

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
National Exchange Carrier Association, Inc.)	WC Docket No. 02-356
Tariff F.C.C. No. 5)	
Transmittal No. 952)	

OPPOSITION TO DIRECT CASE

Sprint Corporation hereby respectfully submits its opposition to the Direct Case filed by the National Exchange Carrier Association, Inc. ("NECA") on December 2, 2002, in response to the Order (DA 02-3100) of the Pricing Policy Division ("Division") of the Commission's Wireline Competition Bureau, released November 8, 2002, in the above-captioned docket.

On August 30, 2002, NECA proposed tariff revisions to increase its switched and special access rates based on an increase in its interstate revenue requirement for the remainder of the 2002/2003 test period of \$15 million due to higher than anticipated uncollectibles. To examine the lawfulness of the proposed rate increases, the Division designated for investigation a single issue: "whether the increased allowance for uncollectibles and the resulting increase in interstate access rates are just and reasonable within the meaning of section 201(b) of the Act." Order, ¶ 6. The Division directed NECA to provide information related to the derivation of its \$15 million estimate of uncollectibles (id., ¶ 8), as well as information about its historical uncollectibles and rate of return. Id., ¶ 9. The Division also requested that NECA explain why its current rates

“do not adequately compensate its carrier participants for the risk of uncollectibles” (id.) and why it considers the variation to reflect a long-term trend that requires an increase in the allowance for uncollectibles. Id., ¶ 12. The Division also asked NECA to discuss other methods to address the risk of uncollectibles. Id.

NECA’s Direct Case fails to sustain its burden of demonstrating that its proposed increase in its allowance for uncollectibles, and its resulting access rate increases, are not unjust and unreasonable, in violation of Section 201(b) of the Act. NECA’s Direct Case here relies heavily on its Direct Case filed on November 21, 2002 in response to the Order designating issues for investigation regarding proposed changes to its customer security deposit provisions in Transmittal No. 951, WC Docket No. 02-340 (DA 02-3048) (*Customer Deposit Direct Case*). Sprint therefore incorporates by reference its Opposition filed December 5, 2002 in that docket.

In response to the Division’s request for an explanation of the derivation of the \$15 million increased revenue requirement, NECA submits that it estimated this amount by “select[ing] a default rate of about 11 percent, roughly the default rate prediction for speculative bond issuers in 2001” and by multiplying its estimated interstate traffic-sensitive access revenues by this default rate and then by 19.2 percent to account for 70 days of lost revenue due to defaults. Direct Case, Exhibit B. NECA’s use of an extremely high 11 percent default rate is completely unsupported and unfounded. NECA has not demonstrated any relationship between a carrier’s ability to pay its access bills and “the default rate for speculative bond issuers.” Nor are two of its largest

customers (AT&T and Sprint) “speculative bond issuers.” Clearly, the analytical basis for the projected increase in uncollectibles is seriously flawed.

The basis of an access charge rate increase for rate of return carriers should be a permanent increase in the interstate revenue requirement. Thus, the Division asks “whether the variation in uncollectible levels for 2000 and 2001 is merely a normal fluctuation in uncollectibles, which would be covered by the business risks anticipated in the 11.25 percent authorized rate of return, or whether it reflects some long term trend that warrants increasing the allowance for uncollectibles in the calculation of NECA’s interstate revenue requirement.” Order, ¶ 9. Despite NECA’s claims to the contrary (Direct Case, p. 4), NECA has not demonstrated a permanent change in uncollectibles which warrants an increase in access rates. In its *Customer Deposit Direct Case*, NECA provided a few articles containing opinions from investment and research firms to support its claim that the telecommunications industry continues to be in a state of financial turmoil. However, one of these articles, prepared by the Precursor Group, suggests the opposite – that there are “some emerging signs of long term stabilization developing in portions of telecom.” *Id.*, Exhibit D (emphasis in text). Further, as Sprint discussed in its Opposition to NECA’s Direct Case in WC Docket No. 02-340 (p. 7), NECA has not shown that the current uncollectibles are not part of the normal fluctuations associated with economic downturns or the one-time rash of carrier bankruptcies that occurred in 2001 and 2002, largely as a result of the bursting of the Internet bubble and disclosures of financial fraud.

