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

In the Matter of	)	
	)	
July 1, 2004	)	WC Docket No. 04-372
Annual Access Charge Tariff Filings	)	
	)	
	)	

<u>OPPOSITION TO DIRECT CASE OF NATIONAL EXCHANGE CARRIER ASOCIATION, INC. BY GENERAL COMMUNICATION, INC.</u>

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SUMMARY

General Communication, Inc. (GCI) opposes the direct case filed by the National Exchange Carrier Association, Inc. (NECA) in the matter of July 1, 2004, Annual Access Charge Tariff Filings, WC Docket No. 04-372.

The Commission must declare NECA's 2004 Annual Access Tariff Filing[1] unlawful with respect to the three issues designated for investigation in the Commission's September 20, 2004 *Designation Order*.[2] The Commission first seeks to investigate whether NECA's rate development methodology, which has consistently yielded rates of return above the prescribed 11.25 percent level (as well as above the maximum level of 11.65 percent) in prior periods, produces access rates that are unjust and unreasonable. In this proceeding, NECA has the burden of proof to demonstrate that, despite the historical pattern of overearnings, its methodology accurately projects its revenue requirement, demand, and rates such that the Commission can expect NECA's proposed rates to yield the prescribed rate of return.

NECA's Direct Case[3] falls far short. To begin with, NECA offers no new information about its methodology for projecting revenue requirement, demand, and rates that would allow the Commission to directly assess whether its proposed rates target 11.25 percent. Thus, the Commission can look only to how accurate NECA's methodology has been in the past, and, as GCI pointed out in its petition to suspend and

[1] National Exchange Carrier Association, Inc., Tariff F.C.C. No. 5, Transmittal No. 1030 (filed June 16, 2004) ("NECA 2004 Annual Access Tariff Filing").

[2] July 1, 2004 Annual Access Charge Tariff Filings, WC Docket No. 04-372, *Order Designating Issues for Investigation*, DA 04-3020 (rel. Sept. 20, 2004) (*Designation Order*).

[3] July 1, 2004, Annual Access Charge Tariff Filings, WC Docket No. 04-372, *Direct Case of the National Exchange Carrier Association, Inc.*, (filed Oct. 12, 2004) (NECA's Direct Case).

investigate NECA's 2004 Tariff,[4] NECA's final Form 492 reports, filed nine months after the two-year monitoring period, reveal that NECA's methodology has consistently produced excessive rates of return over the past ten years. Following this clear pattern, NECA's most recent Form 492 filing reflects a rate of return for the switched traffic sensitive category of 15.14 percent for the 2003 tariff year. NECA attempts to dismiss the Commission's concerns about such prior period earnings, claiming that adjustments to earnings made after the final Form 492 reports are filed reduce NECA's earnings to authorized levels. But NECA's claims fail both on the facts — even accounting for such impermissible adjustments, NECA's own data shows that rates for switched traffic sensitive rates have consistently exceeded the maximum authorized level[5] — and the law — NECA is not permitted to take account of adjustments made after the filing of its final Form 492 monitoring reports.[6]

Because there is no evidence that NECA's methodology, which has been so systematically biased in the past, produces rates that target the prescribed level, the Commission must declare the revised rates in NECA's 2004 tariff unlawful. To correct for this historical bias, the Commission should reduce NECA's switched traffic sensitive revenue requirement by 5.4 percent, and, given NECA's 2003 overearnings, reduce switched traffic sensitive rates for 2004 by an additional 26.8 percent such that NECA's expected rate of return will target 11.25 for the overall 2003-2004 monitoring period.

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[4] July 1, 2004, Annual Access Charge Tariff Filings, National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, Transmittal No. 1030, WCB/Pricing File No. 04-18, *Petition of GCI to Suspend and Investigate* at 2-7 (filed June 23, 2004) (GCI's Petition).

[5] *See* NECA's Direct Case, Exhibit 2.

[6] *See AT&T Corp. v. Central Tel. Co.*, 8 FCC Rcd 3546, 3552 n.69 (1993); *see also*, *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1233 (D.C. Cir. 1993) (*Virgin Islands*).

With respect to the second issue designated for investigation, the Commission must declare unlawful NECA's 2004 entrance facility rates, which are calculated based on demand for entrance facilities whether or not such facilities are used. NECA's tariff requires that entrance facility charges be assessed even if a collocating carrier, like GCI, were to order and use cross-connects from the ILEC pursuant to Section 251 of the Act[7] to provide exchange access. This harms competition in interstate transport by assessing an entrance facility charge even when GCI would provide the transport facility, making the charge for a cross-connect and the charge for an entire ILEC entrance facility the same. This violates Commission rule 51.515(a) by assessing access charges in lieu of Section 251(c)(2) interconnection charges.[8] In addition, NECA's failure to create a cross-connect charge violates rule 69.121.[9] Furthermore, because GCI offers exchange access services to other carriers, rule 51.305(b) does not preclude GCI from obtaining these cross-connects as 251(c)(2) interconnection facilities.[10] If NECA did not unlawfully charge entrance facilities charges for these cross-connects, GCI would migrate to its own entrance facility trunks, as potentially would other long distance carriers, thus reducing the demand for NECA's entrance facilities. Accordingly, NECA's proposed entrance facility rates include demand for entrance facilities that, absent this unlawful practice, would be billed as cross-connects under tariff or interconnection agreements. The Commission should therefore declare NECA's application of its tariff unjust and unreasonable and its proposed entrance facility rates unlawful.

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[7] 47 U.S.C. § 251.

[8] 47 C.F.R. § 51.515(a).

[9] *Id.* § 69.121.

[10] *Id.* § 51.305(b).

Finally, NECA's tariff language relating to these entrance facility charges — the third designated issue — is unjust and unreasonable for the reasons explained with respect to issue two. NECA's tariff language must be amended to conform to the Commission's rules.

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General Communication, Inc. (GCI) opposes the Direct Case filed by the National Exchange Carrier Association, Inc. (NECA) in the above captioned matter.

INTRODUCTION

In its September 20, 2004 *Designation Order*[1], the Commission designated three issues for investigation. First, the Commission sought to determine whether, in light of the repeated and consistent overearnings reflected in NECA's final monitoring reports over the last ten years, NECA's 2004 rates are calculated using a flawed methodology likely to result, once again, in earnings exceeding the prescribed rate of return. On this issue, NECA's direct case[2] is fatally deficient in proof. NECA's claim that earnings actually erode to authorized levels after the final monitoring report fails not only because, for switched access service, no such erosion occurs, but also because judicial and Commission precedent establish that the final monitoring report is binding on carriers as the definitive measure of earnings. Ignoring its burden of proof, NECA

[1] July 1, 2004, Annual Access Charge Tariff Filings, WC Docket No. 04-372, *Order Designating Issues for Investigation*, DA 04-3020 (rel. Sept. 20, 2004) (*Designation Order*).

[2] July 1, 2004, Annual Access Charge Tariff Filings, WC Docket No. 04-372, *Direct Case of the National Exchange Carrier Association, Inc.*, (filed Oct. 12, 2004) (NECA's Direct Case).

offers nothing to demonstrate that, nothwithstanding this historical pattern of overearnings, its rate development methodology accurately projects its revenue requirement, demand, and rates such that the Commission can expect NECA's proposed rates to yield the prescribed rate of return. Because NECA's direct case neither rebuts the evidence of systematic bias, nor provides any affirmative evidence, other than unsupported assertions, that its methodology will yield just and reasonable rates, the Commission must find NECA's rates to be unlawful. The Commission should order NECA to reduce its switched traffic sensitive rates by an amount necessary to offset the extent to which it has overearned its past projections, using that past history as a proxy for the likely present performance. The Commission should order NECA to reduce its switched traffic sensitive rates for the July to December 2004 period so as to target a switched traffic sensitive rate of return of 11.25 percent for the 2003-2004 monitoring period. These adjustments would result in a combined reduction in NECA's switched traffic sensitive rates of 32.2 percent for the period from July to December 2004, and a reduction of 5.4 percent for the period from January 2005 to June 2005.

The second issue that the Commission designated for investigation is whether NECA's entrance facility rates improperly include demand projections for entrance facilities that collocating carriers would not otherwise order or use. NECA's tariff imposes entrance facility charges on carriers, like GCI, that collocate pursuant to Section 251 interconnection agreements with NECA participant ILECs, whether or not they use the ILECs entrance facility. NECA's requirement that the ILEC assess this charge even if the collocating carrier were to obtain and use a cross-connect under Section 251, bypassing the ILEC entrance facility altogether, is blatantly anti-competitive and contrary to Commission rules. Because NECA's entrance facility rates are calculated based on inflated demand projections for such entrance facilities, the resulting rates are neither just nor reasonable.

For its third issue, the Commission designated for investigation whether NECA's tariff language relating to entrance facility charges is unjust and unreasonable. Because, as discussed with respect to the second issue, NECA's assessment of entrance facility charges even if such facilities are neither ordered nor used is unlawful, the questioned language is inconsistent with the Commission's rules and must be amended.

