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

In the Matter of	)	
	)	
July 2007	)	WCB/Pricing File No. 07-10
Annual Access Charge Tariff Filings	)	
	)	
Alliance Communications Cooperative, Inc.	)	Transmittal No. 7
Tariff F.C.C. No. 2	)	
	)	
Broadband Network Group, LLC	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
Arthur Mutual Telephone Company	)	
Bascom Mutual Telephone Company	)	
Benton Ridge Telephone Company	)	
Buckland Telephone Company	)	
Fort Jennings Telephone Company	)	
Glandorf Telephone Company, Inc.	)	
Kalida Telephone Company, Inc.	)	
Middle Point Home Telephone Company	)	
Ottoville Mutual Telephone Company	)	
Ridgeville Telephone Company	)	
Sherwood Mutual Telephone Association, Inc.	)	
Vaughnsville Telephone Company	)	
	)	
Consortia Consulting	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
Beresford Municipal Telephone Company	)	
McCook Cooperative Telephone Company	)	
Roberts County Tel. Coop. Ass’n / RC Comms., Inc.	)	
Western Telephone Company	)	
	)	
Elsie Communications, Inc.	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
	)	
Farmers Mutual Telephone Company	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
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ICORE, Inc.	)	Transmittal No. 80
Tariff F.C.C. No. 2	)	
Jordan-Soldier Valley Telephone Company	)	
Killduff Telephone Company	)	
Lynnville Telephone Company	)	
Northeast Iowa Telephone Company, Inc.	)	
Sully Telephone Association	)	
	)	
John Staurulakis, Inc.	)	Transmittal No. 130
Tariff F.C.C. No. 1	)	
Chesnee Telephone Company	)	
Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company	)	
Skyline Telephone Membership Corp.	)	
Yadkin Valley Telephone Membership Corp.	)	
	)	
Royal Telephone Company	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	

PETITION OF VERIZON[*] TO SUSPEND AND INVESTIGATE TARIFF FILINGS

Sean A. Lev
Evan T. Leo
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(202) 326-7999 (fax)

Karen Zacharia
Amy P. Rosenthal
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3175

Attorneys for Petitioner

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

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY

Pursuant to section 204(a)(1) of the Communications Act of 1934 (the "Act"), as amended, 47 U.S.C. § 204(a)(1), and section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, Verizon requests that the Commission suspend and investigate the individual access tariffs filed by the 29 rural local exchange carriers ("LECs") listed in the above caption. The proposed tariffs raise significant questions of lawfulness, both because there is a strong probability that they will enable the rural LECs to earn far in excess of their authorized rate of return and because the tariffs are based on the unreasonable practice of using traffic-demand data that the filing carriers know are not a reasonable proxy for future demand.

Each of these rural LECs has elected to exit the National Exchange Carrier Association ("NECA") access pool and instead file an individual access tariff based on historical (rather than projected) demand and costs. Although this Commission has permitted such filings for the limited purpose of easing the administrative burden on these carriers, *see* Report and Order, *Regulation of Small Telephone Companies*, 2 FCC Rcd 3811, 3811, ¶ 2 (1987) ("*Small Companies Order*"); 47 C.F.R. § 61.39, it has made clear that rates based on such historical data must be just and reasonable, *see Small Companies Order*, 2 FCC Rcd at 3812-13, ¶¶ 13-14. Indeed, section 201(b) of the Act *requires* that rural LECs charge just and reasonable access rates, regardless of whether the carriers conform to the Commission's procedural rules.

In this instance, there are strong reasons to suspect that the rates proposed by these LECs based on historical demand and costs will not be just and reasonable. In fact, the LECs exiting the pool may well be doing so for the purpose of earning excessive rates of return. Many rural LECs that left the NECA pool during the last tariff filing cycle did so to engage in "traffic pumping" schemes that resulted in them receiving traffic far in excess of the historical levels they relied upon to set their access rates. Under these schemes, rural LECs file tariffs setting high access rates based on their very low historical levels of access demand. These same LECs then enter into agreements to pay kickbacks to third parties (such as "free" conference call or "adult" chat-line providers) in exchange for diverting traffic to the rural LECs' access numbers. The result is that these LECs earn far in excess of their authorized rate of return. They are receiving an enormous amount of traffic and are charging for all of it at very high tariffed access rates based on their very different (and much lower) historical demand levels.

The use of these traffic-pumping schemes is widespread among carriers seeking to leave the NECA pool. In the last full tariff cycle, all eight of the carriers that left the NECA pool to file tariffs under Rule 61.39 experienced enormous increases in traffic volume and revenues above historical levels. *See* Declaration of Alan Buzacott ¶¶ 3-11 (June 19, 2007) ("Buzacott Decl.") (attached hereto). In total, Verizon's interstate access bill from those eight carriers for April 2007 was more than $2.3 million; in May 2005, when the same carriers were still in the NECA pool, it was only $30,000. *See id.* ¶ 3. As just one example, since exiting the NECA pool in July 2005, Searsboro Telephone Company has sent Verizon monthly interstate access bills that are more than 940 times higher than historical levels. *See id.* ¶ 8. There is no reason that these carriers experiencing such enormous increases in demand should be permitted to charge exorbitant rates based on their much lower levels of past demand.

