**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D. C. 20554**

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| **In the Matter of** | ) | |
| **National Exchange Carrier Association, Inc.** | ) | **Transmittal No. 952** |
| **Tariff F.C.C. No. 5** | ) | |

## AT&T PETITION TO REJECT OR SUSPEND AND INVESTIGATE

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") petitions the Commission to reject or suspend and investigate the above-captioned tariff revisions filed by the National Exchange Carrier Association, Inc. ("NECA") on August 30, 2002, under Transmittal No. 952, with an effective date of September 14, 2002.

## INTRODUCTION AND SUMMARY

On August 21, 2002, NECA filed a tariff transmittal seeking to revise the provisions in its access tariff to provide NECA carriers with wide discretion to demand security deposits that NECA alleged were necessary to mitigate the risks of non-payment by financially troubled access customers. As it had done with similar transmittals previously filed by other incumbent LECs, the Commission's Pricing Policy Division suspended the NECA transmittal.[1] The *Suspension Order* found that carriers objecting to the transmittal raised "substantial

[1] Order, *In the Matter of NECA, Inc. Tariff FCC No. 5*, Transmittal No. 951 (rel. Sept. 4, 2002) ("*Suspension Order*"); *see also Iowa Telecom. Serv., Inc. Tariff FCC No. 1,* Transmittal No. 22, DA 02-1732 (rel. July 17, 2002); *BellSouth Telecom. Tariff FCC No. 1,* Transmittal No. 657, DA 02-1886 (rel. Aug. 2, 2002); *Ameritech Operating Cos. Tariff FCC No. 2, et al.,* Transmittal Nos. 1312, 20, 77, 772 and 2906, DA 02-2039 (rel. Aug. 16, 2002); *The Verizon Tel. Cos. Tariff FCC Nos. 1, 11, 14 and 16,* Transmittal No. 226, DA 02-2055 (rel. Aug. 22, 2002).

questions," that, for example, the proposed revisions were far too broad and that NECA had not demonstrated any significant risk of bad debt that is not already protected by existing tariff provisions that allow the NECA carriers to demand security deposits from access customers with a history of non-payment or with no established credit.

Undeterred, NECA now has filed an *additional* tariff transmittal that is aimed at the very same purpose.[2] In this transmittal, NECA seeks to impose a *thousandfold* increase – from 15 *thousand* dollars to 15 *million* dollars – to the component of its traffic sensitive revenue requirement related to uncollectibles. NECA provides no new reason to justify its alleged need to recover this massive increase, and instead relies only on the claim that "recent bankruptcies" necessitate this enormous boost (NECA D&J at 1) – a claim that is simply astounding in light of the fact that NECA proposed its $15,000 revenue requirement just two months ago, on June 17, 2002. Nothing in the last two months – or, indeed, at any time – has occurred that would justify NECA's attempt to so suddenly take the drastic steps in its current filing. Rather, like other incumbent LECs, NECA is protected from any risk of non-payment by access carriers through existing and longstanding tariff provisions that allow NECA carriers to collect security deposits from carriers that present unusual risks of non-payment.

Moreover, even if NECA could show some measurable increase in costs due to risks of uncollectibles, it plainly could not show that its proposed increase (or, indeed, any increase) to its revenue requirement is necessary to provide NECA with its allowed rate of return. To the contrary, NECA has consistently earned in excess of its 11.25% allowed return, and is on course to do so yet again this year.

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[2] NECA, Inc., Transmittal No. 952, *Tariff FCC No. 5* (filed Aug. 30, 2002).

Finally, the scope of NECA's new tariff transmittal is, if anything, even more unreasonable than its suspended transmittal on security deposits. That transmittal was, at least in theory, designed to recover deposits from certain access customers that met NECA-defined criteria (although, in fact, the NECA criteria were far too broad and ambiguous and would have allowed NECA carriers to demand deposits from virtually all access customers). NECA's instant transmittal, however, is expressly designed to recover its thousand fold increase of traffic sensitive uncollectibles from *all* access customers. This is patently unreasonable even if NECA had shown an increased risk of non-payment from certain carriers, because it would require carriers that pose little or no financial risk to pay inflated access rates for the risks posed by other carriers. Of course, the generalized harm to access customers – and, ultimately, consumers – is even greater considering that non-payment risks have certainly been grossly exaggerated. The NECA transmittal should be rejected or, at a minimum, suspended for five months and investigated.[3]

## I. THE NECA TRANSMITTAL IS NOT JUSTIFIED BY ANY "REASSESSMENT" OF THE RISK OF UNCOLLECTIBLE REVENUE FROM ACCESS CUSTOMERS, OR BY ANY SUPPOSED BAD DEBT "CRISIS."