I. IN LIGHT OF ITS HISTORICAL OVEREARNINGS, NECA HAS FAILED TO MEET ITS BURDEN OF SHOWING THAT THE METHODOLOGY USED TO PRODUCE ITS 2004 ANNUAL ACCESS TARIFF RESULTS IN JUST AND REASONABLE RATES.

In its petition to suspend and investigate NECA's 2004 Annual Access Tariff Filing, GCI asked the Commission to suspend and investigate NECA's tariff because it used a rate development methodology that appeared to be the same methodology NECA had used previously — which had systematically resulted in excessive earnings far above the maximum allowable rate of return.[3] NECA's final monitoring reports, filed nine months after the close of each of the Commission's two-year monitoring periods, reveal repeated and consistent overearnings stretching back ten years.[4] As a matter of arithmetic, such excess rates of return must result from NECA overstating its projected revenue requirement, understating projected demand, or some combination of the two. In its tariff justifications, NECA never explained how — if at all — it had corrected the rate development methodology used in prior years to account

[3] July 1, 2004, Annual Access Charge Tariff Filings, National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, Transmittal No. 1030, WCB/Pricing File No. 04-18, *Petition of GCI to Suspend and Investigate* at 2-7 (filed June 23, 2004) (GCI's Petition).

[4] *See* NECA Direct Case, Exhibit 1.

for the consistent under-projection of NECA's rate of return. Moreover, because NECA did not put its actual methodology, model, and workpapers in the record, there was no way, from the data supplied in NECA's tariff filing, to directly evaluate NECA's revenue requirement and demand calculations. Put bluntly, NECA's rate development methodology has been a "black box" into which neither GCI nor the Commission can see. The historical pattern of overearnings is therefore the best available evidence that NECA's methodology for projecting revenue requirement, demand, and rate of return — and thus determining rates — has been systematically biased in NECA's favor and, if applied again, would yield rates that are unjust and unreasonable over the two-year monitoring period.[5]

Finding that GCI had raised substantial questions as to the lawfulness of NECA's tariff, the Commission designated for investigation pursuant to section 204(a) of the Act: "whether NECA's rate development methodology has resulted in consistent overearnings, such that this methodology produces access rates that are unjust or unreasonable."[6] Following the submission of NECA's direct case, however, NECA's rate development methodology remains a "black box"; GCI and the Commission still lack clear visibility into how NECA develops its projections of revenue requirement, demand, and therefore, rate of return. NECA wholly ignores the fact that under Section 204(a) it bears the burden of proof to show that its proposed rates are just and reasonable.[7] In this case, NECA must demonstrate that its rate development methodologies accurately project its members' revenue requirements (including ratebase and expenses

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[5] 47 C.F.R. § 65.701.

[6] July 1, 2004, Annual Access Charge Tariff Filings, WC Docket No. 04-372, *Order Designating Issues for Investigation* at ¶ 1, DA 04-3020 (rel. Sept. 20, 2004) (*Designation Order*).

[7] 47 U.S.C. § 204(a) ("[T]he burden of proof to show that the new or revised charge, or proposed charge, is just and reasonable shall be on the carrier.")

components) and demand, such that the Commission can expect NECA's proposed rates to target an 11.25 percent rate of return.

NECA complains that the *Designation Order* "requests no information on the processes and procedures actually used by NECA to forecast costs and demand and to calculate proposed rates for the test period."[8] But ignoring its burden of proof, NECA supplies no new information to explain its rate development methodology and underlying assumptions or to demonstrate that, notwithstanding past history, its methodology will consistently produce rates of return targeting 11.25 percent and below the maximum allowable 11.65 percent (i.e., 11.25 percent plus 0.4 percent[9]) for the two year monitoring period. Absent such documentation, there continues to be no way for either carriers or the Commission to meaningfully evaluate NECA's methodology, except by testing the extent to which past projections have yielded unjust and unreasonable rates and resulted in earnings that exceed the prescribed rate of return.

In its direct case, however, NECA contends that prior earnings are "irrelevant" because, it claims, "NECA's proposed rates are always targeted to earn the authorized 11.25% level during the tariff test period"[10] and "NECA does not base its rate projections on data 'true-ups' for prior periods."[11] To begin with, NECA entirely misses — or ignores — the relevance of prior period earnings. GCI is not asking to use the tariff proceeding to obtain refunds of prior period earnings. Rather, these prior period earnings are relevant in two respects. First, the pattern of

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[8] NECA Direct Case at 8.

[9] 47 C.F.R. § 65.700(a) ("The maximum allowable rate of return for any exchange carrier's earnings on any access service category shall be determined by adding a fixed increment of four-tenths of one percent of the exchange carrier prescribed rate of return.")

[10] NECA Direct Case at 5.

[11] *Id.* at 6-7.

prior earnings demonstrates the extent to which NECA's methods for projecting its revenue requirement and demand are accurate or inaccurate. If NECA has historically projected revenue requirement and demand that achieved the target rate, that performance would create some basis for assuming that the same methodology employed in the current filing would yield just and reasonable rates. Where, however, past rates have yielded rates of return above the maximum permitted rate of return it is likely that the same methodology, applied to calculate this year's rates, will yield the same result — rates above the maximum allowable rate of return. Second, NECA is only allowed to recover 11.65 percent over the entire two-year monitoring period, and its tariffs should be targeting an 11.25 percent rate of return over that period.[12] Because NECA's September 2004 monitoring report[13] conclusively establishes that NECA overearned during 2003, its rates for the remainder of 2004 (July 1, 2004 – December 31, 2004) must target an 11.25 percent return for the entire monitoring period, even if this means that NECA's returns fall below 11.25 percent for the 2004-2005 tariff year.

NECA argues that the concerns expressed by GCI in its petition and the Commission in its *Designation Order* regarding repeated overearnings are "unfounded" because the monitoring reports are "not necessarily representative of final earnings levels," which, NECA asserts, erode in the months after the final monitoring report is filed and "tend[] to finalize at well-below authorized return levels."[14] NECA fails both on the facts — its assertions prove false with respect to switched traffic sensitive rates — and the law — it is not permitted to take account of adjustments made after the filing of the final monitoring reports.

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[12] 47 C.F.R. § 65.701.

[13] Exhibit 1, NECA Rate of Return Report, Form FCC 492 (filed September 29, 2004).

[14] NECA Direct Case at 4-5.

With respect to switched access sensitive rates, NECA's own filings in this proceeding show that — even accounting for adjustments after the filing of the final monitoring reports (on which, as explained below, NECA is not permitted to rely) — NECA's rates of return have consistently exceeded both the prescribed rate-of-return and the maximum permitted rate of return. In fact they demonstrate that NECA has earned excessive rates of return in the switched traffic sensitive category in each of the last ten years.[15]

	Switched Traffic Sensitive Rate of Return[16]	
Monitoring Period	**Final Form 492 Report**	**Adjusted After Final Form 492 Report Filed**
1993-1994	13.02%	12.93%
1995-1996	12.23%	12.11%
1997-1998	13.66%	13.46%
1999-2000	12.34%	12.17%
2001-2002	12.76%	13.14%
2003	15.14%	13.88%

As reflected in this chart, once again, in 2003, NECA's recently filed final Form 492 monitoring report reflects a 15.14 percent rate of return for switched traffic service. NECA itself does not contend that this rate of return will be lower than 13.88 percent — over 2 percent higher than the maximum prescribed rate even if all of NECA's impermissible post-final Form 492 adjustments are considered.[17] Indeed, given its rate of return for the first half of the 2003-2004 monitoring period, NECA's proposed rates for 2004 should actually reflect a mid-term adjustment and target a rate below the prescribed level so as to offset the inflated 2003 earnings and achieve the prescribed 11.25 percent for the two-year monitoring period overall. Thus, even the data on

[15] NECA Direct Case, Exhibit 2.

[16] *Id.*

[17] *Id.*

which NECA relies demonstrates consistent overearnings in switched traffic sensitive service for which NECA offers no explanation or justification.

Moreover, NECA cannot rely on such post-final adjustments — made after the filing of its final Form 492 monitoring reports — to justify its rates. The Commission's rules establish that "earnings shall be measured over a two year period to determine compliance with the maximum allowable rate of return."[18] As the D.C. Circuit explained in *Virgin Islands Telephone Corp. v. FCC*, the Commission deliberately selected the two-year monitoring period to strike a balance between ratepayers' interests in frequent rate reviews and carriers' desires for longer review periods.[19] Rejecting the Commission's decision to award refunds based on a period shorter than two years, the court in that case concluded that "[u]nder the present system, the target authorized return is a number that has meaning only in relation to the full two-year monitoring period."[20]

It is equally well established that the final monitoring report, filed nine months after the close of that two-year period is "a final and conclusively binding determination of . . . carriers' earnings."[21] Both D.C. Circuit and Commission precedent make clear that the Commission may find liability and award refunds if the final monitoring report indicates that a carrier has exceeded the maximum authorized rate of return.[22] Moreover, the Commission has explicitly

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[18] 47 C.F.R. § 65.701.

[19] *See Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1233 (D.C. Cir. 1993) (*Virgin Islands*).

[20] *Id.* at 1238 (internal quotation marks omitted).