The Commission should suspend and investigate these tariffs to ensure that such grossly excessive returns do not recur in this tariff cycle. The facts from the last tariff cycle show that, when LECs exit the NECA pool in order to file access tariffs based on historical demand, those tariffs frequently yield unreasonable rates. Moreover, there is every reason to believe that many, if not all, of the carriers that are leaving the pool this time will seek to enter traffic-pumping arrangements to obtain the same windfalls that the LECs that exited the pool before the last cycle have obtained. Indeed, a number of the carriers now seeking to exit the pool have engaged in traffic pumping or comparable schemes in the past, or are affiliated with carriers that have done so. For example, NECA's data show that Iowa-based Lynnville Telephone Company has hopped in and out of the pool every two-year tariff period since 1998, with its minutes drastically increasing each time it exits, and then returning to much lower levels once it re-enters the pool. Lynnville's annual minutes were 500,000 in 1998 while it was in the NECA pool, increased to *27 million* in 2001 when it exited the pool, returned to 500,000 in 2002 when Lynnville re-entered the pool, increased to *68.5 million* in 2004 when Lynnville re-exited the pool, and decreased to 6.3 million in 2006 when it returned to the pool yet again.[1]

The Commission should also suspend these tariffs for the additional reason that they are based on traffic-demand data that are likely to prove false or misleading. When the carriers seeking to leave the NECA pool file tariffs based on historical demand levels, they necessarily are implicitly representing that historical demand is a reasonable proxy for expected future demand. If carriers have entered or plan to enter traffic-pumping arrangements, however, they know that this representation is false. Relying on those historical demand levels under these circumstances to establish inflated rates itself constitutes an unreasonable and unlawful practice, violates the Commission's rules and precedent, and results in unlawful tariffs.

[1] *See* NECA, *MOU Data NECA Average Schedule Companies 1998-2001*, http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/netwu01.zip; NECA, *MOU Data NECA Average Schedule Companies 2000-2004* ("*NECA MOU Data 2000-04*"), http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/netwu04.zip; NECA, *MOU Data NECA Average Schedule Companies 2002-2006* ("*NECA MOU Data 2002-06*"), http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/netwu06.zip; NECA, Tariff FCC No. 5, Transmittal No. 988, Vol. 1, Exh. 1 (eff. July 1, 2003) ("NECA 2003 Tariff FCC No. 5") (exiting pool); NECA, Tariff FCC No. 5, Transmittal No. 1077, Vol. 1, Exh. 1 (eff. July 1, 2005) ("NECA 2005 Tariff FCC No. 5") (re-entering pool).

The Commission should thus act now to suspend and investigate so that it can determine whether these carriers' future demand will be consistent with historical data, and preserve the flexibility to order refunds in the event that this is not the case. Such an inquiry should investigate, among other things, whether these carriers are contemplating, or have entered, fee-sharing or other arrangements that are intended to drive traffic above the historical levels of demand on which these tariffs are based.

Suspending these tariffs will not cause undue harm to the rural LECs. Rather, the Commission may, pursuant to section 204(a)(1), allow the LECs to begin collecting their tariffed access rates during the Commission's investigation. Suspension merely ensures that, in the event the LECs' rates are determined to be unreasonable (likely as a result of traffic pumping), the Commission can order refunds to the carriers that have overpaid. The action that Verizon requests thus would preserve the right of access customers (and, ultimately, end users) not to foot the bill for these exorbitant rates without causing any interim dislocation for the rural LECs. And, of course, LECs that do not take action to increase demand for their services far above historical levels have no reason to fear that their tariffs will be invalidated or that they will be subject to a lengthy investigation.

BACKGROUND

When Verizon, in its capacity as an interexchange carrier ("IXC"), delivers a long-distance call made by one of its customers, it is required to pay tariffed, per-minute switched access charges to the LEC that serves the called party. Most small LECs do not file their own access tariffs, but instead choose to participate in a pooled access system administered by NECA and to rely on the NECA access tariff. Indeed, more than 99 percent of small LECs choose to remain in the NECA pool. The Commission's rules, however, also permit small LECs the option of exiting the NECA pool and filing their own individual access tariffs.

If a small LEC decides to file its own access tariff, its rates must be just and reasonable, pursuant to section 201(b). *See* 47 U.S.C. § 201(b) (unreasonable rates declared to be unlawful). Under the Commission's rule interpreting that requirement, small LECs must set their access rates so as not to exceed a "maximum allowable" rate of return of 11.65 percent. 47 C.F.R. § 65.700(a).[2] An individual access tariff that allows a rate-of-return carrier to earn in excess of that maximum allowable rate is unreasonable and therefore unlawful. *See Small Companies Order*, 2 FCC Rcd at 3812, ¶ 7 (concluding that access rates must "remain reasonable" and must "not permit or provide incentives for small companies to file access tariffs producing excessive returns").

In determining the cost basis for measuring a LEC's rate of return, the Commission traditionally has required LECs to rely on projected demand for the period in which the tariff is to be in effect, and to revise those projections on an annual basis. In the *Small Companies Order*, however, the Commission determined that these procedural requirements could be overly burdensome for small carriers (those serving fewer than 50,000 access lines and with $40 million or less in annual operating revenues), and it therefore took two steps to reduce the administrative burdens on these carriers: First, the Commission allowed small carriers, such as the rural LECs involved here, to set their access rates based on *historical* demand and costs. *See id.* at 3812, ¶ 13. Second, the Commission relaxed the requirement of filing an updated tariff annually,

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[2] *See also* Order, *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 5 FCC Rcd 7507, 7507, ¶ 1 (1990), *recon. granted on other grounds*, 6 FCC Rcd 7193 (1991), *petitions for review denied*, *Illinois Bell Tel. Co. v. FCC,* 988 F.2d 1254 (D.C. Cir. 1993); Memorandum Opinion and Order, *AT&T Corp. v. Virgin Islands Tel. Corp.*, 19 FCC Rcd 15978, 15979, ¶ 3 (2004), *vacated in part and remanded on other grounds sub nom. Virgin Islands Tel. Corp. v. FCC,* 444 F.3d 666 (D.C. Cir. 2006).

allowing rural LECs to go two years without updating their tariffs based on recent demand. *See id*. at 3813, ¶ 20, 3814, ¶ 24.

