

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

National Exchange Carrier Association)
)
Revisions to Tariff F.C.C. No. 5)
)
Universal Service Fund and)
Lifeline Assistance Rates)

CC Docket No. 93-123
Transmittal Nos. 518, 527, 530

OPPOSITION TO DIRECT CASE

Allnet Communication Services, Inc. (Allnet) hereby submits its Opposition to the Direct Case filed by the National Exchange Carrier Association, Inc. (NECA) on May 26, 1993, in the above referenced proceeding. NECA's Direct Case was filed as a result of an initial Suspension Order¹ and the most recent Investigation Order². As will be shown (1) NECA has not demonstrated that it complies with the Commission's rules requiring it to calculate a revised universal service fund (USF) payout to all companies on an annual basis, (As a result of the non-compliance, the Commission should Order the retroactive correction of the resizing of the USF pool and refunds to overcharged IXCs. If only prospective corrections are ordered, the Commission would clearly send signals to individual LECs that there are no downside risks for failing to submit updated data to NECA); and (2) the Direct Case raises additional questions that should be investigated further by the Commission.

¹National Exchange Carrier Association, Transmittal Nos. 518, 527, 530, Order, DA 93-136, released February 5, 1993 (Com.Car.Bur.) (Suspension Order).

²In the Matter of National Exchange Carrier Association, Revisions to Tariff F.C.C. No. 5, Transmittal Nos. 518, 527, 530, Order, Universal Service Fund and Lifeline Assistance Rates, DA 93-476, released April 23, 1993 (Com.Car.Bur.) (Investigation Order).

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I. BACKGROUND

The Commission, as a result of petitions filed by AT&T and MCI against NECA Transmittal Nos. 518, 527 and 530, suspended for one day, imposed an accounting order, and designated certain issues for investigation in the Suspension Order and Investigation Order.

In the Investigation Order, the Commission set out two specific issues (identified by a (1) or (2) below) to be addressed by NECA and stated:

(1) ... if NECA had calculated a new payout to all companies on an annual

companies submitting **quarterly adjustments**³, but not adjust the expenses (payout) for those not making **quarterly adjustments**. NECA continually cites to §36.622 as the basis for its purported actions. NECA appears to suggest that these **rules** prohibit a recalculation to the NACPL for all companies on an annual basis. While §36.622 discusses revisions to the NACPL due to the quarterly updates as NECA implies, NECA never once mentions the fact that **§36.613 requires** it to submit **annually** on September 1, of each year “... (1) ...a nationwide average unseparated loop cost.” Compliance with this rule necessitates that NECA recalculate a NACPL on an annual basis, and then make an adjustment to the USF payout **to all carriers**. NECA apparently has not complied with the rules. Thus, the Commission should require NECA to recalculate a new nationwide NACPL and adjust the USF payout to all LECs which will result in refunds of overcharges in USF rates to IXC's.

Corrections Should Be Made Retroactively And Refunds Made Immediately To IXC's Paying The Excessive USF Rates

The Commission should require NECA to revise the resizing

and as demonstrated by NECA's recalculation in Appendix 3 of its Direct Case, that over the past eight (8) years the USF revenue requirements would have been over \$15 million less. Moreover, NECA's policy of allowing up to 24 months of retroactive adjustments to LEC submitted data undermines NECA's claim that it would be an excessive burden to retroactively correct USF expense data. The Commission should require NECA to certify that the recalculated numbers provided are correct, and to then order NECA to refund the excessive USF payments (plus interest) directly to the IXC's (not as credits to future amounts due).

III. NECA'S ERROR DETECTION METHODS ARE INEFFECTIVE AND LACK ENFORCEABILITY

NECA's Direct Case responses reveal that the procedures to "scrub" data consist of little more than routine comparisons of ARMIS data to USF data. Such analyses are not effective. When errors are found, NECA only includes corrections which are more than \$1 million per study area in its revisions. There are no penalties imposed by NECA on the LECs who file incorrect data, or fail to file any data. Without penalties imposed to encourage error-free data, any error detection methods -- no matter how lax or tight they may be -- are of no use. NECA states that the LECs must self-certify the accuracy of the data to NECA, but this certification is no protection against the reporting of incorrect data and is about as effective as letting the fox watch the chicken coup!

IV. NECA RESPONSES RAISE ADDITIONAL QUESTIONS

NECA's Direct Case raises several additional issues which warrant

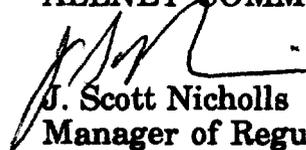
further Commission investigation. For example, in its Direct Case at footnote 19, NECA states that it when it has a surplus collection of USF revenue from IXCs that it "... invests the surplus [USF income received]." The Commission should require NECA to disclose the types of investment NECA makes with the IXCs

occur.

V. CONCLUSION

The NECA Direct Case reveals that it has not complied with the Commission rules. The Commission should require NECA to comply with the rules requiring that it recalculate, annually, a new NACPL and revise the payout to all LECs. The Commission should require that such corrections be made on a going forward basis, as well as making immediate cash refunds for overcharges to IXC for past excessive USF charges resulting from the misapplication of the Commissions rules governing USF.

Respectfully submitted,
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Dated: June 23, 1993

CERTIFICATE OF SERVICE

I, Angela Slaughter, hereby certify that a copy of the foregoing "OPPOSITION TO DIRECT CASE" of Allnet Communication Services, Inc., was served, via first-class, US postage prepaid mail, this 23rd day of June, 1993, to the parties listed below.



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