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June 27, 2007

Ex Parte – Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *In the matter of July 2007 Annual Access Charge Tariff Filings, National Exchange Carrier Association, Inc, Tariff F.C.C. No. 5, Transmittal No. 1172, Petition of GCI to Reject or, in the Alternative, to Suspend and Investigate Tariff Filing*

Dear Ms. Dortch:

In its Petition to Reject or, in the Alternative, Suspend and Investigate NECA's above-captioned tariff filing, GCI explained that NECA's tariff filing unlawfully held DSL rates steady for competitive reasons while substantially increasing rates for noncompetitive services such as DS1 and DS3 services. GCI also explained that NECA's filing suggested that NECA was not recovering all DSL direct costs in its DSL rates. Finally, GCI noted that NECA had not explained how it was guarding against improper cost allocation between tariffed and nontariffed services offered by members exiting the DSL tariff. In its Reply, NECA offers no substantive rebuttal substantiated by data, but instead merely provides assertions that its practices are proper. It therefore remains entirely possible that NECA is misallocating its common costs, cross-subsidizing DSL by failing to recover direct costs, and failing to appropriately account for DSL costs and revenues attributable to carriers exiting the DSL tariff. Accordingly, the Commission should reject or, at minimum, suspend and investigate NECA's tariff filing.

NECA first contends that it is free to hold its DSL rates constant while increasing its remaining special access rates by more than 11.25%. While the Commission has allowed carriers to take marketplace factors into account when setting rates for special access services, it has also recognized that market-influenced pricing may be unjust and unreasonable.[1] In that context, the Commission has cautioned carriers not to "establish[] relative charges for different services that would create undue preferences among classes of customers."[2] Because NECA's

[1] *Investigation of Special Access Tariffs of Local Exchange Carriers,* 2 FCC Rcd 3507, 3508-3509 (¶¶ 15-20) (1987).
[2] *Id.* at 3508 (¶ 15).

disparate treatment of various special access services appears to impermissibly shift an unreasonable proportion of, at minimum, common costs to purchasers of noncompetitive services, its DSL rate is unjust and unreasonable and should be rejected.

NECA additionally claims that the sharp increase in non-DSL special access rates is justified by the lost contribution from companies exiting the traffic sensitive pool. Even this allegedly reasonable basis for an increase of 5.6%, however, does not justify an increase of nearly twice that amount (11.6%) in DS1 rates.

NECA next asserts that its DSL rates do cover all direct costs. Notably, NECA does not provide any information that would allow the Commission to test this self-serving assertion. NECA, for example, states that it does not use a 100% utilization factor for common equipment, but does not provide its actual utilization factor. Similarly, NECA implicitly concedes that it uses a 100% utilization factor for circuit packs by claiming that such packs tend to be purchased as demand grows, but does not explain how such a utilization factor could be appropriate for other types of direct equipment.[3] NECA next relies on the gap between its claimed DSL direct costs and its DSL rates as justifying its rate structure, but without data to evaluate NECA's calculation of its direct costs, it is simply not possible to determine whether NECA's proposed DSL rate covers DSL direct costs as NECA claims.

NECA fails entirely to respond to GCI's concern that carriers exiting the DSL tariff may not properly account for costs and revenues attributable to DSL service. As GCI explained in it its tariff challenge, carriers exiting the DSL tariff may be misallocating costs and revenues between their tariffed and nontariffed services in a manner that distorts rates for special access services that remain under tariff. Because NECA has not responded to this argument, there is no basis for concluding that carriers are properly allocating costs and revenues between tariffed and nontariffed services. For this reason, as well, the Commission should reject NECA's tariff filing.

Finally, GCI notes that NECA fails to offer a coherent or reasonable explanation of its DS1 rate banding practices. Specifically, NECA initially describes these bands as being based on "projected unit costs" but then states that companies are assigned to a band based on "retention ratio."[4] NECA's letter attempting to justify this practice merely asserts without factual support that retention ratio is a proxy for unit cost.[5] It is not clear why this is a good measure of relative cost, as compared with actual costs or, if a proxy is necessary, the banding used for multiline business SLC rates (which should correlate to loop cost). Instead, NECA has expressly used bands to provide lower prices where competition exists and higher prices where no competition exists, irrespective of costs, rather than basing the bands on underlying cost. Specifically, DS1 and DS3 rates for companies with the lowest retention ratios (companies that presumably face the greatest competition) are 5% lower than DS1 and DS3 rates for companies with the highest retention ratios. This practice, like the other practices to which GCI has objected, would have the effect of driving up noncompetitive prices while reducing prices in areas where there are competition.. The Commission should not allow rate-of-return carriers to disproportionately recover costs from noncompetitive services, and thus should reject or, in the alternative, suspend and investigate NECA's tariff filing.

[3] NECA Reply at 14.
[4] NECA Transmittal No. 1172, vol. 5 at 29-30.
[5] Letter from Richard A. Askoff, Executive Director, Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WCB/Pricing File No. 07-10 (June 27, 2007).

NECA argues that GCI's observation about NECA's contradictory descriptions of its rate banding contradict GCI's concerns about DS-1 rates being priced too high. To the contrary, these concerns about how NECA assigns companies to bands dovetail with GCI's concerns about cross-subsidy of and cost misallocation from DSL services to non-competitive special access services. What NECA appears to have creates in totality is a mechanism that in general increases the prices of less competitive DS-1 services, but then mitigates that price increase in areas where NECA faces competition. This buttresses, rather than undermines, GCI's concerns regarding cost misallocation and cross-subsidy, as NECA ensures that the highest DS-1 rates apply in the least competitive areas, irrespective of underlying cost.
A copy of this letter is being filed in the record of the above-captioned proceeding. Please let me know if you have any questions or concerns.

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Sincerely,

John T. Nakahata
Brita D. Strandberg
Stephanie Weiner
Counsel for General Communication Inc.

cc: Jeffrey Dupree, Director, Access Tariffs & Planning, NECA; Raj Kannan, Pricing Policy Division, FCC; Pamela Arluk, Acting Chief, Pricing Policy Division, FCC