Far from authorizing LECs to use these new procedural mechanisms to earn windfall returns, the Commission made clear that these relaxed filing requirements should not alter the revenues that the LECs receive and that, if this was not the case, it would take action to ensure reasonable rates. *See id.* at 3813, ¶ 14 ("this proposal *only* allows a simplified filing mechanism") (emphasis added).[3] The Commission stated that the new procedures should be "rate neutral" and that "[c]arriers using this ratemaking process . . . should neither gain nor lose revenues in the long run as a result of using actual historical data." 2 FCC Rcd at 3812, ¶ 12. The Commission further explained that "[c]arriers remain subject to the Act's requirement that rates be reasonable" and that any "presumption" that rates based on historical demand and costs will be reasonable can be "rebutted." *Id.* at 3813, ¶ 14; *see also id.* ("Similarly, if a proposal to switch between use of prospective and historical costs and demand as a basis for ratemaking is *likely* to violate the principle of rate neutrality in a given case, [the Commission] stands ready to undertake necessary corrective measures.") (emphasis added). Finally, in addition to this principle of "rate neutrality," the Commission predicted that its rule would be "pooling neutral," in that it "should neither encourage nor discourage [NECA pool] participation." *Id.* at 3811, ¶ 5.

In recent years, the decisions of many small LECs to leave the NECA pool and file their own tariffs based on historical costs and demand have been far from "rate neutral" or "pool neutral." As discussed in more detail below, *see infra* Part A, each of the eight carriers that left

[3] *See also* Suspension Order, *Beehive Telephone Co., Inc. and Beehive Telephone, Inc. Nevada, Tariff F.C.C. No. 1*, 12 FCC Rcd 11695 (CCB 1997) (suspending Beehive's tariff filed under Rule 61.39 to investigate whether rates are unjust and unreasonable); Memorandum Opinion and Order, *Beehive Telephone Co., Inc. and Beehive Telephone, Inc. Nevada, Tariff F.C.C. No. 1*, 13 FCC Rcd 2736 (1998) (finding after investigation that Beehive's rates are unlawful).

the pool in the last tariff cycle to file tariffs under Rule 61.39 engaged in schemes to inflate demand for their services exponentially above the historical demand levels these carriers used in setting their tariffed rates. Those same carriers now plan to re-enter the NECA pool during this tariff cycle, *see* Buzacott Decl. ¶ 12, which will enable them to avoid setting new, much lower rates based on the very high demand they have recently experienced. Moreover, as discussed below, a number of the carriers now seeking to exit the NECA pool have engaged in a pattern of pool hopping in which their demand spikes each time they exit the pool and returns to normal when they re-enter the pool. The result of this intentional manipulation of the system has been windfall returns far above any just and reasonable level. And, because the Commission has not previously suspended these carriers' tariffs, section 204(a)(3), which was enacted after the *Small Companies Order*, presents an obstacle to obtaining retroactive refunds for the unreasonable rates during the tariff period that is now ending.

ARGUMENT

THE CHALLENGED TARIFFS MEET EACH OF THE FOUR REQUIREMENTS FOR SUSPENSION

Suspension and investigation of a tariff is appropriate where it raises significant questions of lawfulness. *See, e.g.*, Memorandum Opinion and Order, *ITT World Communications, Inc., Amendments to Joint Tariff FCC No. 12 for International Telex Service*, 73 F.C.C.2d 709, 716, ¶ 19 n.5 (1979) (citing Memorandum Opinion and Order, *AT&T Co. Transmittal No. 11935*, 46 F.C.C.2d 81, 86 (1974)). In determining whether to suspend a tariff in this context, the Commission looks to whether (1) "there is a high probability the tariff would be found unlawful after investigation"; (2) "any unreasonable rate would . . . be corrected in a subsequent filing"; (3) "irreparable injury will result if the tariff filing is not suspended"; and (4) "the suspension would . . . otherwise be contrary to the public interest." 47 C.F.R. § 1.773(a)(1)(iii). Each of these requirements supports suspension here.[4]

A. There Is a High Probability That the Tariffs Will Generate Excessive Rates of Return and Rely on Unreasonable and Unlawful Practices

There is overwhelming recent evidence that rural LECs leaving the NECA pool and setting rates based on historical costs frequently experience much higher demand than that used to set their access rates, and therefore earn excessive rates of return. There is also evidence that many of the LECs seeking to leave the NECA pool now have engaged in traffic pumping or comparable schemes in the past, or are affiliated with carriers that have done so. Based on this evidence, there is a high probability that the tariffs at issue will be found unlawful.

Verizon's internal billing records show that the eight companies that left the NECA pool in July 2005 to file tariffs under Rule 61.39 subsequently experienced skyrocketing demand that bore no resemblance to historical levels. *See* Buzacott Decl. ¶¶ 3-11.[5] For example, Interstate 35 Telephone Company billed Verizon only $1,474 for interstate access in May 2005; in April 2007, the bill had spiked to $329,662. *See id.* ¶ 7. Similarly, in May 2005, Verizon paid $11,274 for interstate access to Farmers Telephone Company of Riceville; in April 2007, the monthly access bill was $896,393. *See id.* ¶ 5. All told, compared to the total of $30,260 in interstate access charges Verizon paid to these eight carriers in May 2005, just prior to their exit

[4] The Commission also may suspend the tariffs on its own motion, regardless of whether these criteria are met. *See* 47 U.S.C. § 204(a)(1) (authorizing Commission to suspend and investigate tariffs on its own motion); First Report and Order, *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor,* 85 F.C.C.2d 1, 37, ¶ 108 n.93 (1980) (Commission may "consider whether tariff proposals of these carriers should be investigated . . . on [its] own initiative," regardless of whether a petitioner "demonstrate[s] that a tariff should be suspended").

