Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of July 2007 Annual Access Charge Tariff Filings	WCB/Pricing File No. 07-10

PETITION OF VERIZON TO SUSPEND NECA TARIFF F.C.C. NO. 5, ACCESS SERVICE, TRANSMITTAL NO. 1172

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INTRODUCTION AND SUMMARY

The members of the National Exchange Carrier Association ("NECA") charge unreasonably high access charge rates that have historically failed to comply with the Commission's rate-of-return prescription. Despite this, NECA has continued to *increase* access charge rates — by almost 17 percent in its proposed June 2007 tariff filing, following a nearly 6 percent increase in its June 2006 tariff filing — and now proposes to increase its composite switched access rate to $0.0233 per minute. And NECA's rate increases have occurred even as its members' costs have decreased.

The Bureau should suspend NECA's latest rate increase proposal and initiate an investigation. First, NECA's current filing is difficult to square with its filing from just six months ago, when NECA told the Commission that its average schedule companies were facing cost decreases of about 7.27 percent on average. Now, in calculating proposed switched access rates, NECA asserts that its cost study companies are facing much smaller cost decreases of 1.83 percent — without offering any explanation as to why these two groups of companies (which

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

presumably face similar market changes) are so differently situated. Second, NECA's rate proposal is based on an insufficiently explained, new methodology for projecting demand based on the historical demand of an unspecified subset of NECA members. Given the role the projected decrease plays in demand in driving up NECA's already excessively high switched access rates, the Commission should insist upon a clear explanation before it accepts a tariff based on that new methodology.

DISCUSSION

The Bureau suspends tariffs where it finds that "that substantial questions of lawfulness exist that warrant further investigation." *E.g.*, Order, *2002 Annual Access Tariff Filings*, 17 FCC Rcd 12842, ¶ 7 (Pricing Policy Div. 2002). The Bureau has suspended tariffs in the past where it found that a company's "fail[ure] to provide sufficient explanation" for its calculations "raise[d] significant questions of lawfulness." Memorandum Opinion and Order, *1997 Annual Access Tariff Filings*, 13 FCC Rcd 5677, ¶ 67 (Com. Car. Bur. 1997); *accord* Order, *Verizon Tel. Cos.*, 17 FCC Rcd 19128, ¶ 4 (Pricing Policy Div. 2002). The Bureau has also previously suspended NECA's annual access tariff filing where, as here, there are "question[s] [about] whether NECA correctly forecasts its minutes-of-use demand projections." Order, *2002 Annual Access Tariff Filings*, 17 FCC Rcd 12842, ¶ 4 (Pricing Policy Div. 2002). Applying those standards, the Bureau should suspend NECA's tariff filing.

First, NECA's current filing must be viewed in light of its past, consistent violation of the Commission's rate-of-return prescription.[2] NECA has admitted that its members have exceeded the prescribed rate-of-return in *each and every* monitoring period from 1993 through 2004, which is the last monitoring period for which NECA filed final rate-of-return reports. *See*

[2] *See*, *e.g.*, Order, *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 5 FCC Rcd 7507, ¶ 216 (1990).

NECA Access Tariff Order[3] ¶ 25 n.70. NECA's "final" report for 2003–2004 only became available in January 2007, and it shows the *highest* return during any of the monitoring periods from 1993 through 2004.[4] On September 29, 2006, NECA submitted a Form 492 for the first year of the 2005–2006 monitoring period, again showing that participants in the NECA Traffic Sensitive and Common Line Pool exceeded the prescribed rate of return.[5] NECA now claims that, for 2006, it has finally complied with the rate-of-return prescription,[6] but one compliant year out of *fourteen* is hardly proof that it can now be taken on faith that NECA will finally come into compliance on a regular basis.

The Bureau should also consider that NECA is proposing to increase its already excessive switched access rates by nearly 17 percent,[7] after it raised those rates by about 6 percent in its 2006 annual access tariff filing. Indeed, proposed composite switched access rate to $0.0233 per minute would be *more than two-and-a-half times* the target rate of $0.0095 per minute established under the CALLS regime for rural price cap LECs. *See CALLS I Order*[8] ¶ 142. And the rate is *more than quadruple* the target rate established for the Bell operating companies and GTE ($0.0055 per minute) and *more than three-and-a-half times* the target rate for all other price cap LECs ($0.0065 per minute). *See id.* These rate targets were established

[3] Memorandum Opinion and Order, *July 1, 2004 Annual Access Charge Tariff Filings*, 19 FCC Rcd 23877 (2004) ("*NECA Access Tariff Order*").

[4] *See* NECA Form 492 (filed Jan. 31, 2007).

[5] *See* NECA Form 492 (filed Sept. 29, 2006).

[6] *See* NECA Tariff F.C.C. No. 5, Access Service, Transmittal No. 1172, Vol. 1, at 34.

[7] *See id.* at 9.