NECA claims that its proposed $15 million dollar increase comes as the result of NECA's "reevaluat[ion]" of the uncollectible reserves that it included in its recent 2002 Annual Access Tariff Filing. NECA D&J at 1. According to NECA, this reevaluation was prompted by the industry's "financial stress," and particularly by the "recent bankruptcies of Global Crossing Ltd. and WorldCom, Inc." *Id.* But NECA filed its 2002 annual access tariff filing on June 17,

[3] A tariff is subject to rejection when it is *prima facie* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See*, *e.g.*, *American Broadcasting Companies, Inc. v. AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI v. AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See Suspension Order* at 2.

2002, just over two months ago – and at that time, it claimed that its uncollectible reserve should be only $15,000. NECA never explains what has happened since that filing that led it to reevaluate its uncollectibles requirements and increase them a thousand fold. To be sure, the telecommunications industry has experienced a downturn, but that fact has been evident for quite some time. And with regard to the specific instances cited by NECA, Global Crossing filed for bankruptcy on January 28, 2002, and WorldCom's financial plight was evident before NECA's June filing.[4] Thus, nothing in recent events could possibly provide a valid basis for NECA's "reassessment," after just eleven weeks, of its revenue requirement to increase by $15 million.

But regardless of the timing of NECA's request, it must be denied because NECA simply has failed to provide any evidence that its uncollectibles will in fact increase. As AT&T and others have explained in objecting to prior incumbent LEC transmittals, there simply is no incumbent LEC bad debt "crisis." NECA points to WorldCom and Global Crossing to claim that apparently healthy carriers can "quickly succumb" to financial problems, NECA D&J at 1, but those companies' difficulties apparently resulted from massive – and unprecedented – accounting improprieties that masked their financial problems long after they would otherwise have been evident. NECA's other access customers can hardly be painted with WorldCom's and Global Crossing's unusual circumstances.[5]

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[4] *See* C. Stern, "Global Crossing Files For Bankruptcy," Washington Post, (Jan. 29, 2002). Although WorldCom's accounting scandal was announced a few days after NECA's June 17, 2002, filing, it was under investigation by the SEC well before and had slashed its expected revenue by a billion dollars in April, 2002. *See* S. Young, "WorldCom Cuts Revenue Forecast," Wall St. J. (Apr. 22, 2002).

[5] And, in all events, NECA carriers and other incumbent LECs can and are pursuing their Bankruptcy Code rights to adequate assurances of payment from WorldCom and other bankrupt customers.

NECA provides *no* information to support its claims that it will be unable to collect from remaining access carriers. Indeed, like other incumbent LECs, NECA generally enjoys low levels of bad debt, as evidenced by the fact that it previously included only a small amount in its annual access tariff to account for uncollectibles.[6] And, in fact, the NECA companies, like other incumbent LECs, already receive sufficient protection from the risks of nonpayment by access customers, because their existing access tariffs have long permitted NECA carriers to demand security deposits from customers with "a proven history of late payments" or with no "established credit." *See* NECA Tariff FCC No. 5, § 2.4.1(A), 4th Revised Page 2-26. The Commission itself prescribed that language in 1984 to balance properly the LECs' risk of nonpayment with the burden on customers. *See Investigation of Access and Divestiture Related Tariffs*, 97 F.C.C.2d 1082, 1168-70 (1984). That tariff language has been sufficient for years to protect incumbent LECs from non-payment risks, even in prior unfavorable economic circumstances. Under these circumstances, any risk that NECA carriers face increased risk of bad debt is purely speculative.

NECA's transmittal is also unreasonable because, although NECA purports to justify it by pointing to problems posed by bankrupt entities and customers that in the future may be unable to pay, its tariff revisions at issue here are not directed at bankrupts or even at deadbeats, but at *all* ratepaying access customers, even those with impeccable credit. Even if NECA carriers and other large incumbent LECs could show truly increased levels of bad debt expense, this transmittal does not represent a limited, specified, and reasonable measure to

[6] As AT&T has shown, other incumbent LECs generally experience bad debt levels of less than one percent. And even in the recent economic downturn that affects all of the LECs' customers, these incumbent LECs have seen minimal increases in bade debt levels. NECA provides no reason to believe that NECA carriers have seen any larger increases in bad debt expense (and, if so, that the increases are attributable to access customers and not other customers).

recover the costs of bad debt caused by customers that can be demonstrated, by objective criteria, to present actual and unusual risks of nonpayment. In this regard, NECA's prior transmittal that the Division recently suspended at least *purported* to apply to a limited subset of customers. The current transmittal removes any such pretense and openly seeks to require all customers to pay increased rates. That result would be unreasonable even if the non-payment risks faced by NECA carriers were substantial. But because NECA has provided no evidence of any actual bad debt crisis, this transmittal will simply result in increased rates for customers, and higher rates of return for NECA carriers.