[5] Those eight carriers are Dixon Telephone Company, Farmers & Merchants Mutual Telephone Company, Farmers Telephone Company of Riceville, Glenwood Telephone Membership Corp., Interstate 35 Telephone Company, Searsboro Telephone Company, South Central Telephone Association Inc., and Wheat State Telephone Company.

from the pool, Verizon has been billed on average $1.1 million in additional access charges each month since August 2005. *See id.* ¶ 3.[6] Moreover, the widespread existence of traffic pumping during the prior tariff cycle, combined with the much larger number of carriers now seeking to leave the pool, indicates that the windfall returns obtained by some carriers have induced others now to try the same strategies.

Other IXCs have had similar experiences. For example, Qwest has found that, "within two months of [Farmers & Merchants Mutual Telephone Company] leaving the NECA pool, Qwest delivered to Farmers more than *17* times its pre-exit traffic, and, within 18 months, it delivered more than *238* times its pre-exit traffic – an increase of more than 20,000 percent with no proportional increase in Farmers's costs." Formal Complaint of Qwest Communications Corp. at 2, *Qwest Communications Corp. v. Farmers & Merchants Mut. Tel. Co.*, File No. EB-07-MD-001 (FCC filed May 2, 2007); *see also* Complaint ¶ 49, *AT&T Corp. v. Reasnor Tel. Co.*, No. 4:07-cv-117 (JEG) (S.D. Iowa filed Mar. 22, 2007) ("AT&T Compl.") (alleging that, using traffic-pumping scheme, "Reasnor Telephone's average *weekly* volume for AT&T *alone* was greater than the *yearly* volume that it reported to the FCC for all IXCs in connection with its tariff filing"); Complaint ¶ 38, *Sprint Communications Co. v. Superior Tel. Coop.*, No. 4:07-cv-194 (JEG) (S.D. Iowa filed May 7, 2007) ("Sprint Compl.") (alleging that, between March 2006 and March 2007, traffic to rural LEC Superior Telephone Cooperative increased 25,690 percent); Complaint and Jury Demand, *Qwest Communications Corp. v. Superior Tel. Coop.*, No. 4:07-cv-78 (JEG) (S.D. Iowa filed Feb. 20, 2007) ("Qwest Compl.") (alleging same traffic-pumping scheme).

[6] Another carrier, Superior Telephone Cooperative, left the NECA pool in July 2006, and it quickly began traffic pumping. After billing Verizon only $396 for interstate access in May 2006, Superior's monthly access charges to Verizon rose to $265,514 for the month of October 2006. *See* Buzacott Decl. ¶ 13.

A number of LECs that are seeking to exit the pool appear to have engaged in traffic pumping or comparable schemes in the past, or are affiliated with carriers that have done so. In addition to the example of Lynnville Telephone Company discussed above, Sully Telephone Association (based in Iowa) left the NECA pool in 2003 and experienced a spike in annual demand from 3.5 million minutes to 50.4 million minutes; Sully re-entered the pool in 2005, and its demand decreased to 9.4 million minutes.[7]

Similarly, Jordan-Soldier Valley Telephone Company (also based in Iowa) exited the pool in 1999, and its annual demand rose from 4.1 million minutes to 12.5 million; Jordan-Soldier re-entered the pool in 2003, and its demand decreased to 4.8 million minutes.[8] Both Elsie Communications (based in Nebraska) and Alliance Communications Cooperative (based in South Dakota) are affiliated with carriers that engaged in traffic pumping while outside the pool.[9]

Some carriers appear to have gone so far as to split themselves into two separate entities, so that one "half" can always remain outside the NECA pool and engage in traffic pumping, rotating every two years with the "half" that stays in the pool. For example, Killduff Telephone Company, which is managed and operated by Sully, appears to have been created for the purpose

[7] *See NECA MOU Data 2002-06*; NECA 2003 Tariff FCC No. 5, Vol. 1, Exh. 1 (exiting pool); NECA 2005 Tariff FCC No. 5, Vol. 1, Exh. 1 (re-entering pool).

[8] *See NECA MOU Data 2000-04*; NECA 2003 Tariff FCC No. 5, Vol. 1, Exh. 1 (re-entering pool).

[9] *See* Elsie Communications Inc. & Dalton Telephone Co. (shared website), http://www.daltontel.net; Application for Transfer of Control, *Arlington Telephone Co., et al., Application for Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended, for Transfer of Control*, WC Docket No. 07-93, Attach. B at 4 (FCC filed Apr. 30, 2007) (showing common ownership of Elsie and Dalton); Application for Streamlined Transfer of Control of Domestic Blanket Section 214 Authorization, *Baltic Telecom Coop., et al., Application for Transfer of Control*, WC Docket No. 02-342, at 1-2 (FCC filed Oct. 17, 2002) (describing proposed merger of Baltic and Splitrock Telecom and changing name of merged entity to Alliance). Alliance also owns Splitrock Properties, *see* Ind. Anal. & Tech. Div., Wireline Comp. Bur., FCC, *Telecommunications Provider Locator* Table 3, at 87 (Mar. 2006), which engaged in traffic pumping from 2005 to 2006, *see NECA MOU Data 2002-06*.

