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

In the Matter of	)	
	)	
July 2006 Annual Access Charge Tariff Filings	))	WCB/Pricing File No. 06-15
	)	
National Exchange Carrier Association, Inc. Tariff FCC No. 5	))	Transmittal No. 1129

PETITION OF VERIZON[1]

Pursuant to Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, and the Commission's Order dated March 24, 2006,[2] Verizon hereby respectfully requests that the Commission suspend and investigate the annual interstate access services tariff filed by the National Exchange Carrier Association ("NECA") on June 16, 2006. As explained below, the supporting materials filed with NECA's tariff show that NECA's participating carriers earned more than the Commission-prescribed rate of return for 2005. However, NECA fails to make the necessary mid-course correction to ensure that NECA's rate of return during the 2005-2006 monitoring period will be within Commission limits. Furthermore, the cost support that NECA has supplied with Transmittal No. 1129 is inadequate to justify the projected increase in NECA's switched access revenue requirement, particularly given that it is already exceeding its Commission-prescribed return.

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[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] *July 2006 Annual Access Charge Tariff Filings*, Order, WCB/Pricing File No. 06-15, DA 06-649 (rel. Mar. 24, 2006).

I. NECA FAILS TO SHOW THAT ITS PROPOSED TARIFF IS CONSISTENT WITH ITS COMMISSION-PRESCRIBED RATE OF RETURN.

Pursuant to Section 65.701 of the Commission's rules, a rate-of-return carrier's earnings "shall be measured over a two year period to determine compliance with the maximum allowable rate of return."[3] Accordingly, LECs have an obligation to ensure that they do not exceed the Commission's prescribed rate of return over the two-year monitoring period. As the Commission has explained, "[d]uring the course of the two-year monitoring period, rate-of-return carriers must review how their actual costs and demand calculations compare to their earlier projections, and make rate adjustments, if necessary, to ensure that they do not exceed their prescribed rate of return."[4]

The description and justification filed in support of NECA's annual access tariff filing clearly demonstrate that NECA pool participants are earning in excess of the authorized rate of return and that switched access rates require adjustment.[5] NECA's March Form 492 submission shows that, in the first year of the 2005-2006 monitoring period, NECA's rate of return in the switched access category exceeded its Commission-prescribed return.[6] However NECA has taken no steps in Transmittal No. 1129 to correct for this fact and ensure that its earnings for the 2005-2006 monitoring period do not exceed the prescribed rate of return. NECA has, instead, developed its rates solely to target the prescribed rate of return for the July 1, 2006-June 30, 2007

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[3] 47 C.F.R. § 65.701.

[4] *General Communications Inc., Complainant v. Alaska Communications, Inc. and Alaska Communications Systems, Inc. d/b/a ATU Telecommunications d/b/a Anchorage Telephone Utility, Defendants*, EB-00-MD-016, Memorandum Opinion and Order, 16 FCC Rcd. 2834, ¶ 5 (2001).

[5] National Exchange Carrier Association, Inc., Access Service Tariff F.C.C. No. 5, Transmittal No. 1129, Vol. 1-5 (filed June 16, 2006).

[6] *Id.*, Vol. 1 at 35 (using data from NECA Form 492, filed Mar. 31, 2006).

tariff year. In fact, rather than decreasing rates to ensure that it reduces its rate of return to the Commission's prescribed level, NECA is proposing an *increase* of approximately 6 percent in its switched access rates, from an average of $0.0188/min to $0.0199/min.[7]

NECA will no doubt argue, as it has in the past, that its reported switched access earnings will be adjusted downward as NECA pool members submit additional data. Such claims should be given no weight. As the Commission found in 2004, NECA's attempts to explain and justify its later "adjustments" to its reported earnings have been "inadequate."[8] The Commission found, in particular, that it "cannot determine the accuracy of what NECA alleges to be its final rate of return."[9] Because NECA's proposed rates are not designed to ensure that its earnings for the 2005-2006 monitoring period comply with the Commission's rate of return prescription, NECA Transmittal No. 1129 raises a substantial question of lawfulness and should be suspended.

II. NECA HAS FAILED TO SUPPORT ITS PROPOSED SWITCHED ACCESS RATE INCREASES.

The Commission should also suspend and investigate Transmittal No. 1129 because NECA has failed to support adequately its projected switched access rate increases. NECA is projecting an increase in its switched access revenue requirement that, combined with the projected decrease in switched access minutes, is the basis for the 6 percent switched access rate increase proposed in Transmittal No. 1129.

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[7] *Id.,* Vol. 1 at 10.

[8] *July 1, 2004 Annual Access Tariff Filings*, Memorandum Opinion and Order, 19 FCC Rcd 23877, ¶ 20 (2004). Among the conclusions reached in that Order was the finding that NECA's rates, which were in effect during at least the first half of 2005, were legal, but might not be lawful, and thus are potentially subject to refunds for the earnings in excess of the authorized rate of return. *Id.*, ¶¶ 24, 56.

[9] *Id.*, ¶ 19.

The issues identified by the Commission in its 2004 investigation of NECA's tariff raise significant questions concerning the reliability of NECA's projected 2006-2007 revenue requirement. In that investigation, the Commission found that NECA was unable to produce reliable financial data for its participating LECs, including basic revenue, expense, and rate base data.[10] In addition, NECA was unable to provide information concerning the NECA LECs' allocation of costs between the state and interstate jurisdictions.[11] Given these findings, the Commission must view NECA's unsupported revenue requirement projections with skepticism. As the Commission explained in 2004, "[r]eliable data are essential to the Commission's ability to conduct tariff reviews and investigations, ensure just and reasonable rates and, if necessary, to prescribe rates." [12]

Moreover, the FCC should be vigilant in ensuring that rates for rural carriers do not include excess costs. NECA's current average switched access rate of $0.0188 is already almost double the $0.0095 target switched access rate that the Commission has established for rural price cap carriers,[13] and three times the average switched access rate for other price cap carriers. This discrepancy would be exacerbated by NECA's proposed switched access rate increase. In addition, the Commission has stated repeatedly that rate-of-return regulation does not provide any incentive for a carrier to become more efficient.[14]

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[10] *Id,* ¶¶ 16-23.

[11] *Id.,* ¶ 22.

[12] *Id*., ¶ 24.

[13] 47 C.F.R. § 61.3(qq)(2).

[14] *See, e.g., Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶¶ 21-37 (1990).

Removing excess costs from access rates is also important in light of the Commission's goal to reform all intercarrier compensation.[15] The Commission is considering reducing access charge rates to intercarrier compensation rates, allowing some capped increase to subscriber rates, and then permitting carriers to recover the excess through a new universal service mechanism.[16] Increasing already high rates further complicates this reform effort and potentially burdens all consumers with ever higher universal service contributions.

CONCLUSION

For the foregoing reasons, the Commission should suspend NECA Transmittal No. 1129 and institute an investigation of the data and methodologies used by NECA to develop its projected switched access revenue requirement.

Respectfully submitted,

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[15] *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33 (rel. Mar. 3, 2005).

[16] *Id.*, ¶¶ 40-59.