## II. THE NECA TRANSMITTAL IS UNNECESSARY TO ALLOW NECA TO MEET ITS RATE OF RETURN.

Even if NECA could show some measurable increase in its bad debt exposure, that would still be insufficient to justify its huge revenue requirement increase. That is because NECA provides *no* evidence that it will not collect revenues sufficient to achieve an 11.25% rate of return. Indeed, the evidence shows that NECA will likely (once again) overearn.

On June 17, 2002, just over two months ago, NECA filed its 2002 annual interstate access tariff filing (Transmittal No. 939), which provided supporting information for its projected revenue requirements, demand and traffic sensitive and common line access rates for the prospective July 1, 2002 through June 30, 2003 tariff period. At that time, NECA asserted that it had, in fact, precisely produced a set of rates that would yield an 11.25 % rate of return for the prospective tariff period.[7] Now, only weeks later, NECA asserts that its projection of bad debt costs was off by *one hundred thousand percent*, and that it must increase rates to ensure that it will achieve a rate of return equal to 11.25 %.

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[7] *See* Reply of NECA, Inc., Transmittal No. 939, *In the Matter of July 2, 2002, Annual Access Charge Tariff Filings, Tariff FCC No. 5*, WCB/Pricing 01-12 (filed June 28, 2002).

NECA's entirely unsupported assertion should be rejected. NECA has consistently earned in excess of 11.25%.[8] And for the upcoming period, it is likely that the NECA common line and traffic sensitive pool members will achieve at least an 11.25% rate of return. Indeed, NECA's projected common line revenue requirements are virtually guaranteed.[9] Because common line access revenues constitute approximately 66% of the total NECA revenue requirement[10] and generate the largest dollar return, this revenue guarantee nearly assures that the overall interstate rate of return will exceed 11.25%. Under these circumstances, where the common line revenue requirement almost certainly will earn at least 11.25% and where the traffic sensitive pool has historically exceeded a return of 11.25%, the overall return for the upcoming period will almost certainly continue to exceed 11.25%.

NECA's proposal to implement a 100,000% increase for uncollectibles is all the more arbitrary considering that there are barely three months remaining in the current monitoring period. Given that short period, the only possible impact of such large rate increases will be to guarantee *further* inflation in its rate of return. Indeed, NECA has already filed a preliminary FCC Form 492 for 2001 reporting interstate earnings of 12.90%.[11] Notwithstanding that fact, NECA has *not* made any reductions in its rates to flow-through these excess earnings – even though the amount of any reductions would surely be significant and in fact would easily dwarf

[8] As reported in NECA's FCC Form 492 (NECA Tariff Participants) (Sept. 28, 2001 & Sept. 30, 1999), NECA in these monitoring periods (1999-2000 & 1997-1998) reported cumulative overall interstate access returns of 11.81% and 12.28%, and traffic sensitive rates of return of 12.21% and 13.28%.

[9] As NECA notes, any difference between the Common Line Revenues and the Common Line Revenue Requirement will be recovered from Interstate Common Line Support.

[10] *See* NECA Transmittal No. 939, NECA TRP, 61.38 ACR-1 Projected, Column M.

[11] FCC 492, Rate of Return Report, filed March 29, 2002, reports 12.25% and 13.66% rates of return for common line and traffic sensitive revenues, respectively.

the magnitude of the nearly $15 million increase that NECA current seeks to implement. Thus, rather than approving tariff changes that allow NECA to further increase its rates (and its rate of return), NECA should instead be required to flow-through its prior overearnings by implementing rate reductions.

## CONCLUSION

For the foregoing reasons, NECA's proposed tariff revisions should be rejected or at a minimum, suspended for the full five-month statutory period and investigated.

Respectfully submitted,

AT&T CORP.

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September 6, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of September, 2002, I caused true and correct copies of the forgoing AT&T Petition to Reject and Suspend to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: September 06, 2002
Washington, D.C.

/s/ Patricia Bunyasi

Patricia A. Bunyasi

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