

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

In the Matter of)	
)	WCB/Pricing 03-15
July 1, 2003)	Transmittal No. 988
2002 Annual Access Tariff Filings)	

**REPLY COMMENTS OF THE
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

The National Exchange Carrier Association Inc. (NECA), pursuant to section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, submits this reply to petitions filed by General Communications, Inc. (GCI)¹ and AT&T Corp. (AT&T)² seeking to suspend and investigate NECA's June 16, 2003 tariff filing (Transmittal No. 988).

Section 1.773 of the Commission's rules requires petitioners seeking suspension or rejection of a tariff filing to demonstrate that the challenged filing raises substantial questions of lawfulness, and must provide specific reasons why the tariff warrants investigation, suspension, or rejection. For the reasons discussed below, neither petition meets this standard. They should be denied, and NECA's proposed tariff revisions should be allowed to become effective as filed.

¹ Petition of GCI to Suspend and Investigate (filed June 24, 2003) (*GCI Petition*).

² Petition of AT&T Corp. (filed June 23, 2003) (*AT&T Petition*).

I. THE COMMISSION SHOULD DISMISS GCI'S PETITION AS UNTIMELY AND FOR FAILURE TO SHOW THAT THE FILING RAISES SUBSTANTIAL QUESTIONS OF LAWFULNESS.

The Commission's Electronic Tariff Filing System (ETFS) shows that the *GCI Petition* was filed on June 24, 2003, one day after the June 23, 2003 deadline specified in the Commission's *2003 Access Tariff Order*³ and by Commission rules.⁴ The *GCI Petition*, therefore, is untimely and should be dismissed.⁵ Timely filings are critical to the Commission's streamlined tariff filing procedures, established in accordance with Section 204(a)(3) of the Communications Act, to allow respondents to make the best use of the allocated four-day interval to analyze petitions and prepare a reply.

If the Commission reaches the merits of GCI's late-filed *Petition*, it should dismiss it for failure to raise substantial questions as to whether the proposed rates are unlawful.

As noted above, section 1.773 of the Commission's rules requires that petitions seeking suspension or rejection of a tariff filing must provide specific reasons why the protested tariff filing warrants investigation, suspension or rejection under the Communications Act.⁶ GCI presents no evidence whatsoever that the revenue requirements or demand forecasts underlying the instant filing are incorrect. Instead it

³ July 1, 2003 Annual Access Charge Tariff Filings, WCB/Pricing Docket No. 03-15, *Order*, 18 FCC Rcd 7155 (2003) (*2003 Annual Access Tariff Order*) at ¶ 2. The Commission specifically cautions

⁴ 47 C.F.R. § 1.773(a)(2)(iii) requires petitions seeking investigation, suspension or rejection of a tariff filing made on fifteen days notice to be made within 7 days after the date of the tariff filing.

⁵ *See, e.g.,* Protested Tariff Transmittals Actions Taken, Report No. CCB/CPD 00-19, *Public Notice*, 15 FCC Rcd 14967 (2000) in which the Competitive Pricing Division dismissed the petition of International Communications Association (ICA) as untimely filed.

simply argues that NECA's prior filings suffered from forecast errors, and therefore the current filing probably has errors too.

GCI's only observation about the proposed filing (*i.e.*, that the proposed rates do not reflect adjustments from current rates)⁷ is simply wrong. NECA's filing proposes to reduce the composite traffic sensitive switched access rate by nearly 8% (from \$.0244 per minute to \$.0225 per minute).⁸ Common transport rates are decreasing by more than 30%.⁹ These rates reasonably reflect NECA projections of costs and demand trends for the test period. Because GCI has provided no basis for its claim that the proposed rates are unlawful, it's petition must be dismissed.

II. NECA HAS APPORTIONED TIC COSTS CORRECTLY

AT&T asserts that NECA has incorrectly apportioned TIC costs.¹⁰ AT&T points out that the Commission's *MAG Order* requires that line port costs be shifted from the Local Switching access element to the Common Line access element prior to TIC reallocation. AT&T claims that NECA used a ratio in which Local Switching includes, rather than excludes, these costs.¹¹ AT&T asserts that use of a local switching ratio that includes line port costs causes revenue requirements for the Common Line and Transport

⁶ 47 C.F.R. § 1.773(a).