[21] *In the Matter of Section 208 Complaints Alleging Violations of the Commission's Rate of Return Prescriptions*, 12 FCC Rcd 4007, 4015 (¶ 20) (1997) (internal quotation marks omitted) (citing *MCI Telecomms. Corp. v. Pac. Northwest Bell Tel. Co.*, 5 FCC Rcd 216, 225 (1990)).

[22] *See, e.g., MCI Telecomms. Corp. v. FCC*, 59 F.3d 1407, 1414 (D.C. Cir. 1995); *AT&T Corp. v. Virgin Islands Tel. Corp.* (*Vitelco*), 19 FCC Rcd 15978 (¶ 4-5) (2004).

denied carriers' attempts to adjust these figures after final monitoring reports have been filed.[23] In adjudicating the overearnings complaint in *AT&T Corp. v. Central Telephone Co.*, for example, the Commission rejected a NECA member company's argument that its rate of return could end up below the authorized level because pool returns had not been finalized by NECA.[24] Although the Commission noted that "extraordinary circumstances [could] warrant different accounting treatment in individual cases," the Commission concluded that the company's "attempt to alter its final monitoring report well past the end of the nine-month cut-off is unavailing."[25]

GCI sees no basis for measuring prior period earnings any differently in this proceeding, where, in lieu of sufficient detail about NECA's revenue and demand models, NECA's prior period earnings remain the best available evidence from which to evaluate the accuracy of NECA's methodology.[26] The period of time over which NECA targets its rates to achieve the prescribed rate of return must logically be the same as the period of time over which earnings from those rates would be conclusively measured in an overearnings case. Otherwise, the Commission's methodology for reviewing proposed rates in a tariff investigation would be

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[23] *See, e.g.,Com Sys., Inc. v. Pac. Bell Tel. Co.*, 8 FCC Rcd 1140, 1148 (1993) (disallowing such post-period adjustments because "the Forms 492 [monitoring reports] are final reports and carriers may rely upon them").

[24] *AT&T Corp. v. Central Tel. Co.*, 8 FCC Rcd 3546, 3552 n.69 (1993).

[25] *Id.*

[26] The enactment of § 204(a)(3) in no way invalidates the case law establishing that prior earnings must be measured by the final monitoring reports. As the Commission recently explained "even with respect to duly lawful rates, the Commission can still cause the carrier to lower its rates prospectively via an investigation under section 205 of the Act or a complaint proceeding under section 208 of the Act to ensure compliance with the rate-of return prescription during the course of the full two year period." *AT&T Corp. v. Vitelco.*, 19 FCC Rcd 15978 (¶ 22); *See also id.* ("Section 204(a)(3) did *not* change . . . the Commission's requirement that carriers comply with the rate of return prescription over a two year period.").

different than the methodology used to determine whether a carrier had impermissible overearnings as a result of charging those rates.

NECA, however, seeks to extend the timeframe for determining whether overearnings have occurred (and will occur) well beyond the filing of the final Form 492 monitoring report nine months after the conclusion of the two-year monitoring period. NECA cites no Commission authority for its ability to do so — and it cannot because there is none. NECA's sole basis for including post-monitoring period adjustments is its own internal practice for generating the settlement payments among its tariff participants. But as the Commission concluded in *AT&T v. Central Telephone*, such internal NECA practices cannot justify modifications of the final monitoring reports well past the nine-month cutoff. Moreover, although NECA seeks to lengthen rather than shorten the two year period, NECA's approach lacks "congruen[ce] with the FCC's standard theory of rate-of-return regulation and consisten[cy] with prior Commission practice."[27] Under *Virgin Islands*, such a deviation from the two year period is impermissible. Thus, even if the data submitted by NECA supported its claim — which it does not — NECA cannot now rely on after-the-fact adjustments — never before filed with the Commission or disclosed to carriers — when both practice and precedent require that the Commission measure historical earnings and ensure compliance based on the final two-year Form 492 monitoring reports.

In sum, NECA's 2004 annual access tariff filing adheres to a rate development methodology that has produced repeated and consistent overearnings, and NECA has failed to meet its burden of proof to show that its historically flawed methodology will yield just and

[27] *Virgin Islands*, 989 F.2d at 1232.

reasonable rates for 2004. For these reasons, the Commission must find NECA's rates to be unlawful.

In order to correct for the biases historically evident in NECA's methodology, GCI proposes that the Commission reduce NECA's projected switched traffic sensitive revenue requirement for the 2004-2005 tariff year by the average amount that its rates of return in the switched traffic sensitive category for 1997-2002 – the last three complete monitoring periods – exceeded the prescribed rate of return. The purpose of this adjustment is not to exact a refund, but to adjust for what the evidence in the record shows is a systemic bias in NECA's projection methodologies. Doing so would reduce NECA's permissible switched traffic sensitive revenue requirement for the 2004-2005 tariff year by 5.4 percent.[28]

In addition, however, a further adjustment must be made in order to target an 11.25 percent rate-of-return for the switched traffic sensitive category for the 2003-2004 monitoring period. NECA's final Form 492 for 2003 reports a switched traffic sensitive rate of return of 15.14 percent. In order to produce switched traffic sensitive rates that will yield a projected 11.25 percent rate of return over this two year monitoring period, NECA's switched traffic sensitve rates for the period from July 2004 to December 2004 must be further reduced by 26.8 percent.[29] Unless the Commission prescribes this adjustment as well, NECA predictably will earn in excess of the prescribed rate of return for the entire two-year monitoring period.

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[28] *See* Exhibit 2, Declaration of Alan Mitchell.

[29] *Id.*

II. NECA'S ENTRANCE FACILITY CHARGES ARE UNLAWFUL BECAUSE THEY ARE IMPROPERLY BASED ON DEMAND PROJECTIONS FOR ENTRANCE FACILITIES THAT COLLOCATING CARRIERS WOULD NOT OTHERWISE ORDER OR USE.

The second issue designated for investigation is "whether NECA's entrance facilities rates are calculated using demand projections for entrance facilities that are neither ordered nor used, and whether the resulting rates are unjust or unreasonable under section 201 of the Act."[30] As GCI explained in its petition, NECA's annual access tariff filing includes demand for entrance facilities "even when the customer's serving wire center and customer-designated premises are collocated,"[31] in other words, regardless of whether the NECA's member companies would actually provide transport. GCI has collocated pursuant to Section 251 of the Act in two access (and host) end offices and at two remotes operated by NECA tariff participants ACS of Fairbanks, Inc. (ACS-F) and ACS of Alaska, Inc. (ACS-AK). NECA's position, as communicated to GCI by ACS and as NECA itself sets forth in its direct case, has been that whenever GCI or any similarly situated CLEC seeks to interconnect its collocated transport facilities with the trunk side of the incumbent LEC's switch, GCI must pay an entrance facility under Tariff No. 5, rather than a tariffed cross-connect charge or, even more appropriately, a cross-connect charge under an applicable interconnection agreement. NECA's policy, and attendant interpretation of its tariff, improperly inflates the demand for such entrance facilities, making NECA's calculation of its entrance facility rates flawed. Accordingly, NECA's interpretation of its tariff results in unjust and unreasonable rates, both in setting interstate entrance facility rate levels and in the tariff's application.

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[30] *Designation Order* at ¶1.

[31] NECA 2004 Annual Access Tariff Filing 2004, Volume 5, Section 2 at 4.

As set forth in the Declaration of Frederick W. Hitz, III, GCI not only provides interexchange services in Fairbanks and Juneau, but also provides competitive local exchange services, including telephone exchange service and exchange access service. GCI has a federal access tariff, through which it offers dedicated transport, including entrance facilities.[32] At present, GCI has installed the facilities it would need to actually provide competitive exchange access services from GCI's POP – or the POP of any other facilities-based long distance carrier – to the ACS central office host switches in Fairbanks and Juneau.[33] Because GCI already has extended its facilities to a digital cross-connect in ACS' offices/remote sites, to physically complete the circuit necessary to provide exchange access transport services (entrance facilities for switched access services and channel terminations for special access services), GCI would simply need obtain a cross-connect between ACS' trunk port and GCI's interconnection facility at the cross-connect panel, along with any necessary multiplexing.[34]

GCI, however, cannot order a simple cross-connect from ACS for a facility used to provide interstate exchange access. Under NECA's view of Tariff No. 5, and as ACS has told GCI, GCI must order and pay a full entrance facility charge in order to obtain this cross-connect. Because this charge is the same regardless of whether GCI uses a full entrance facility running over ACS facilities all the way back to GCI's POP or uses only a cross-connect,[35] GCI does not today actually provide exchange access service between a long distance POP and the ACS

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[32] Exhibit 3, Declaration of Frederick W. Hitz, III at ¶¶ 12, 20 (Hitz Declaration).

[33] *Id.* at ¶¶ 5, 13. The ACS host switches are located at its Globe wire center in Fairbanks and the Juneau Main wire center in Juneau. *Id.*

[34] *Id.* at ¶¶ 7-12, 15-20

[35] *Id.*

offices or remotes to any party, including its own long distance affiliate.[36] In that circumstance, no long distance carrier is going to pay GCI for transport over GCI's fiber, and also pay an entrance facility charge to ACS that covers not just the cross-connect, but duplicates entirely the charge for transport between ACS' office and the long distance carrier POP.