of traffic pumping: Searsboro Telephone, which is managed by Sully, exited the NECA pool in 2005 and promptly began traffic pumping. *See* Buzacott Decl. ¶ 8. Before doing so, however, Searsboro "transferred" 190 of its 400 access lines (those in the Killduff, Iowa telephone exchange) to the newly formed Killduff Telephone.[10] Killduff remained in the NECA pool during the last tariff cycle, and, now that Searsboro is forced to return to the pool, Killduff is exiting, enabling it to pick up where Searsboro left off. The General Manager of Killduff is also the President of Reasnor Telephone, which is another entity that Sully spun off to engage in traffic pumping; the same person also is the General Manager of Lynnville, whose extensive traffic pumping is discussed above.[11]

It is thus no coincidence that the demand of rural LECs that exit the NECA pool and file tariffs based on historical levels of demand increases exponentially once they do so. On the contrary, as these small carriers largely acknowledge, they have entered into traffic-pumping agreements that are intended to lead to these enormous spikes in demand. Thus, an industry coalition that includes several of the carriers that exited the NECA pool in 2005 openly states that those carriers have "team[ed] with conference providers and other companies that generate telephone traffic" by entering into what they term "an access revenue-sharing arrangement."

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[10] *See* Joint Application for Streamlined Approval of a Transfer of Control, *Searsboro Telephone Co., Inc. and Killduff Telephone Co. Domestic Section 214 Application for Streamlined Approval of a Transfer of Control*, WC Docket No. 04-315, at 4-5 (FCC filed July 30, 2004) (describing proposed spin-off of Killduff by Searsboro and management of both Searsboro and Killduff by Sully). Sully Telephone has been sued by AT&T for a similar scheme involving another of its affiliates, whereby Sully created Reasnor Telephone Company for purposes of traffic pumping. *See* AT&T Compl. ¶ 5 (alleging that Sully Telephone "devised a plan whereby [it] would transfer its exchange in Reasnor, Iowa to a separate, new company, *i.e.*, Reasnor Telephone . . . for the purpose of unlawfully inflating the rates, traffic volumes and billed access charges for the Reasnor exchange").

[11] *See* ICORE, Tariff FCC No. 2, Transmittal No. 74 (eff. Jan. 20, 2006) (showing Gary Neill as President of Reasnor); NECA, Tariff FCC No. 5, Transmittal No. 1159 (eff. Mar. 1, 2007) (showing Gary Neill as General Manager of Killduff); NECA, Tariff FCC No. 5, Transmittal No. 1147 (eff. Dec. 1, 2006) (showing Gary Neill as General Manager of Lynnville).

Coalition for Carrier Neutrality (listing as members, among others, Farmers Telephone Company of Riceville and Superior Telephone Cooperative), http://www.ccninfo.org; *see also* Certain LEC Defendants' Brief in Support of Motion To Dismiss or Stay at 3, *Qwest Communications Corp. v. Superior Tel. Coop.*, No. 4:07-cv-78 (JEG) (S.D. Iowa filed Mar. 30, 2007) (filed by Farmers Telephone Co. of Riceville, Interstate 35 Telephone Co., and Dixon Telephone Co.) (arguing that "'traffic pumping' is merely routine marketing of services to increase sales").[12]

There is thus a significant body of evidence that, when small LECs exit the NECA pool in order to file access tariffs based on historical demand, those tariffs do not yield reasonable rates. Moreover, for the reasons discussed above, there is every reason to believe that, absent action by this Commission, many, if not all, of the LECs seeking to leave the NECA pool this year will engage in the type of "traffic pumping" that is *designed* to increase their demand well above historical levels and thus will receive unreasonable returns. Indeed, Sully Telephone apparently has *already* entered into kickback arrangements with third parties and begun to engage in traffic pumping in anticipation of leaving the pool this time. Beginning in mid-March 2007, Verizon started terminating between 150,000 and 200,000 minutes per day to telephone numbers assigned to Sully Telephone, compared to an average of about 11,000 minutes per day during 2006. Verizon's records indicate that well over 95 percent of the Verizon traffic currently going to Sully is "terminating" to conferencing telephone numbers. *See* Buzacott Decl. ¶ 14.

[12] Unsurprisingly, all eight of the carriers that exited the NECA pool in 2005 to file tariffs under Rule 61.39 and that engaged in the traffic-pumping scheme have elected to rejoin the NECA pool rather than collect under the access rate that would result based on their most recent demand. *See* Buzacott Decl. ¶ 12. Notably, the other four carriers that exited the NECA pool in 2005 filed tariffs under Rule 61.38, have not engaged in traffic pumping, and are not rejoining the pool in this tariff cycle. It is thus clear that the traffic-pumping scheme is also directly contrary to the Commission's second goal in adopting the *Small Companies Order*, namely, that "the rules should neither encourage nor discourage" participation in the NECA pool. 2 FCC Rcd at 3811, ¶ 5, 3812, ¶ 7.

In addition to the high probability that the tariffs at issue will generate excessive rates of return, it is also likely that the historical demand on which these tariffs are based will prove false or misleading, which provides an independent basis for finding a violation of the Act and the Commission's rules. These tariffs are a representation to the Commission that the proposed rates are reasonable and that the historical demand on which those rates are based is a reasonable proxy for these carriers' future demand, or at least sufficiently so, such that any limited changes in demand that may result from ordinary market factors can be adjusted for in the next round of tariff filings. To the extent the rural LECs leaving the NECA pool already have a basis to believe that their actual demand will far exceed their historical demand, however, they know that this representation is false. For these carriers to rely on historical demand levels under these circumstances is therefore an unreasonable and unlawful practice, in violation of section 201(b), and it results in tariffs that are unlawful. *Cf.* First Report and Order and Further Notice of Proposed Rulemaking, *Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492, 7506, ¶ 24 (1999) ("a carrier's provision of misleading or deceptive billing information is an unjust and unreasonable practice in violation of section 201(b)").

