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

In the Matter of	)	
Telecommunications Relay Services for	)	
Individuals with Hearing and Speech	)	**CC Docket No. 98-67**
Disabilities, and the Americans with	)	
Disabilities Act of 1990	)	

MCI COMMENTS

MCI hereby responds to the May 3, 2004 submission by the National Exchange Carrier Association ("NECA") of its payment formula and fund size estimate for July 2004 through June 2005.[1] Using the basic methodology proposed by the Consumer Governmental Affairs Bureau ("Bureau") in its *2003 Funding Order*,[2] NECA has proposed reimbursing telecommunications relay service (TRS) providers $1.331 per minute of use for traditional and internet protocol

[1] In the Matter of:Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Payment Formula and Fund Size Estimate Interstate Telecommunications Relay Services Fund For July 2004 through June 2005, (*NECA 2004 Fund Size Estimate)* CC Docket No. 98-67, May 3, 2004.

[2] In the Matter of:Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, (*2003 Funding Order*) CC Docket No. 98-67, DA 03-2111, 18 FCC Rcd 12823 (2003).

("IP") relay;[3] $1.44 per minute for use of speech-to-speech ("STS") relay;[4] and $7.293 per minute for the use of video relay service ("VRS").[5]

MCI respectfully requests the Bureau to direct NECA to revert to the rate setting methodology it has traditionally relied upon prior to the Bureau's *2003 Funding Order* altered the rate setting methodology for VRS until the Bureau undertakes a rulemaking proceeding into the appropriate rate setting methodology for relay services and the Commission issues a final Order validating this rate setting methodology for TRS. As several relay providers explained in their petitions ("Petitioners") to reconsider the *2003 Funding Order*, that order was seriously flawed because: 1) it violated the administrative procedures act by modifying an established rate setting procedure without notice or opportunity for comment; 2) it was arbitrary and capricious by not sufficiently justifying its decision to move from a cost-plus to a rate of return on investment methodology, did so without offering relay providers the ability to provide investment and other data that ought to have been included in a rate of return regulation

[3] *NECA 2004 Fund Size Estimate* at 12.

[4] *Id.*, at 14.

[5] *Id.*, at 16.

methodology, did not set rate of return and tax rates appropriate for the industry, excluded costs based on capacity utilization requirements that were unstated and unknown to relay providers; and 3) it was outside the jurisdiction of the Bureau's delegated authority to decide new and novel features of law or set an interim rate.[6]

MCI agrees with Petitioners' arguments, and will not restate them further. What is remarkable about NECA's recent filing is it extends the errors made in the 2003 Funding Order, which were limited to VRS rate-setting, to STS, IP-Relay, and traditional relay. Thus, last year the VRS reimbursement rate was reduced by approximately 100 percent, this year the STS reimbursement rate was reduced by approximately 40 percent. This was undoubtedly done at the direction of the Bureau, but once again there was no public notice to relay providers that the rate setting methodologies for these other TRS services would be modified. Also troubling is NECA's rejection of data by certain providers merely because they were found to be an outlier in some fashion.[7] Being an outlier does not necessarily mean the provider's expenses were not legitimate.

MCI is also troubled by the lack of transparency in NECA's decisions. For example NECA states it contacted providers regarding "inconsistencies in the relationship between

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[6] See Petitions for Reconsideration of Sprint, Hands On Video Relay, Communications Services for the Deaf and AT&T, filed July 30, 2003, In the Matter of: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 98-67.

[7] *NECA 2004 Fund Size Estimate* at 6, 14.

projected salaries and demand; the calculation of occupancy and utilization percentages for Communications Assistants (CA) and interpreters; the amount of research and development included in engineering expenses; the costs included in corporate overheads; disparities between comparable expenses for traditional TRS and IP; the type of taxes claimed or paid; the calculation of profit margin; etc."[8] While the provider contacted may have gained a better sense of acceptable capacity utilization rates, or the proper relation between salaries and demand, other providers have not been informed of acceptable levels for these and other factors that go into the rate-setting.

In normal rate-setting proceedings, there is an actual proceeding. Regulated entities submit evidence of their costs, argue what they believe is the appropriate return, and have the right to respond on the record to criticisms of their evidence and arguments. In this present case, there is no proceeding. Providers submit costs, and NECA makes decisions without public explanation of its decisions, at least with any degree of specificity that would allow alternate, meaningful evidence to be submitted. For example, NECA appears to have independently made adjustments to certain VRS management and marketing expenses, but fails to provide any information regarding the basis of the exclusion.[9]

In the past NECA may have engaged in similarly sparse explanations of its handling of data, but MCI is not aware of any time such decisions resulted in such dramatic reimbursement

[8] Id., at 6

[9] Id., at 15.

reductions. An accepted feature of good ratemaking practice is to produce results that minimize year-to-year rate fluctuations. The *2003 Funding Order* has thrown this accepted practice out the window and has introduced unneeded uncertainty among relay providers and users. MCI therefore respectfully requests the Bureau to reinstate its long-standing TRS rate-setting methodology and direct NECA to recalculate rates for each TRS service on that basis. The Bureau may then either retain that rate-setting methodology, or open a proceeding exploring appropriate rate-setting methodologies for TRS, which should consider the merits and demerits of cost-plus, rate of return, price caps, and other methodologies.

Respectfully submitted,

/s/Larry Fenster

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Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on May 24, 2004

/s/ Larry Fenster

Larry Fenster