The Commission long ago recognized that such practices are blatantly anti-competitive, foreclosing exchange competition for exactly the reasons GCI has experienced. In its *Notice of Proposed Rulemaking* that initiated the proceeding that led to the Commission's *Expanded Interconnection* orders, the Commission, with respect to special access services, observed:

> [U]nder the current tariff structure, a large customer cannot, as a practical matter, deliver its interstate traffic to an IXC POP using LEC access facilities from its location to the LEC central office and CAP transmission facilities from there, or a point just outside the central office, to the IXC premises. Assuming that the customer location and the POP are served by the same central office, a customer using CAP facilities in this manner would pay two channel termination charges to reach the CAP facilities in addition to the CAP charges. By paying the two channel termination charges directly to the LEC, however, the customer could also reach the POP directly without incurring any CAP charges. Accordingly, the customer must choose between using LEC facilities for the entire special access connection or bypassing the LEC entirely through third-party facilities that connect the customer location directly with the IXC."[37]

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[36] In its Petition, GCI stated that it was currently paying cross-connect fees under its interconnection agreement for trunks used to provide switched exchange access transport over GCI facilities between the ACS central office and GCI's POP. *See* GCI Petition at 8-9. Upon further investigation, this statement was in error. Hitz Declaration at ¶¶ 9, 16. GCI currently uses ACS entrance facilities to provide all its switched access transport for long distance service provided to ACS local, GCI resale and GCI UNE-P customers. *Id.* However, this is a direct result of the fact that ACS, under NECA Tariff No. 5, would require GCI to order a full entrance facility in order to obtain a cross-connect to connect GCI's already existing transport and interconnection facilities to the trunk side of ACS' switch. *Id.* at ¶¶ 10, 18. Thus, the effect of NECA's unlawful tariff language is still the same -- competition in switched transport entrance facilities is eliminated.

[37] In re Expanded Interconnection with Local Telephone Company Facilities, *Notice of Proposed Rulemaking & Notice of Inquiry*, 6 FCC Rcd 3259, 3260 (¶ 8) (1991) ("*Expanded Interconnection NPRM*"). The *Expanded Interconnection* proceeding began with consideration of the use of competitive access providers (CAPS) to provide competition for the transport portion of a special access service. It was later extended to the use of CAPs to provide competition for the transport portion of a switched access service. At that time, the extraneous channel

The same observation holds true with respect to entrance facilities for switched access services – when two entrance facility charges are assessed, the long distance carrier must choose between using the ILEC's switched access services all the way from the POP to the end user, or bypassing the ILEC entirely by becoming the end user customer's local service provider. Assessing two entrance facilities precludes the long distance carrier from bypassing only the provision of the switched entrance facility service. As an antidote, in its *Expanded Interconnection Orders*, the Commission required ILECs subject to expanded interconnection requirements to establish cost-based cross-connect charges.[38]

In the same vein, following the enactment of the 1996 Act, the Commission expressly prohibited ILECs from imposing any access charges, including entrance facilities and channel terminations, on interconnection facilities and unbundled network elements obtained pursuant to Section 251(c)(2) to provide exchange access. As the Commission points out in the *Designation Order*, Section 51.515 of the Commission's rules prohibits ILECs from assessing access charges "on purchasers of elements that offer telephone exchange or exchange access services."[39] "Elements" are specifically defined in Rule 51.501(b) to include "network elements, interconnection, and methods of obtaining access to unbundled elements." Were GCI to order a cross-connect to connect its interconnection facility (number 2 in Exhibit 4 and Exhibit 5, attached) with ACS' switch, that cross-connect (and any associated multiplexing) would be an

termination charge was justified by the ILECs on grounds that their then-current tariffs "required [the CAP or other interconnecting party] to pay both LEC channel termination charges regardless of whether it substituted its own facilities for virtually all of one of the LEC transmission segments." *Id.* (¶7).

[38] In re Expanded Interconnection with Local Telephone Company Facilities, *Second Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 7341, 7362 (¶48) (1996); *Second Report and Order and Third Notice of Proposed Rulemaking*, 8 FCC Rcd 7374, 7439 (¶130) (1996); *see also* 47 C.F.R. § 69.121.

[39] 47 C.F.R. § 51.515(a).

interconnection element ordered in order to "offer . . . exchange access," and thus the imposition of access charges would be prohibited.[40] As interconnection elements, this cross-connect (and any associated multiplexing) would be required to be priced, in any state arbitration conducted pursuant to Section 252, based on forward looking economic costs and according to the Commission's specific rate structure rules for Section 251(c)(2) interconnection facilities and Section 251(c)(3) UNEs.[41] The application of an embedded cost, rate-of-return regulation-derived entrance facility charge to this cross-connect cannot meet these requirements.

NECA suggests that section 51.515(a) is inapplicable because GCI does not provide "telephone exchange" or "exchange access" services. NECA is wrong. "Interconnection," under both Section 251(c)(2) and rule 51.305,[42] includes "the transmission and routing of telephone exchange traffic, exchange access traffic, or both."[43] Although rule 51.305(b) states, "a carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act,"[44] that rule would not extend to a GCI request for a cross-connect where, as here, GCI seeks to obtain such interconnection both so that

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[40] NECA's argument that 51.515(d) limits 51.515(a) to those situations in which a carrier provides both telephone exchange service and exchange access is without merit. This section is an additional prohibition against providing access charges when a carrier provides both telephone exchange service and exchange access to an end user customer, but in no way limits 51.515(a).

[41] 47 C.F.R. § 51.503.

[42] 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(1).

[43] 47 C.F.R. § 51.305(a)(1).

[44] *Id.* § 51.305(b).

it can provide exchange access service to itself and be in a position to *offer* exchange access service to others under its tariff. As the Commission made clear in the *Local Competition Order*:

> "traditional IXCs that *offer* access services in competition with an incumbent LEC (*i.e.*, IXCs that *offer* access services to other carriers as well as to themselves) are also eligible to obtain interconnection pursuant to section 251(c)(2). For example, when an IXC interconnects at a local switch, bypassing the incumbent LEC's transport network, that IXC may *offer* access to the local switch in competition with the incumbent. In such a situation, the interconnection point may be considered a section 251(c)(2) interconnection point."[45]

Interpreting rule 51.305(b) to require that a CLEC affiliated with an IXC must first *provide* exchange access to unaffiliated IXCs before it may obtain interconnection pursuant to Section 251(c)(2) would lead to a ridiculous – and self-defeating – result. Because, as noted above, NECA's tariff results in assessing the full entrance facility charge even for a cross-connect, a CLEC affiliated with an IXC will never succeed in attracting an unaffiliated IXC customer so long as it is subject to such a non-cost-based charge. The CLEC would be caught in a Catch-22: because it was subject to a superfluous, non-cost-based entrance facility charge that precludes it from competing to provide exchange access service, it would never be able to attract the exchange access business of an unaffiliated IXC and thus would never be able to obtain cost-based interconnection pursuant to Section 251(c)(2) to provide exchange access.

NECA also asserts that Part 69 of the Commission's "rules *require* the application of entrance facilities" even if a collocating carrier, like GCI, were to use its own facilities for interstate transport.[46] But NECA relies on the language of section 69.110(a), which provides that

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[45] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 15599 (¶191) (1996) (*Local Competition Order*)(emphasis added).

[46] NECA Direct Case at 24-5.

entrance facility charges "shall be assessed upon all interexchange carriers and other persons that *use* telephone company facilities between the interexchange carrier or other person's point of demarcation and the serving wire center."[47] However, when GCI provides the entrance facility between its, or any other IXC's, POP and the ILEC's central office, it is not "us[ing]" the ILEC's facilities at all, and thus should not be required to pay an anticompetitive entrance facility charge pursuant to Section 69.110(a).

Furthermore, following the enactment of the 1996 Act, the better reading of the Commission's expanded interconnection rules is to require an ILEC to create a cross-connect charge whenever another carrier collocates in its central office. Although the pre-1996 Act rule 64.1401 was limited to requiring Class A LECs to offer expanded interconnection, the 1996 Act established a second means by which a carrier such as GCI could obtain collocation that extended to all incumbent LECs (other than those under a rural exemption) – an interconnection agreement negotiated and arbitrated under Sections 251 and 252 of the Communications Act. Through their Section 251 interconnection agreements, ACS and other NECA carriers are making an "offering" of functionalities that meet the definition of "expanded interconnection as defined in part 64, subpart N."[48] Accordingly, rule 69.121 requires those incumbent LECs actually providing collocation to also tariff a cross-connect subelement.[49]

NECA's other arguments are equally unpersuasive. GCI is not asking that the Commission require NECA companies to ratchet facility charges. Ratcheting occurs, if at all, when the same ILEC facility is used to provide interconnection services under an interconnection

[47] 47 C.F.R. § 69.110(a) (emphasis added).

[48] *See id.* § 69.121 (requiring the use of "connection charge subelements" to set rates for equipment and facilities associated with expanded interconnection offerings "as defined in part 64, Subpart N" of the Commission's rules).