NECA claims that “[t]he recent bankruptcies of Global Crossing Ltd. and WorldCom, Inc. highlight the financial stress facing the telecommunications industry,”¹ and it estimates that these two bankruptcies “have accounted for estimated uncollectible revenues of over \$70 million.” *Id.*, p. 2, footnote omitted. However, the actual impact of the WorldCom and Global Crossing bankruptcies is still unknown and may be lower than anticipated.² Because these bankruptcies were a result of massive fraud or questionable accounting practices, unprecedented and unlikely to be repeated, losses attributable to them should not be considered the basis of a permanent increase in uncollectibles, or consequently, of increases in access rates. In order to properly estimate uncollectibles, the impact of these two anomalies should be excluded from any demonstration of a long term trend in uncollectibles. Although NECA claims that its forecast of uncollectibles for the test period 2002/2003 does not include losses from these bankruptcies, it also states that it “proposed...to revise its uncollectibles estimate to reflect additional uncollectible losses based on recent experiences with bankruptcies.” Direct Case, p. 10. Thus, even though amounts from these two bankruptcies may not have been included explicitly in its forecasted uncollectibles, the two have clearly affected the “recent historical trends” (Direct Case, p. 10) on which NECA’s estimation is based.

¹ National Exchange Carrier Association, Inc., Transmittal No. 952, filed August 30, 2002, D&J, p. 1.

² These companies are currently operating as debtor-in-possession and presumably are paying their access bills pursuant to court order. Therefore, there should be no further uncollectible exposure from these two carriers.

Because NECA is subject to rate of return regulation, its proposed rates should not be designed to achieve a rate of return greater than 11.25 percent. NECA is currently earning above this authorized rate of return: Common Line – 11.70 percent and Traffic Sensitive – 12.80 percent. *Customer Deposit Direct Case*, p. 5. If NECA is permitted to increase its rates as proposed and if an increase in uncollectibles is not permanent, NECA's rate of return may be increased further above 11.25 percent. Absent a more compelling case that the increase in uncollectibles is permanent, the proposed rate increases should be rejected.

Nor has NECA shown that its currently effective tariff provisions for requiring security deposits would not have substantially mitigated its uncollectible issue – to the extent there is one – had such provisions been exercised in a timely manner. In its *Customer Deposit Direct Case* (p. 9), NECA states that several companies “have instituted increased reviews of their customer accounts resulting in timelier notices to customers that have been delinquent in bill payments.” Certainly, NECA should be required to enforce its currently effective tariff to obtain security deposits from those customers that “have a history of late payments,”³ and thereby protect itself from uncollectibles, before it is permitted to increase access rates for all of its access customers.

³ National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, Section 2.4.1(A), 4th revised Page 2-26.

In Exhibit D, NECA proposes two uncollectibles escrow alternatives it developed “[i]n response to issues raised in discussion with FCC staff.” Direct Case, Exhibit D, p.

1. Under both options, revenues generated by the increased rates would be held in an escrow account. Under Option #1, carriers would be paid from the escrow account as they report actual uncollectibles. If uncollectibles exceed the balance in the escrow account, uncollectibles would be paid to the extent funds are available. If uncollectibles are less than the escrow account, any unused amounts would be “refunded” in the next test period, and a new estimate of uncollectibles would be made for future test periods. NECA describes Option #2 as having “[s]imilar processes as Option #1, with the exception that estimated uncollectibles for the current rate period would be reimbursed from the escrow account.” *Id.* p. 2. The issues with respect to these options are similar to those discussed above regarding the proposed rate increases. Specifically, there has been no demonstration of a permanent change in uncollectibles; the methodology for estimating the uncollectibles is unsupported; and there has been no evidence presented that the currently effective tariffs, if properly enforced, would not protect NECA carriers without penalizing all access customers. The second option is further flawed by being based on expected, rather than actual, uncollectibles. Carriers may ultimately receive payment from bankrupt firms, but the amount is unknown; therefore, any process relying on estimates is seriously deficient.

For the above reasons, Sprint urges the Commission to find that NECA has failed to sustain its legal burden of proof on the core issue of the reasonableness of its tariff provision.

Respectfully submitted,

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December 16, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of that portion of Sprint's Opposition to Direct Case of the National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 952, WC Docket No. 02-356, was sent electronically and/or by U.S. First Class Mail and facsimile on this 16th day of December 2002 to the parties listed below.


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