Moreover, these carriers have no "reasonable basis" to assert that their tariffs are "correct and not misleading." To the contrary, if the LECs are intending to engage in traffic pumping – as history strongly suggests is the case – then they already are aware that their actual demand will far exceed the historical demand on which their tariffs are based. Their failure to disclose this information to the Commission is a violation of the Commission's rules and precedent. As an initial matter, the Commission has found that "sham" transactions "designed solely to extract inflated access charges" from long-distance carriers "constitute[ ] an unreasonable practice . . . in violation of section 201(b)." Memorandum Opinion and Order, *Total Telecomms. Servs., Inc. v.*

AT&T Corp., 16 FCC Rcd 5726, 5733, ¶ 16 (2001). The traffic-pumping schemes at issue here involve precisely the type of "sham" arrangements that are barred by section 201(b): arrangements between small LECs and conference and chat-line providers designed to manipulate traffic routing and the Commission's tariff filing procedures "solely to extract inflated access charges." *Id.*

The implicit misrepresentations at the core of the traffic-pumping schemes also violate the Commission's rules prohibiting material *omissions* – not just affirmative misstatements – in tariff filings.[13] The Commission's rules provide that, in "any tariff proceeding," no person shall, "[i]n any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading." 47 C.F.R. § 1.17(a)(1). In addition, with respect to written statements of fact, a carrier is further prohibited from "provid[ing] material factual information that is incorrect or omit[ting] material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading." *Id.* § 1.17(a)(2). For the reasons set forth above, there is a high probability that the tariffs at issue will run afoul of this prohibition and will therefore be deemed unlawful.

[13] The Commission's recognition that material omissions, no less than affirmative misstatements, constitute misrepresentations, is consistent with other analogous areas of the law. *See, e.g.*, *McEvoy Travel Bureau, Inc. v. Heritage Travel, Inc.*, 904 F.2d 786, 791 (1st Cir. 1990) (fraudulent intent can be established by showing an intention to deceive, "by means of false or fraudulent pretenses, representations, promises, or other deceptive conduct"); *United States v. Colton*, 231 F.3d 890, 899 (4th Cir. 2000) (fraudulent intent can be established by proof of fraudulent concealment, which "is characterized by deceptive acts or contrivances intended to hide information, mislead, avoid suspicion, or prevent further inquiry into a material matter").

In sum, recent history shows that historical demand may well not be a reasonable estimate for the amount of traffic that these carriers will carry after they leave the pool and that small carriers increasingly are seeking to game the system through traffic-pumping schemes and by hopping in and out of the NECA pool. The Commission should thus suspend these tariffs and investigate whether the historical demand that these carriers are relying upon fairly reflects the demand they will experience during the tariff period. Such an investigation should determine, among other things, whether the carriers filing these tariffs now have or are negotiating any agreements designed to increase demand above the historical levels that they are using to set the rates that are contained in these tariffs.

B. The Unreasonable Rates Cannot Be Corrected in a Subsequent Filing

Under the streamlined tariffing provisions of the Telecommunications Act of 1996, unless the Commission takes prompt action to suspend the challenged tariffs, the rates will be "deemed lawful." 47 U.S.C. § 204(a)(3). Once a tariff has been "deemed lawful" under section 204(a)(3), refunds for rate-of-return violations are generally unavailable. *See ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 412 (D.C. Cir. 2002).[14] Nor is there any likelihood that Verizon and other carriers that are forced to pay excessive access rates could be made whole through reductions in future rates, because these LECs are currently permitted to return to the NECA pool before they are required to file new tariffs reflecting sharply increased demand. Finally, even assuming the participating LECs could be prohibited from immediately returning to the NECA pool, the lower access rate would be charged on a much smaller amount of traffic and

[14] The court in *ACS of Anchorage* left open the possibility that a carrier could nonetheless be liable for refunds where it "furtively employs improper accounting techniques in a tariff filing, thereby concealing potential rate of return violations." 290 F.3d at 413.

thus would not offset the excessive returns the LECs will have collected while engaging in schemes to increase traffic during prior periods.

C. Verizon and Consumers Will Suffer Irreparable Injury if the Tariff Filing Is Not Suspended

Verizon has experienced an enormous increase in access billings – approximately $1 million per month – because of the actions of small carriers that left the NECA pool during the last cycle and set rates based on historical demand and cost figures that bear no resemblance to current demand levels. *See* Buzacott Decl. ¶ 3. Other carriers are reporting similar impacts. *See, e.g.*, Qwest Compl.; AT&T Compl.; Sprint Compl. Absent action by this Commission to ensure that these carriers obtain only the reasonable, lawfully authorized rate of return, Verizon will ultimately be required to pass these costs on to consumers in the form of higher rates. This injury will be irreparable because, under *ACS of Anchorage* and similar cases, unless the Commission takes swift corrective action to suspend the challenged tariffs, refunds for the rural LECs' rate-of-return violations likely will be unavailable.[15]

D. The Public Interest Strongly Favors Suspending the Tariffs

The public interest is disserved by allowing rate-of-return carriers to earn well above their authorized rate of return. Congress has specifically directed that this Commission ensure that "[a]ll charges . . . shall be just and reasonable." 47 U.S.C. § 201(b); *see also Virgin Islands Tel. Corp. v. FCC*, 444 F.3d 666, 669-70 (D.C. Cir. 2006) ("[v]iolations of rate of return prescriptions are *per se* violations of the duty to charge only 'just and reasonable' rates").

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[15] As the Commission has recognized, the requirement of "irreparable injury" under Rule 1.773 is not applied as stringently as when a preliminary injunction is sought. *See, e.g.*, Report and Order and Second Further Notice of Proposed Rulemaking, *Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873, 3099, ¶ 457 (1989) (noting that, even if refunds were available, the "logistics of ordering a refund, or other factors, could constitute 'irreparable harm'" in this context).