[49] *Id.* § 69.121(a)(1).

agreement and exchange access services under Part 69. This issue, however, is about the appropriate treatment of a cross-connect that GCI will use to provide exchange access, not about a mixed use facility.

As GCI pointed out in its previous petition, the inclusion of demand for entrance facilities that should be billed as cross-connects under tariff or interconnection agreement also conflicts with the reasoning in the *Second MAG Order*.[50] In that Order, the Commission clarified that a rate-of-return carrier seeking to geographically deaverage rates "must establish a cross-connect element providing for interconnection and may not charge collocated providers for entrance facilities . . . when the entrant provides its own transmission facilities."[51] The policy underlying this ruling, however — to prevent rate-of-return carriers from using their market power to assess charges in an anti-competitive manner — is no less essential where the rate-of-return carrier does not seek geographic deaveraging. As explained above, allowing NECA to assess entrance facility rates whether or not its members' entrance facilities are used, distorts and harms competition in interstate transport.

Finally, in its direct case, NECA complains that the Commission did not ask "how NECA calculated its entrance facility charges," asserting that the "real issue" is the reasonableness of the provisions governing entrance facility charges, which cannot be addressed in this proceeding. Contrary to NECA's assertions, however, the calculation of NECA's entrance facility rates in its 2004 annual access tariff filing is squarely within the scope of this proceeding. As GCI has explained, NECA's entrance facility rates are calculated by dividing the

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[50] Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service, *Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket Nos. 00-256, 96-45 (¶ 31) (rel. Feb. 26, 2004) (*Second MAG Order*).

[51] *Id.*

revenue requirement by projected demand for entrance facilities. However, because NECA's existing and projected demand for its entrance facilities are based on the practice of charging carriers like GCI for entrance facilities in lieu of Section 251(c)(2) interconnection cross-connects or rule 69.121 cross-connects, the Commission can only determine the lawfulness of the proposed entrance facility rates by determining the lawfulness of that underlying practice. In other words, if the imposition of such charges on carriers like GCI is unlawful, and carriers such as GCI would reduce their purchases of ILEC entrance facilities if NECA companies charged cross-connect charges in a lawful manner, then the demand projections based on those charges are unjustly inflated and the resulting rates unreasonably low, damaging competition in interstate transport.

III. THE LANGUAGE IN NECA'S 2004 TARIFF FILING RELATING TO ENTRANCE FACILITY CHARGES IS UNJUST AND UNREASONABLE AND MUST BE AMENDED.

For the same reasons that an entrance facility may not be assessed on, or in lieu of, a section 251(c)(2) interconnection charge, NECA's existing tariff language in section 6.1.3 of NECA Tariff No. 5 relating to entrance facility charges is unjust and unreasonable. GCI incorporates herein its full discussion in response to Issue 2. As discussed above, NECA's current language flatly violates rules 51.515(a) and 69.121.[52]

At a minimum, NECA's tariff language in Section 6.1.3(A)(1) must be amended to strike the following text: "This charge specified in 17.2.2 following will apply even if the customer designated premises and the serving wire center are collocated in a Telephone Company building." In addition, the following text should be inserted in lieu thereof: "*When a customer*

[52] 47 C.F.R. §§ 51.515(a), 69.121.

has virtually or physically collocated in a Telephone Company premise no entrance facility charge shall apply."

Furthermore, to the extent that NECA creates a new cross-connect charge under Part 69, it should do so pursuant to 69.121. NECA provides no rationale for why it should be allowed to create a charge other than pursuant to the Commission's longstanding rules governing cost-based expanded interconnection. In *Competitive Telecommunications Assoc. v. FCC*, the D.C. Circuit held that when the Commission sets rates, it "must . . . specifically justify any rate differential that does not reflect cost."[53] Absent such a justification, rates that violate this cost causation principle cannot withstand judicial scrutiny.[54] If a carrier collocates and uses its own transport facilities rather than a NECA participant's, no entrance facility service is being provided and no "costs" are being incurred, other than for the cross-connect, as rule 69.121 contemplates. Disregarding this fundamental ratemaking principle, NECA's proposed tariff modification would impose an entrance facility charge on the carrier anyway, and would therefore be unjust and unreasonable. NECA provides no rational basis for deviating from rule 69.121, and doing so without explanation would be arbitrary and capricious.

CONCLUSION

Based on the foregoing, the Commission must declare NECA's 2004 Annual Access Tariff Filing unlawful with respect to the issues designated for investigation. Because NECA provides no reason to believe that its rate development methodology — which has resulted in consistent and repeated overearnings for the last ten years — targets the prescribed rate of return, the Commission must declare NECA's rates unjust and unreasonable. In addition, NECA's

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[53] *Competitive Telecomms. Assoc. v. FCC*, 87 F.3d 522, 529 (D.C. Cir. 1996).

[54] *Id.*

assessment of entrance facility charges on collocating carriers, whether or not they actually use the ILEC's entrance facility, is anti-competitive and unlawful. Finally, NECA's tariff language related to these unlawful entrance facilities must be amended to conform to Commission rules.

Respectfully submitted,

By: ______________________

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* Admitted only in Massachusetts; supervision by Timothy J. Simeone, a member of the DC Bar.

Dated: October 22, 2004

CERTIFICATE OF SERVICE

I, John T. Nakahata, hereby certify that a copy of the foregoing Petition of GCI to Suspend and Investigate was delivered by electronic filing or e-mail on the 22nd day of October 2004, to the following parties:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
(via ECFS)

Marvin Sacks
Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
(via e- mail)

Douglas Slotten
Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
(via e- mail)

Richard A. Askoff
National Exchange Carrier Association
80 South Jefferson Rd.
Whippany, NJ 07981
(via email)

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
(via email)

By: ______________________
John T. Nakahata

GCI Opposition to NECA's Direct Case

WC Docket No. 04-372

Exhibit 1

NECA
80 South Jefferson Road • Whippany, NJ 07981

Patricia A. Chirico
Executive Director
Tariffs, Rates, Costs & Average Schedules

Voice: 973-884-8087
Fax: 973-884-8469
E-mail: pchirico@neca.org

RECEIVED

SEP 29 2004

Federal Communications Commission
Office of Secretary

September 29, 2004

Ms. Katie Rangos
Federal Communications Commission
Industry Analysis & Technology Division
445 12th Street, SW
Washington, DC 20554

ATTENTION: Wireline Competition Bureau

SUBJECT: Rate of Return Report, Form FCC 492

Dear Ms. Rangos:

Attached please find, in accordance with Part 65.600 of the Commission's Rules, the Rate of Return Report covering the cumulative period of January 1, 2003 through December 31, 2003 for common line and traffic sensitive pools administered by NECA.

NECA has provided two Form 492 reports. The first applies to companies that participate in NECA's Common Line pool. The second applies to the smaller subset of companies that participate in both NECA's Common Line and Traffic Sensitive pools. Because all Common Line pool participants receive a uniform return on investment, the Common Line rate of return reported on both forms is identical.

In addition, the current version of Form 492 requests data separately for the End Office, Information and Local Transport elements. NECA only has switched access data available at the category level and consequently is unable to provide separate information for these elements. Information on aggregate switched access results is provided as an attachment to the Form 492 report applicable to companies that participate in NECA's Common Line and Traffic Sensitive pools.

If there are any questions regarding the enclosed, please call me.

Sincerely,

P. A. Chirico

Enclosures

cc: FCC Secretary

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Approved by OMB 3060-0355
Expires 07/31/2007

1. Name and Address of Reporting Company	2. Reporting Period	
	(a) Annual Period Covered	
National Exchange Carrier Association	01/03	12/03
80 South Jefferson Road	(b) Cumulative Period Covered:	
Whippany, NJ 07981	01/03	12/03

FCC 492
NECA Common Line Pool Participants

RATE OF RETURN REPORT
(Read Instructions on Reverse Before Completing)
Dollar Amounts Shown in Thousands

3. Particulars	(A) Interstate Access		(B) Common Line		(C) Special Access	
	Current Year	Cumulative	Current Year	Cumulative	Current Year	Cumulative
1. Total Revenues	NA	NA	$1,961,145	$1,961,145	NA	NA
2. Total Expenses and Taxes	NA	NA	$1,689,113	$1,689,113	NA	NA
3. Oper. Inc. (Net Return) (1-2)	NA	NA	$272,032	$272,032	NA	NA
4. Rate Base-(Avg. Net Invest.)	NA	NA	$2,278,156	$2,278,156	NA	NA
5. Rate of Return (3/4) Annualized	NA	NA	11.94%	11.94%	NA	NA
6. FCC Ordered Refund- Amortized for Current Period (see Instr. I)	NA	NA	$0	$0	NA	NA
7. Net Return (incl. effect of FCC Order Refund) (3+6)	NA	NA	$272,032	$272,032	NA	NA
8. Rate of Return (incl. effect of FCC Order Refund) (7/4) Annualized	NA	NA	11.94%	11.94%	NA	NA

3. Particulars	Switched Traffic Sensitive					
	(D) End Office		(E) Information		(F) Local Transport	
	Current Year	Cumulative	Current Year	Cumulative	Current Year	Cumulative
1. Total Revenues	NA	NA	NA	NA	NA	NA
2. Total Expenses and Taxes	NA	NA	NA	NA	NA	NA
3. Oper. Inc. (Net Return) (1-2)	NA	NA	NA	NA	NA	NA
4. Rate Base-(Avg. Net Invest.)	NA	NA	NA	NA	NA	NA
5. Rate of Return (3/4) Annualized	NA	NA	NA	NA	NA	NA
6. FCC Ordered Refund- Amortized for Current Period (see Instr. I)	NA	NA	NA	NA	NA	NA
7. Net Return (incl. effect of FCC Order Refund) (3+6)	NA	NA	NA	NA	NA	NA
8. Rate of Return (incl. effect of FCC Order Refund) (7/4) Annualized	NA	NA	NA	NA	NA	NA

4. Rates of Return for the Switched Traffic Sensitive Category		5. Multiplicative Factor Used for Annualizing Rate of Return for Cumulative Measurement Period	1.0000
(a) Current Year	(b) Cumulative	6. Total Out-of-Period Adjustment (see instruction K)	$ 0
NA	NA		

7. Certification: I certify that I am the chief financial officer or the duly assigned accounting officer: that I have examined the foregoing report; that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and this report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth therein during the specified period.

