

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

In the Matter of)
)
National Exchange Carrier Association, Inc.,) Transmittal No. 952
Tariff FCC No. 5)

REPLY

The National Exchange Carrier Association Inc. (NECA), pursuant to section 1.773 of the Commission's rules,¹ submits this Reply to petitions from AT&T Corp. (AT&T), Sprint Corporation (Sprint), and General Communication, Inc. (GCI) seeking rejection or suspension of the above-captioned tariff filing.²

Petitioners claim that NECA has not properly justified a need to increase its uncollectible reserves.³ AT&T and GCI also claim that the proposed increase is unnecessary to meet the authorized rate of return.⁴ Finally, GCI alleges that Transmittal No. 952 "appears to be an unlawful attempt at retroactive ratemaking to recover prior shortfalls."⁵

¹ 47 C.F.R § 1.773.

² See AT&T Petition to Reject or Suspend and Investigate (filed September 6, 2002) (*AT&T Petition*); Sprint Petition to Reject, or Alternatively Suspend and Investigate (filed September 6, 2002) (*Sprint Petition*); GCI Petition to Reject, or Alternatively, Suspend and Investigate (filed September 6, 2002) (*GCI Petition*).

³ See *AT&T Petition* at 3; *Sprint Petition* at 2; *GCI Petition* at 5.

⁴ See *AT&T Petition* at 6; *GCI Petition* at 7.

⁵ See *GCI Petition* at 4.

Section 1.773 of the Commission's rules establishes standards for rejection or suspension of a tariff filing. A petitioner must demonstrate that the challenged tariff filing raises substantial questions of lawfulness, and must provide specific reasons why the tariff warrants suspension and investigation or rejection.⁶ For the reasons discussed below, petitioners have not made this showing. NECA's proposed tariff revisions should be allowed to take effect as filed.

I. PETITIONERS HAVE NOT RAISED QUESTIONS OF LAWFULNESS.

AT&T contends that the risk of additional uncollectibles from access customers does not justify the proposed filing.⁷ AT&T points out in this regard that NECA's *2002 Annual Filing*⁸ contained a much smaller uncollectibles allowance, and contends that "nothing in recent events could possibly provide a valid basis for NECA's "reassessment."

⁹ AT&T further contends that existing tariff language governing security deposits gives LECs "sufficient protection from the risks of nonpayment by access customers."¹⁰

Contrary to AT&T's contentions, major changes have taken place since the *2002 Annual Filing*. WorldCom, Inc. and its subsidiaries, NECA pooling companies' second largest access customer, sought bankruptcy protection on July 21, 2002. In addition, as described in the supporting documentation for NECA's Transmittal No. 952, the credit

⁶ See 47 C.F.R § 1.773(a)

⁷ See *AT&T Petition* at 3.

⁸ See National Exchange Carrier Association, Inc., Access Service Tariff, F.C.C. No. 5, Transmittal No. 939 (June 17, 2002) (*2002 Annual Filing*).

⁹ See *AT&T Petition* at 4.

¹⁰ *Id.* at 5.

ratings of other major access customers have deteriorated dramatically making it ever more difficult for them to raise cash flow for short and long term needs.¹¹

NECA was aware at the time of the *2002 Annual Filing* that a number of telecommunications carriers might be in serious financial trouble. At that time, however, the only significant access customer that had recently declared bankruptcy was Global Crossing Ltd. Increasing the forecast for uncollectible reserves at the time of that filing with only one significant access customer in default might have certainly been viewed as a premature action on NECA's part. This was especially true since only two weeks prior to the *2002 Annual Filing*, WorldCom claimed that it had "an undeniably strong cash position and ability to create cash that will cover debts".¹²

With known bankruptcies now adding over \$70 million in estimated uncollectibles for 2002, there can be no doubt that an adjustment is needed. The \$15 million proposed in this transmittal is, if anything, a conservative estimate given the 2002 uncollectible estimates described above and the precarious financial condition of the interexchange carrier industry on the whole.¹³

AT&T and GCI claim that no rate increase is necessary for NECA to achieve its authorized rate of return. This argument ignores the fact that the rates set in NECA's *2002 Annual Filing* were targeted to earn at the 11.25% level without an adequate uncollectibles

¹¹ See National Exchange Carrier Association, Inc., Access Service Tariff, F.C.C. No. 5, Transmittal No. 952 (August 30, 2002), Supporting Documentation at 2.

¹² John Curran, *Worldcom Says Finances Are Strong, New Bank Lines Expected in June*, TR Daily, May 29, 2002.

¹³ John C. Hodulik, CFA, *Wireline Services: Too Early to Call a Bottom*", UBS Warburg LLC, May 28, 2002, at 1.

reserve. The FCC recently reviewed claims by both AT&T and GCI that the rates set forth in NECA's 2002 Annual Filing were overstated, and concluded after a brief suspension that the filing did not raise issues warranting investigation.¹⁴ AT&T and GCI raise essentially the same claims made against the annual filing without any additional substantiating information. They provide no reason why the Commission should reach a different conclusion with this filing.

AT&T and GCI misuse the preliminary Form 492 filed by NECA on March 29, 2002 to support their contention that a rate increase is unnecessary.¹⁵ Form 492, filed by NECA on behalf of its pooling companies, merely represents preliminary earnings for the first year of the 2001-2002 monitoring period. Since these interim results are subject to true up throughout the course of the entire monitoring period, rate of return levels typically decrease as pooling companies update the results with actual data. The preliminary results filed on March 29, 2002 did not reflect updates that may occur before the end of the monitoring period and clearly did not account for the impacts of the bankruptcy filings by Global Crossing or WorldCom.

II. NECA TRANSMITTAL NO. 952 SEEKS TO RECOVER ONLY PROSPECTIVE REVENUE REQUIREMENT FOR THE REMAINDER OF THE TEST PERIOD

GCI states that Transmittal 952 "appears to be an unlawful attempt at retroactive ratemaking to recover prior shortfalls."¹⁶ GCI apparently has misread the supporting

¹⁴ See 2002 Annual Access Tariff Filings, WCB/Pricing Docket No. 02-12, *Order on Reconsideration*, 17 FCC Rcd 14551 (2002) (*Reconsideration Order*).

¹⁵ See *AT&T Petition* at 6-7 and *GCI Petition* at 7.

¹⁶ See *GCI Petition* at 4.

material filed with Transmittal No. 952. As shown in the filing, NECA is increasing its uncollectible reserve by \$15 million for the entire 2002-2003 test period to account for projected increases in uncollectibles. The proposed rates, which will only be in effect for the remaining months of the test period, will only recover a portion of the \$15 million.¹⁷ The increased revenue requirements are calculated to not include any uncollectible amounts that have been already reported to the pool.

III. CONCLUSION

AT&T, Sprint and GCI have failed to show any basis for suspending and investigating NECA's Transmittal No. 952 tariff filing. None of the petitioners have met the standards of section 1.773 to warrant suspension and investigation or rejection of the tariff filing. NECA's tariff filing should therefore be allowed to become effective on September 14, 2002, as filed.

Respectfully submitted,

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September 12, 2002

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¹⁷ See Transmittal No. 952 at note 8.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply was served this 12th day of September 2002, by electronic delivery, first class mail, or facsimile transmission, to the persons listed below.

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