[8] Sixth Report and Order in CC Docket Nos. 96-262 and 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) ("*CALLS I Order*"), *aff'd in part, remanded in part, Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

through negotiations between carriers with equivalent bargaining power, and therefore reflect market-based rates. The Commission has long recognized that such a "market-based approach" will result in "a better combination of prices, choices, and innovation than can be achieved through rate prescription." *Access Charge Reform Order*[9] ¶ 289; *see id.* ¶ 263. The Commission therefore concluded "that competition or, in the event that competition fails to develop, rates that approximate the prices that a competitive market would produce, best serve the public interest." *Id.* ¶ 42; *see id.* ¶¶ 262, 263. The Commission should therefore be moving *all* carriers' interstate access rates toward the market-based rates charged by price cap LECs under the CALLS regime, not allowing to take effect — without serious investigation — further increases that move rates further away from the CALLS market-based standard. Indeed, there is little (if any) difference in the work performed by rural price cap and rural rate-of-return carriers; there is no justification for non-price cap carriers to charge more than two-and-a-half times as much for that work.

Second, NECA's current filing is difficult to square with its recently proposed revisions to the average schedule formulas that the Wireline Competition Bureau approved just two weeks ago.[10] In that earlier filing, NECA projected reductions of about 7.27 percent, on average, in the costs of average schedule companies. *2007 Modification of Average Schedules*[11] at I-6. NECA explained that these significant declines in costs are due to a "marked decline in costs of some line haul facilities" resulting from "cost economies in fiber and copper networks equipped for

[9] First Report and Order, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCC Rcd 15982 (1997) (subsequent history omitted) ("*Access Charge Reform Order*").

[10] *See* Order, *National Exchange Carrier Association*, DA 07-2400, WC Docket No. 06-223 (Wireline Comp. Bur. June 8, 2007).

[11] *See* 2007 Modification of Average Schedules, National Exchange Carrier Association, Inc., *2007 Modification of Average Schedules*, WC Docket No. 06-223 (Dec. 21, 2006) ("*2007 Modification of Average Schedules*").

ever increasing broadband demand," as well as "continued depreciation" of older network investments. *Id.* at I-5. Its current filing, however, paints a very different picture. In calculating its proposed switched access rates, NECA asserts much lower cost reductions for annual cost study companies — which presumably are affected by similar market factors.[12] NECA gives no explanation in its filing for why it assumed such facts for one set of its membership in its average schedule filing so different from those it assumed for another set of its membership in its annual access filing. Absent, at a minimum, some plausible, economic explanation for the disparity, the disconnect between the two NECA filings raises significant questions of lawfulness warranting further investigation.

Third, NECA has adopted a new model for projecting demand growth, which leads to a -7.9 percent projection for the test period used in this tariff filing.[13] NECA's new model is based on data from a subset of NECA companies, and includes only those companies that were in the NECA traffic sensitive pool from January 1999 through December 2006 and will remain in that pool for the 2007–2008 test period.[14] NECA then excluded from that group companies that neither bought nor sold exchanges from January 1999 through December 2006 and also did not experience any major declines in demand due to discontinuance of a particular service.[15] NECA does not identify which (or even how many) companies are left after these filters are applied; nor does it explain what it considers a "major" decline in demand or how it determined whether such a decline was "due to" the discontinuance of a service, rather than to some other factors. NECA's exclusion of companies that have left the traffic sensitive pool in the past seven years

[12] *See* NECA Tariff F.C.C. No. 5, Access Service, Transmittal No. 1172, Vol. 2, Exh. 4 at 2; *id.* Vol. 1 at 11-12 (positing cost reductions of 1.83 percent).

[13] *See id.*; *id.* Vol. 3 at 9-10.

[14] *See id.* Vol. 3, at 10.

[15] *See id.*

— even if they are re-joining the pool this year — excludes from the sample companies that have engaged in "traffic pumping" schemes and that can be expected to retain some of their excess demand even after returning to the pool. This exclusion artificially skews NECA's projection of growth demand downward, resulting in increases in NECA's switched access rates.

NECA offers no reason why it selected these four filters for selecting the subset of companies to use for their demand growth projection, other than the assertion that its "model . . . fits the historical data best."[16] NECA provides no support for that assertion — such as by pointing to other models or other subsets of companies that were considered — making it impossible to verify its claim that this particular approach is the "best" one, rather than one that is biased toward greater projected demand growth reductions that lead to higher proposed rates (and revenues in excess of the rate-of-return prescription when all of the "projected" reduction does not materialize). Here, too, NECA's failure to provide an adequate explanation of its methodology raises significant questions of lawfulness warranting further investigation.

[16] *Id.*

CONCLUSION

For the foregoing reasons, the Bureau should suspend NECA's Transmittal No. 1172 and set it for investigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 22, 2007, a copy of the foregoing Petition of Verizon To Suspend NECA Tariff F.C.C. No. 5, Access Service, Transmittal No. 1172 was sent to the parties listed below by electronic mail or by facsimile and U.S. first-class mail.

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