Date	Typed Name of Person Signing	Title of Person Signing	Signature
09/29/2004	Peter Dunbar	Director of Financ~~ial Operations and Treasurer~~	Peter Dunbar CPA

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, Section 503).

National Exchange Carrier Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981

Cumulative Period Covered
from: 01/03 to 12/03

Common Line Pool Form
Additional Statements

Pursuant to Section 65.600 of the Commission's Rules, NECA is submitting cumulative period Rate of Return information for the Common Line Pool for the period January 2003 through December 2003, as of the August 2004 settlement view.

All of the individual line items on the Form include estimates and are subject to further adjustments, as Exchange Carriers revise data. The amounts in this report require the following additional explanations:

1) This Common Line-only pool report supplements data contained in NECA's combined Common Line/Traffic Sensitive pool Form 492 Report. Common Line data contained herein is duplicative of the data contained in NECA's combined report and the combined reports of individual exchange carriers that participate in NECA's Common Line pool but not its Traffic Sensitive pool.

2) Nine companies converted from average schedule settlements to cost-based settlements during the cumulative period. These conversions affect the levels of expenses and investment associated with the Common Line Pool during the reporting periods.

3) The 2002 Modification of Average Schedules was effective beginning July 1, 2002 and the 2003 Modification of Average Schedules was effective beginning July 1, 2003. These formulas are the basis for total payments to average schedule companies in the current period that is included, along with Category I.B NECA administrative expenses, in line 2 of NECA's Form 492.

4) Some cost company reported expenses and investments included in NECA's FCC 492 report are based upon estimated data. Historically, expense and investment levels increase as companies begin reporting actual data. Considering this, it is expected that the rates of return reported on NECA's Form 492 report will decline as the companies update their studies. Also, Long Term Support and Interstate Common Line Support payments are subject to true-ups pursuant to FCC rules.

5) The report includes cumulative period rate of return data reported to NECA for 1241 study areas that participated in NECA's Carrier Common Line tariffs pursuant to Commission rules. Actual cost and average schedule settlements information is used for the study areas in the report. Revenues for these study areas are derived using the pool realized rate of return.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Approved by OMB 3060-0355
Expires 07/31/2007

1. Name and Address of Reporting Company	2. Reporting Period
National Exchange Carrier Association 80 South Jefferson Road Whippany, NJ 07981	(a) Annual Period Covered 01/03 12/03 (b) Cumulative Period Covered: 01/03 12/03

FCC 492
NECA Traffic Sensitive and Common Line Pool Participants

RATE OF RETURN REPORT

(Read Instructions on Reverse Before Completing)

Dollar Amounts Shown in Thousands

3. Particulars	(A) Interstate Access		(B) Common Line		(C) Special Access	
	Current Year	Cumulative	Current Year	Cumulative	Current Year	Cumulative
1. Total Revenues	$2,329,615	$2,329,615	$1,252,718	$1,252,718	$315,884	$315,884
2. Total Expenses and Taxes	$1,998,628	$1,998,628	$1,082,674	$1,082,674	$274,224	$274,224
3. Oper. Inc. (Net Return) (1-2)	$330,987	$330,987	$170,044	$170,044	$41,660	$41,660
4. Rate Base-(Avg. Net Invest.)	$2,568,308	$2,568,308	$1,424,056	$1,424,056	$356,154	$356,154
5. Rate of Return (3/4) Annualized	12.89%	12.89%	11.94%	11.94%	11.70%	11.70%
6. FCC Ordered Refund-Amortized for Current Period (see Instr. I)	$0	$0	$0	$0	$0	$0
7. Net Return (incl. effect of FCC Order Refund) (3+6)	$330,987	$330,987	$170,044	$170,044	$41,660	$41,660
8. Rate of Return (incl. effect of FCC Order Refund) (7/4) Annualized	12.89%	12.89%	11.94%	11.94%	11.70%	11.70%

3. Particulars	Switched Traffic Sensitive					
	(D) End Office		(E) Information		(F) Local Transport	
	Current Year	Cumulative	Current Year	Cumulative	Current Year	Cumulative
1. Total Revenues	NA	NA	NA	NA	NA	NA
2. Total Expenses and Taxes	NA	NA	NA	NA	NA	NA
3. Oper. Inc. (Net Return) (1-2)	NA	NA	NA	NA	NA	NA
4. Rate Base-(Avg. Net Invest.)	NA	NA	NA	NA	NA	NA
5. Rate of Return (3/4) Annualized	NA	NA	NA	NA	NA	NA
6. FCC Ordered Refund-Amortized for Current Period (see Instr. I)	NA	NA	NA	NA	NA	NA
7. Net Return (incl. effect of FCC Order Refund) (3+6)	NA	NA	NA	NA	NA	NA
8. Rate of Return (incl. effect of FCC Order Refund) (7/4) Annualized	NA	NA	NA	NA	NA	NA

See Attachment 1

4. Rates of Return for the Switched Traffic Sensitive Category		5. Multiplicative Factor Used for Annualizing Rate of Return for Cumulative Measurement Period	1.0000
(a) Current Year	(b) Cumulative	6. Total Out-of-Period Adjustment (see instruction K)	$ 0
NA	NA		

7. Certification: I certify that I am the chief financial officer or the duly assigned accounting officer: that I have examined the foregoing report; that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and this report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth therein during the specified period.

Date	Typed Name of Person Signing	Title of Person Signing	Signature
09/29/2004	Peter Dunbar	~~Director of~~ CFO Financial Operations ~~and Treasurer~~	Peter Dunbar

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, Section 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, Section 503).

ATTACHMENT 1

1. Name and Address of Reporting Company	2. Reporting Period
National Exchange Carrier Association 80 South Jefferson Road Whippany, NJ 07981	(a) Annual Period Covered: From: 01/03 To: 12/03 (b) Cumulative Period Covered: From: 01/03 To: 12/03
Traffic Sensitive Pool Participants	RATE OF RETURN REPORT Dollar Amounts Shown in Thousands

3. Particulars	Switched Traffic	
	Current Year	Cumulative
1. Total Revenues	$761,013	$761,013
2. Total Expenses and Taxes	$641,730	$641,730
3. Oper. Inc. (Net Return)(1-2)	$119,283	$119,283
4. Rate Base-(Avg. Net Invest.)	$788,098	$788,098
5. Rate of Return (3/4) Annualized	15.14%	15.14%
6. FCC Ordered Refund - Amortized for Current Period (see Instr. I)	$0	$0
7. Net Return (incl. effect of FCC Order Refund) (3+6)	$119,283	$119,283
8. Rate of Return (incl. effect of FCC Order Refund) (7/4) Annualized	15.14%	15.14%

4. Multiplicative Factor Used for Annualizing Rate Of Return for Cumulative Measurement Period — 1.0000

5. Total Out-of-Period Adjustment (See Instr. L) — $0

6. Certification: I certify that I am the chief financial officer or the duly assigned accounting officer; that I have examined the foregoing report; that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and this report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth therein during the specified period.

Date	Typed Name of Person Signing	Title of Person Signing	Signature
09/29/2004	Peter Dunbar	CFO ~~Director of Financial Operations and Treasurer~~	Peter Dunbar

National Exchange Carrier Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981

Cumulative Period Covered
From: 01/03 to 12/03

NECA Tariff Participants Form 492
Additional Statements

Pursuant to Section 65.600 of the Commission's Rules, NECA is submitting cumulative period Rate of Return information for the Common Line and Traffic Sensitive categories for the period January 2003 through December 2003, as of the August 2004 settlement view.