Permitting a few LECs to obtain windfall returns based on manipulation of rules that this Commission adopted to ease their procedural burdens in filing tariffs serves no conceivable public interest.

There is no evidence that the "free" (or discounted) conference and chat-line providers are offering a benefit that could not be offered but for these schemes. The supposedly "free" services that the traffic-pumping schemes subsidize are in no economically meaningful sense "free" – Verizon and other carriers subject to the access charges filed in the tariffs will have to pay, and the costs of the rural LECs' overearnings will eventually have to be borne by consumers. There is no justification for forcing ordinary ratepayers to subsidize the conference calls and adult chat sessions that drive the access revenues from the traffic-pumping scheme. Allowing this scheme to continue would also be inefficient, because the access rates of the rural LECs bear no relation whatsoever to the actual value of the conference call and chat-line services. The traffic-pumping scheme results in nothing more than a direct windfall to rural LECs, which is directly contrary to the intent of the *Small Companies Order*.

Finally, suspending the tariffs will not harm any legitimate interest of the rural LECs seeking to leave the NECA pool. It will merely give the Commission an opportunity to investigate the tariffs and determine whether carriers are likely to exceed their authorized rate of return. The rates proposed by all of these carriers can take effect subject to refund during the Commission's investigation. *See* 47 U.S.C. § 204(a)(1). Refunds will be necessary only if these carriers' demand increases above historical levels, resulting in unreasonable rates that this Commission can, and should, invalidate. Carriers that do not experience a pronounced increase in demand over historical levels have no reason to fear that their tariffs will be invalidated or that they will be subject to a lengthy investigation.

Verizon has no way of knowing at this point precisely which (if not all) of the 29 carriers exiting the NECA pool and relying on historical demand will engage in traffic pumping, nor does the Commission. However, the costs of suspension to an "innocent" carrier are truly negligible – the carrier's rates can take effect after a suspension as short as one day, and, given that flagrant traffic pumping is relatively easy to spot based on monthly access bills, there is little likelihood that a carrier not engaged in traffic pumping will suffer undue scrutiny. On the other hand, the costs of inaction are enormous. Indeed, taking into account only the eight traffic-pumping LECs that exited the NECA pool in 2005, the scheme cost Verizon more than $1 million per month (not to mention the costs to other IXCs). With 29 carriers now seeking to exit the pool and relying on historical demand, the damage would in all likelihood be far worse in the upcoming cycle. In this instance, the public interest is far better served by potential overinclusiveness than by potential underinclusiveness.

CONCLUSION

For the foregoing reasons, the Commission should suspend the tariffs of the 29 rural LECs listed in the caption of this petition and institute an investigation into whether the filed rates are likely to result in rate-of-return violations.

Respectfully submitted,

Sean A. Lev
Evan T. Leo
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
(202) 326-7999 (fax)

Karen Zacharia
Amy P. Rosenthal
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3175

Attorneys for Petitioner

Dated: June 19, 2007

ATTACHMENT

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

In the Matter of	)	
	)	
July 2007	)	WCB/Pricing File No. 07-10
Annual Access Charge Tariff Filings	)	
	)	
Alliance Communications Cooperative, Inc.	)	Transmittal No. 7
Tariff F.C.C. No. 2	)	
	)	
Broadband Network Group, LLC	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
Arthur Mutual Telephone Company	)	
Bascom Mutual Telephone Company	)	
Benton Ridge Telephone Company	)	
Buckland Telephone Company	)	
Fort Jennings Telephone Company	)	
Glandorf Telephone Company, Inc.	)	
Kalida Telephone Company, Inc.	)	
Middle Point Home Telephone Company	)	
Ottoville Mutual Telephone Company	)	
Ridgeville Telephone Company	)	
Sherwood Mutual Telephone Association, Inc.	)	
Vaughnsville Telephone Company	)	
	)	
Consortia Consulting	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
Beresford Municipal Telephone Company	)	
McCook Cooperative Telephone Company	)	
Roberts County Tel. Coop. Ass'n / RC Comms., Inc.	)	
Western Telephone Company	)	
	)	
Elsie Communications, Inc.	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
	)	
Farmers Mutual Telephone Company	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
	)	
	)	
	)	
	)	
	)	
	)	

ICORE, Inc.	)	Transmittal No. 80
Tariff F.C.C. No. 2	)	
Jordan-Soldier Valley Telephone Company	)	
Killduff Telephone Company	)	
Lynnville Telephone Company	)	
Northeast Iowa Telephone Company, Inc.	)	
Sully Telephone Association	)	
	)	
John Staurulakis, Inc.	)	Transmittal No. 130
Tariff F.C.C. No. 1	)	
Chesnee Telephone Company	)	
Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company	)	
Skyline Telephone Membership Corp.	)	
Yadkin Valley Telephone Membership Corp.	)	
	)	
Royal Telephone Company	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	

DECLARATION OF ALAN BUZACOTT

1. My name is Alan Buzacott. I am currently employed by Verizon Business as Director – Federal Regulatory. I have more than ten years of experience with Verizon Business and, previously, MCI in the review and analysis of local exchange carrier access tariffs.

2. I have reviewed Verizon's data, kept in the ordinary course of business, reflecting the monthly access bills that Verizon has received between May 2005 and April 2007 from the following local exchange carriers ("LECs"): Dixon Telephone Company ("Dixon"), Farmers & Merchants Mutual Telephone Company ("Farmers & Merchants"), Farmers Telephone Company of Riceville ("Farmers Riceville"), Glenwood Telephone Membership Corp. ("Glenwood"), Interstate 35 Telephone Company ("Interstate 35"), Searsboro Telephone Company ("Searsboro"), South Central Telephone Association Inc. ("South Central"), and Wheat State Telephone Company ("Wheat State").

