 1. This is the exact phrase the Commission earlier determined prohibited LECs from transporting calls across a LATA boundary.

Similarly, the Commission found that the definition of Switched Access Service also precluded LECs using the NECA tariff from charging IXC's for calls across a LATA boundary.

The old definition read:

Switched Access Service provides for the ability to originate calls
from an end user's premises to a customer designated premises,
and to terminate calls from a customer designated premises to an
end user's premises in the LATA where it is provided.

NECA Tariff No. 5, § 6.1, 8th Revised Page 6-1. The new filing adds "or 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" to the phrase above. NECA Tariff No. 5, § 6.1, 9th Revised Page 6-1. Again, this is a direct response to the FCC's holding in *Alpine* that "the disputed mileage charges for

⁸ Transmittal Letter Oct. 23, 2013.

transport outside the LATA by these three LECs are not authorized by the language in the NECA Tariff and thus are unlawful.” *Alpine Order* ¶ 34.

Finally, NECA struck the phrase “within a LATA” in three other sections of the access charge section.⁹

NECA claims that its revisions are to allow participating LECS to “use more efficient network technologies.”¹⁰ But it cannot be mere coincidence that the revised phrases are the exact provisions that the Commission found unreasonable in the *Alpine Order*. The revisions only fix half the problem because the Commission did not just rely on the limitations of the then-current tariff language. The Commission also found that the practice at issue—selecting POIs for the purpose of inflating charges to IXCs—is inherently unreasonable. NECA’s propose with these changes is apparently to foster mileage-pumping schemes that the FCC has already found are unreasonable under 201(b). Indeed, it is entirely possible that if this tariff revision were allowed to stand, participating carriers could charge IXCs like Sprint for several hundred miles of transport for a call that traverses a very large state like Texas. And if, instead of just traveling across one state that same call crossed into an “adjacent state,” the mileage charges could skyrocket even further.¹¹ For these reasons, this tariff filing should be suspended. NECA’s claim that the purpose of the tariff changes is to provide for enhanced network efficiency is implausible in light of the *Alpine Order*.

⁹ Compare NECA Tariff No. 5, 7th Revised Page 6-4 with 8th Revised Page 6-4.

¹⁰ “NECA is proposing these revisions to enable its tariff participants to respond to evolving network trends designed to facilitate the use of more efficient network technologies. The revisions would provide the tariff participant with the ability to connect its switches to a tandem provider located outside its LATA in order to address facility exhaust problems, improve network routing efficiency, provide or enhance network backup capabilities, and/or improve the quality of billing data recordings.” Transmittal Letter Oct. 23, 2013.

¹¹ Not to mention that if a participating carrier read the proposed tariff revision in such a way as to allow for interstate transport, which, due to the ambiguity is entirely possible, that participating carrier could attempt to bill IXCs for calls that travel across the country.

The Commission should investigate this tariff to determine whether NECA's statement is correct or whether the tariff changes are designed to facilitate mileage-pumping schemes. If homing an end-office switch to a distant tandem switch in a different LATA offers advantages, as NECA claims in its transmittal letter, it and the subscribing LECs should have to weigh those advantages against the added costs imposed on IXCs. That is the basic cost/benefit analysis that drives any non-monopoly business enterprise, and the LEC should not be allowed to exploit its switched access monopoly power to foist the cost component of the equation onto the IXC that is not receiving any benefit. For example, if the far-distant tandem offers "the use of more efficient network technologies" or "improve[s] quality of billing data recordings," the LEC should have to weigh its added transport costs against the benefit to be received. If the benefit is completely free to the LEC—because it's allowed to transfer all associated costs to the IXCs—even the smallest benefit may be attractive to the LEC, whether the associated cost is minimal or completely exorbitant. That's just bad economics, and cannot possibly be in the public interest.

For all of the reasons stated above, Sprint urges the FCC to suspend and investigate NECA's proposed tariff changes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jo-Ann Monroe, do hereby certify that on this 30th day of October 2013, a copy of the foregoing Petition of Sprint Communications Company L.P. to Suspend and Investigate was filed by Electronic Tariff Filing System, with a copy served via electronic mail and/or facsimile, to the parties listed below:

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