All of the individual line items on Form 492 include estimates and are subject to further adjustments, as Exchange Carriers revise data. The amounts in this report require the following additional explanations:

1. NECA does not collect pooled data for Switched End Office, Information, and Local Transport. It collects data for total Switched Access only. Attachment 1 provides particulars for total Switched Access.
2. Nine companies converted from average schedule settlements to cost-based settlements during the cumulative period. These conversions affect the levels of expenses and investment associated with the Common Line and Traffic Sensitive pools during the reporting periods.
3. The 2002 Modification of Average Schedules was effective July 1, 2002 and the 2003 Modification of Average Schedules was effective July 1, 2003. These formulas are the basis for total payments to average schedule companies in the current period that are included, along with Category I.B and I.C NECA administrative expenses, in line 2 of NECA's Form 492.
4. Some cost company reported expenses and investments included in NECA's FCC 492 report are based upon estimated data. Historically, expense and investment levels increase as companies begin reporting actual data. Considering this, it is expected that the rates of return reported on NECA's Form 492 report will decline as the companies update their studies. Also, Long Term Support, Interstate Common Line Support, and Local Switching Support payments are subject to true-ups pursuant to FCC rules.
5. The report includes cumulative period rate of return data reported to NECA for 1113 study areas that have participated in both NECA's carrier common line and traffic sensitive tariffs pursuant to Commission rules. Actual cost and average schedule settlements information is used for the study areas in the report. Revenues for these study areas are derived using the pool realized rate of return. The Total Interstate Access columns consist of data summed from the Common Line and Traffic Sensitive categories. Exchange carriers not included in NECA's Form 492 filed an interstate access tariff during the monitoring period and file their own Form 492 pursuant to Commission rules.
6. NECA reports the Rate of Return as an aggregate for the Traffic Sensitive category for monitoring purposes per Authorized Rates of Return for Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800 Phase I, Memorandum Opinion and Order, FCC 86-14 (released March 24, 1986) at n. 51.

GCI Opposition to NECA's Direct Case

WC Docket No. 04-372

Exhibit 2

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

In the Matter of	)	
	)	
July 1, 2004	)	WC Docket No. 04-372
Annual Access Charge Tariff Filings	)	
	)	
	)	

DECLARATION OF ALAN MITCHELL

I, Alan Mitchell, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Alan Mitchell. I am Director, Economic Analysis at General Communication Inc. ("GCI"). In that capacity, I provide financial and economic analysis of regulatory issues.

2. The purpose of this declaration is to provide the Federal Communications Commission with an estimate of the rate impacts of GCI's proposed adjustments to the NECA Switched Traffic Sensitive access rates. I have prepared Exhibit AM-1, which shows the details of how the estimate was developed.

3. GCI is proposing two different adjustments to the NECA Switched Traffic Sensitive (STS) rates. The first adjustment adjusts the rates to account for what appears to be systematic bias in NECA's STS ratemaking methodology, as evidenced by consistent overearnings during recent monitoring periods. This adjustment is addressed in the "Adjustment 1" section of Exhibit AM-1, page 1. The adjustment lowers the rate of return for the STS rate elements by 1.67% (line 4). The 1.67% is calculated as the difference between the average return realized by NECA during the 1997 – 2002 monitoring periods, 12.92%, and the authorized 11.25% return. Page 2 of Exhibit AM-1

shows how the 12.92% average return was calculated from data provided by NECA in their direct case in Exhibit 2. I used the rate of returns listed as "Initial Amounts" on NECA's Exhibit 2 because these are the return values found on the final Form 492 reports filed by NECA.

4. Returning to Exhibit AM-1, line 6 on page 1 of that Exhibit calculates the dollar reduction in return that is needed to lower NECA's STS percentage return as filed in Transmittal 1030 by 1.67%. In order to achieve a $1 reduction in return, approximately $1.698 must be removed from revenue due to income tax effects. Line 8 shows the total required revenue reduction of $21.027 million, accounting for this 1.698 "tax gross-up factor." The 1.698 tax gross-up factor is developed on page 2 of AM-1 and uses the assumption that the NECA companies have a marginal federal income tax rate of 35.0% and a marginal state income tax rate of 9.4%.

5. As indicated in NECA's transmittal 1030, NECA's proposed STS access rates will collect $387.861 million, and this amount is shown on line 9 of Exhibit AM-1. GCI's proposed Adjustment 1 requires that $21.027 million be removed from this access revenue collection. Line 10 shows that a 5.4% reduction in access rates is required to lower revenue by the required amount. GCI proposes that this adjustment be in effect for the entire July 2004 – June 2005 tariff period.

6. The second adjustment proposed by GCI is detailed in the "Adjustment 2" section of Exhibit AM-1. This adjustment proposes to lower STS rates in the last six months of the 2003-2004 monitoring period to compensate for the known overearnings that occurred in the calendar year 2003 period, thus targeting a 11.25% return for the 2003-2004 monitoring period as a whole. Information on NECA's Form 492 filed on

September 29, 2004 allows the calculation of the excess return received by NECA in 2003. That calculation is shown on lines 11 through 15 on Exhibit AM-1, indicating that \$30.622 million of excess return was received by NECA companies. Next, the amount of required revenue reduction is calculated by grossing-up the excess return to account for income tax effects. Line 17 shows that NECA revenue must be reduced by \$51.996 million. Because this revenue reduction must be realized over a six-month period, the revenue reduction must be multiplied by two on line 18 before calculating the required rate adjustment. Line 20 shows that STS rates must decrease by 26.8% in the last 6 months of the monitoring period in order to target an overall return of 11.25% for the monitoring period.

7. For July 2004 through December 2004, both Adjustment 1 and Adjustment 2 apply, resulting in required STS rate reductions of 32.2% (5.4% + 26.8%). For January 2005 through June 2005, only Adjustment 1 applies, requiring STS rate reductions of 5.4%.

Alan Mitchell

Alan Mitchell

Dated: 10/22/2004

Exhibit AM-1

Estimate of Proposed Switched TS Access Rate Adjustments

All $ are in thousands

Proposed Revenue from Access Rates from NECA Transmittal No. 1030

Line	Item	Amount	Source
1	Revenue generated from Access Rates	$387,861	Transmittal 1030, Vol 2, Exhibit 2, p. 4, line 100

Note: an additional $309,197 Switched TS revenue comes from USF Local Switching Support.

Adjustment 1: Adjust for Average Historical Deviation from 11.25% Return

Applied to rates for entire July 2004 - June 2005 tariff period

2	Average Return for 1997-2002	12.92%	Attached Supporting Calculations
3	Target Return	11.25%	
4	Return Adjustment Required	-1.67%	ln3 - ln2
5	Rate Base from Transmittal No. 1030	$741,523	Transmittal 1030, Vol 2, Exhibit 2, p. 4, line 410
6	Required $ Adjustment to Return	($12,383)	ln4 x ln5
7	Tax Gross-Up Factor	1.698	Attached Supporting Calculations
8	Required Adjustment to Revenue	($21,027)	ln6 x ln7
9	Access Rate Revenue from Above	$387,861	ln1
10	Access Rate Adjustment 1	**-5.4%**	ln8 / ln9

Adjustment 2: Adjustment for 2003 Overearnings

Applied to rates for July 2004 - December 2004 period

11	Operating Income	$119,283	Form 492, filed 9/29/2004
12	Rate Base	$788,098	Form 492, filed 9/29/2004
13	Actual Rate of Return	15.14%	ln11 / ln12
14	Authorized Rate of Return	11.25%	
15	Required Return Adjustment	($30,622)	ln12 x (ln14 - ln13)
16	Tax Gross Up factor	1.698	Attached Supporting Calculations
17	Required Adjustment to Revenue	($51,996)	ln15 x ln16
18	Adjust for 6 month collection period	($103,992)	ln17 x 2
19	Access Rate Revenue from Above	$387,861	ln1
20	Access Rate Adjustment 2	**-26.8%**	ln18 / ln19

Total Rate Adjustments

21	**For July 2004 - December 2004 Period**	**-32.2%**	ln10 + ln20
22	**For January 2005 - June 2005**	**-5.4%**	ln10

Exhibit AM-1, continued

Supporting Calculations for Proposed NECA Rate Adjustments

Tax Gross Up Calculation

Marginal Federal Tax Rate:	35.0%
Marginal State Tax Rate:	9.4%
$1 of Pre-Tax Net Income:	$1.000
State Income Tax:	$0.094
Base for Federal Taxes:	$0.906
Federal Taxes:	$0.317
Net After-Tax Income:	$0.589
Ratio of Pre-Tax to After-Tax Net Income, i.e. gross-up factor:	**1.698** tax gross-up factor

Average Historical Rate of Return for Switched TS

From NECA Direct Case, Exhibit 2

Period	Initial Rate of Return
1997-98	13.66%
1999-00	12.34%
2001-02	12.76%
Average:	**12.92%**

GCI Opposition to NECA's Direct Case

WC Docket No. 04-372

Exhibit 3

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

In the Matter of	)	
	)	
July 1, 2004	)	WC Docket No. 04-372
Annual Access Charge Tariff Filings	)	
	)	
	)	

DECLARATION OF FREDERICK W. HITZ, III

I, Frederick W. Hitz, III, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Frederick W. Hitz, III. I am Vice President, Regulatory Economics and Finance at General Communication Inc. ("GCI"). GCI is a certified competitive local exchange carrier and a certified long distance carrier in, *inter alia*, Fairbanks and Juneau, Alaska. In that capacity, I am familiar with the various interconnection arrangements use to link GCI's local and long distance networks with the incumbent LEC networks in Fairbanks and Juneau, Alaska, and how the charges for such arrangements are currently billed.