3. Each of these eight LECs exited the National Exchange Carrier Association ("NECA") access pool in July 2005 and, at that time, began billing Verizon for access pursuant to their own individual access tariffs. Each LEC's access bill to Verizon has increased dramatically since that time. All told, compared to the total of $30,260 in interstate access charges Verizon paid to these eight carriers in May 2005, just prior to their exit from the pool, Verizon has been billed on average $1,135,766 in interstate access charges each month since August 2005. Verizon's interstate access bill from those eight carriers for April 2007 was more than $2.3 million; in May 2005, when the same carriers were still in the NECA pool, it was only $30,000.

4. In May 2005, Farmers & Merchants billed Verizon $2,382 for interstate access. In April 2007, Farmers & Merchants billed Verizon $220,570. Farmers & Merchants' average monthly access bill to Verizon from August 2005 to April 2007 was $164,376.

5. In May 2005, Farmers Riceville billed Verizon $11,274 for interstate access. In April 2007, Farmers Riceville billed Verizon $896,393. Farmers Riceville's average monthly access bill to Verizon from August 2005 to April 2007 was $268,294.

6. In May 2005, Glenwood billed Verizon $3,711 for interstate access. In April 2007, Glenwood billed Verizon $218,754. Glenwood's average monthly access bill to Verizon from August 2005 to April 2007 was $95,241.

7. In May 2005, Interstate 35 billed Verizon $1,474 for interstate access. In April 2007, Interstate 35 billed Verizon $329,662. Interstate 35's average monthly access bill to Verizon from August 2005 to April 2007 was $161,787.

8. In May 2005, Searsboro billed Verizon $106 for interstate access. In April 2007, Searsboro billed Verizon $72,756. Searsboro's average monthly access bill to Verizon from August 2005 to April 2007 was $100,549.

9. In May 2005, South Central billed Verizon $7,457 for interstate access. In April 2007, South Central billed Verizon $165,444. South Central's average monthly access bill to Verizon from August 2005 to April 2007 was $88,911.

10. In May 2005, Wheat State billed Verizon $2,799 for interstate access. In April 2007, Wheat State billed Verizon $173,759.50. Wheat State's average monthly access bill to Verizon from August 2005 to April 2007 was $58,861.

11. In May 2005, Dixon billed Verizon $2,382 for interstate access. In April 2007, Dixon billed Verizon $303,850.47. Dixon's average monthly access bill to Verizon from August 2005 to April 2007 was $197,746.

12. Each of the eight carriers that exited the NECA pool in the last tariff cycle plans to re-enter the NECA pool during this tariff cycle. This is confirmed by the NECA tariff that was filed with the Commission on June 15, 2007. *See* NECA, Tariff FCC No. 5, Transmittal No. 1172, Vol. 1, Exh. 1 (filed June 15, 2007). Each of the eight carriers is a signatory to that tariff.

13. I have also reviewed data reflecting the monthly access bills that Verizon has received from Superior Telephone Cooperative ("Superior"), beginning in May 2006 through April 2007. In May 2006, Superior billed Verizon $396 for interstate access. In April 2007, Superior billed Verizon $39,429. Superior's average monthly access bill to Verizon from August 2006 to April 2007 was $32,447. For the month of October 2006, Superior billed Verizon $265,514 for access.

14. There is also evidence that at least one of the carriers leaving the NECA pool this tariff cycle has already begun to engage in traffic pumping. In particular, beginning in mid-March 2007, Verizon started terminating between 150,000 and 200,000 minutes per day to telephone numbers assigned to Sully Telephone, compared to an average of about 11,000 minutes per day during 2006. Verizon's records indicate that well over 95% of the Verizon traffic currently going to Sully is "terminating" to conferencing telephone numbers.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 19, 2007

Alan Buzacott

CERTIFICATE OF SERVICE

I hereby certify that, on June 19, 2007, a copy of the foregoing Petition of Verizon To Suspend and Investigate Tariff Filings was sent to the parties listed below by electronic mail or by facsimile and U.S. first-class mail.

Darrin Leverette

By Electronic Mail

Thomas Navin, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Thomas.Navin@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com

Albert Lewis, Division Chief
Pricing Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Albert.Lewis@fcc.gov

By Facsimile and U.S. Mail

Doug Eidahl
Vantage Point Solutions, Inc.
1801 N. Main
Mitchell, SD 57301
Fax: (605) 995-1778

Richard Jordan
Broadband Network Group, LLC
P.O. Box 2038
Wapakoneta, OH 45895
Fax: (419) 739-3154

Cindy Grosvenor
Consortia Consulting
9300 Underwood Avenue, Suite 310
Omaha, NE 68114
Fax: (402) 398-0065

Jovanka Mersman
Elsie Communications, Inc.
1180 Golden Hills Road
Colorado Springs, CO 80919
Fax: (720) 222-1984

Gary Davis
Farmers Mutual Telephone Co.
319 S.W. 3rd Street
Fruitland, ID 83619
Fax: (208) 452-5341

Tina Bobbyn
ICORE, Inc.
326 South Second Street
Emmaus, PA 18049
Fax: (610) 928-5036

Scott Duncan
John Staurulakis Inc.
7852 Walker Drive, Suite 200
Greenbelt, MD 20770
Fax: (301) 577-5575

Jeff E. Gough
GVNW Consulting, Inc.
3220 Pleasant Run
Springfield, IL 62711
Fax: (217) 698-2715