⁷ *GCI Petition* at 2.

⁸ NECA Filing, Volume 1, Table 3. Additionally, NECA will be filing an Amendment to Transmittal No. 988 under authority of Special Permission No. 03-066 that will further reduce the local switching rate to \$0.0224 per minute.

⁹ NECA Filing, Volume 1, Table 4.

¹⁰ *AT&T Petition* at 3.

¹¹ *Id.*

access elements to be understated, and revenue requirements for the Local Switching, Information and Special Access access elements to be overstated.¹²

NECA reallocated test period TIC amounts to the other access elements (*i.e.*, common line, local switching, information, special access), as well as to the other local transport elements, based on each access element's projected revenue requirement divided by projected total access element revenue requirements.¹³ In determining the revenue requirements used in the TIC reallocation, NECA made the following adjustments: (1) LSS was removed from the local switching revenue requirement; (2) line port costs were shifted from the local switching revenue requirement to the common line revenue requirement; (3) TIC amounts were excluded from the local transport revenue requirement; (4) Long Term Support (LTS) and Interstate Common Line Support (ICLS) were included in the common line revenue requirement; and (5) universal service contribution amounts were excluded.¹⁴

This reallocation was performed at the individual study area level, with revised revenue requirements for each access element for all pooling study areas summed to derive total pool revenue requirements. Because local switching revenue requirements did not include line port costs, there is no basis for AT&T's claim that NECA's reallocation of TIC costs is inconsistent with the Commission's *MAG Order*.

¹² *Id.*

¹³ NECA Filing at Volume 2, p. 10.

¹⁴ *Id.*

AT&T apparently reallocated TIC costs at the total pool level, using overall NECA pool access element revenue requirement percentages.¹⁵ This method would, if adopted, significantly misallocate TIC reallocations for the access elements. For example, total pool Common Line revenue requirements include amounts for companies that do not participate in NECA's traffic sensitive pool. If total common line amounts are used in the ratio for TIC reallocation purposes with traffic sensitive revenue requirements for local switching, information, special access and local transport amounts (which are based on revenue requirements only for those companies that participate in the traffic sensitive pool), excessive TIC costs would in fact be allocated to common line, and insufficient TIC costs would go to the local switching, local transport, information, and special access elements.¹⁶

AT&T's method ignores differences such as individual study area pool participation and different levels of local switching support. NECA's method of calculating TIC reallocations captures these differences. The Commission should therefore not adopt AT&T's method for calculating TIC reallocations, as this would produce misallocations of costs among the access elements.

¹⁵ AT&T's analysis is based on NECA's tariff review plan ACR form (Rate of Return TRP, ACR Adjustments, Test Year 7/03-6/04, 61.38 ACR-1 Projected), which incorrectly displays line port costs being included, rather than excluded. This form will be corrected in an amendment to Transmittal No. 988 that NECA will submit on June 27, 2003. In any event, NECA's ACR form is simply a display of amounts for NECA pool participants and is not used in the actual calculation of the TIC reallocations. The TIC amounts in column J are not affected by the corrections made to the form.

¹⁶ NECA includes the line port and TIC costs shifted to common line for these companies. NECA's approach correctly reflects the fact that traffic sensitive revenue requirements for common line pool members filing their own traffic sensitive tariffs are reflected in their own tariff filings.

III. CONCLUSION

AT&T and GCI have failed to show any basis for suspending and investigating NECA's 2003 annual tariff filing. NECA's tariff filing should therefore be allowed to become effective on July 1, 2003, the scheduled date. None of the petitioners have adequately challenged the lawfulness of NECA's tariff, nor have they met any of the standards of section 1.773 to warrant suspension and investigation of the tariff filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply was served this 27th day of June 2003, by electronic filing, electronic mail or facsimile transmission, to the persons listed below.

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