2. The purpose of this declaration is to provide the Federal Communications Commission with information as to interconnection infrastructure, arrangements and charges in Fairbanks and Juneau, Alaska, when GCI collocates at the incumbent local exchange carrier host end office and seeks to provide exchange access in competition with the incumbent LEC. I have reviewed NECA Exhibit 6, and have found that the figures contained therein do not fully and accurately depict the interconnection arrangements at the ACS-F and ACS-AK wire centers in Fairbanks and Juneau. I also

provide information as to the anticompetitive effect of ACS-F's and ACS-AK's assessment, pursuant to NECA Tariff No. 5, of interstate entrance facility charges on cross-connects that would connect GCI interconnection facilities with a trunk port on ACS' host end office switch.

3. The incumbent LEC in Fairbanks is ACS of Fairbanks, Inc. ("ACS-F"), and the incumbent LEC in Juneau is ACS of Alaska, Inc. ("ACS-AK"). Both ACS-F and ACS-AK are wholly-owned subsidiaries of Alaska Communications Systems Group, Inc. ACS-F and ACS-AK both are participants in, and issuing carriers of, the common line and traffic sensitive provisions of NECA's interstate Tariff No. 5.

4. In connection with this declaration, I have had prepared at my direction Exhibits 4 and 5, to the Opposition to NECA's Direct Case by General Communication, Inc. ("GCI Opposition").

Fairbanks

5. Exhibit 4 to the GCI Opposition ("Exhibit 4") is a schematic diagram of the switched network interconnecting GCI's long distance point-of-presence and local switch at 1300 Van Horn Road, Fairbanks, ("Van Horn") with ACS-F's host switch in the Globe wire center.

6. As depicted in Exhibit 4, GCI is virtually collocated at the ACS-F Globe wire center. GCI's collocation space, in which GCI houses a fiber terminal and digital loop carrier, is physically located across a very narrow alley from ACS-F's Globe wire center. GCI runs its own fiber facilities from its Van Horn switching center/POP to its collocation space adjacent to the ACS-F Globe wire center.

7. GCI provides its own interconnection facilities to connect its facilities in its collocation space with either ACS-F's digital cross-connect panels or main distribution frame. Some of the facilities are tie pair cable used to gain access, via an ACS-F provided cross-connect on the main distribution frame, to ACS unbundled loops. These tie pair facilities are designed #3 on Exhibit 4. ACS provides the conduit space used to enter ACS' premises, which the GCI-ACS-F Interconnection Agreement refers to as an entrance facility. See GCI/ACS-F Interconnection Agreement, Part C, Attachment I, § 1.2.5.

8. GCI also provides a shielded T1 pair, designated #4 on Exhibit 4, that connects GCI's fiber terminal in its collocation space to an ACS digital cross-connect (DSX). That ACS digital cross-connect provides the actual cross-connect between GCI's interconnection facilities and ACS' network and is connected to a trunk port on ACS' switch. ACS provides the conduit space used to enter ACS' premises, which the GCI-ACS-F Interconnection Agreement refers to as an entrance facility. See GCI/ACS-F Interconnection Agreement, Part C, Attachment I, § 1.2.5. At present, this facility is used only to exchange local traffic between GCI and ACS-F for termination. However, if ACS-F would not charge GCI an entrance facility charge for doing so, GCI would also order additional cross-connects and use this facility to carry exchange access traffic between GCI's adjacent collocation space and ACS' host switch. ACS-F will permit GCI to order such cross-connects for interstate exchange access traffic, but only by ordering an entrance facility pursuant to NECA Tariff No. 5.

9. GCI has a third interconnection facility in place, designated #2 on Exhibit 4, a coaxial cable between its fiber terminal in its collocation space and an ACS digital

cross-connect (DSX). At present, there are no cross-connects provided by this DSX, and GCI's coaxial cable is therefore not connected to a trunk port on ACS's switch.[1] ACS-F will permit GCI to order such cross-connects for interstate exchange access traffic, but only by ordering an entrance facility pursuant to NECA Tariff No. 5. GCI would also order multiplexing from DS-1 to DS-3 to accompany this cross-connect. Because these cross-connects and multiplexing facilities are not currently provided by ACS-F, they are depicted in Exhibit 4 by dashed lines.

10. Exhibit 4 also illustrates the interstate switched entrance facility service that ACS-F provides to GCI. For a single entrance facility charge, pursuant to NECA Tariff No. 5, ACS-F provides GCI with an interstate switched access circuit over ACS facilities from the trunk side of ACS-F's host switch in the Globe wire center to an ACS fiber terminal in GCI's Van Horn Road switching center/POP. GCI orders multiplexing in addition to that entrance facility. Notably, the entrance facility charge for this ACS-F provided facility is the same as the entrance facility charge ACS-F would assess on GCI pursuant to NECA Tariff No. 5 in order to provide the cross-connects described in paragraphs 8-9, above, when GCI seeks to use such cross-connects to provide interstate exchange access service.

11. If ACS-F did not charge GCI an interstate entrance facility charge when GCI orders cross-connects, as described in paragraphs 8-9, supra, to provide interstate exchange access service, but instead charged a cost-based cross-connect fee, GCI would migrate traffic from ACS entrance facilities (#6 in Exhibit 4) to GCI entrance facilities (#2 and 5 in Exhibit 4), reducing the demand for ACS entrance facilities and thus the

[1] GCI's statement in its Petition to Suspend and Investigate NECA's Tariff Transmittal No. 1030 that it had ordered such cross-connects was an error.

demand for entrance facilities under NECA Tariff No. 5. In that situation, GCI would be providing exchange access service for its long distance affiliate, rather than using ACS exchange access services.

12. Moreover, if ACS-F did not charge GCI an interstate entrance facility charge when GCI orders cross-connects, as described in paragraphs 8-9, supra, to provide interstate exchange access service, but instead charged a cost-based cross-connect fee, GCI could provide exchange access services to other carriers in competition with ACS-F. GCI has filed an interstate access tariff under which it offers entrance facility service. In addition, GCI is a certified CLEC vendor for AT&T Alascom, a long distance carrier in Fairbanks not affiliated with GCI. In the absence of a full entrance facility charge for a cross-connect between GCI entrance facilities and ACS' switch, GCI could provide AT&T Alascom with exchange access services. To the extent GCI did so, the demand for entrance facilities provided pursuant to NECA Tariff No. 5 would fall. However, when ACS-F charges GCI a full entrance facility charge for a cross-connect even when GCI uses its own fiber transport facilities, GCI cannot feasibly provide exchange access entrance facility service to a third party, because GCI would have to charge the ACS entrance facility charge plus a charge for use of GCI facilities, when ACS-F offers the same service for only its entrance facility charge.

Juneau

13. Exhibit 5 to the GCI Opposition ("Exhibit 5") is a schematic diagram of the switched network interconnecting GCI's long distance point-of-presence and local switch at 1580 Thane Road, Juneau, ("Thane Road") with ACS-AK's host switch in the Juneau Main wire center.

14. As depicted in Exhibit 5, GCI is physically collocated at the ACS-AK Juneau Main wire center. GCI's collocation space, in which GCI houses a fiber terminal and digital loop carrier, is physically located in the basement of the ACS-AK building. GCI runs its own fiber facilities from its Thane Road switching center/long distance POP to its collocation space at the Juneau Main wire center.

15. GCI provides its own interconnection facilities to connect its facilities in its collocation space with either ACS-AK's digital cross-connect panels or main distribution frame. Some of the facilities are tie pair cable used to gain access, via an ACS-AK provided cross-connect on the main distribution frame, to ACS unbundled loops. These tie pair facilities are designed #3 on Exhibit 5. ACS-AK provides the conduit space, which the GCI-ACS-AK Interconnection Agreement refers to as an entrance facility. See GCI/ACS-AK Interconnection Agreement, Part C, Attachment I, § 1.2.5.

16. GCI also provides a shield T1 pair, designated #4 on Exhibit 5, that connects GCI's fiber terminal in its collocation space to an ACS digital cross-connect (DSX). That ACS digital cross-connect provides the actual cross-connect between GCI's interconnection facilities and ACS' network and is connected to a trunk port on ACS' switch. ACS-AK provides the conduit space, which the GCI-ACS-F Interconnection Agreement refers to as an entrance facility. See GCI/ACS-F Interconnection Agreement, Part C, Attachment I, § 1.2.5. At present, this facility is used only to local exchange traffic between GCI and ACS-AK for termination. However, if ACS-AK would not charge GCI an entrance facility charge for doing so, GCI would also order additional cross-connects and use this facility to carry exchange access traffic between GCI's

adjacent collocation space and ACS-AK's host switch. ACS-AK will permit GCI to order such cross-connects for interstate exchange access traffic, but only by ordering an entrance facility pursuant to NECA Tariff No. 5.

17. GCI has a third interconnection facility in place, designated #2 on Exhibit 5, a coaxial cable between its fiber terminal in its collocation space and an ACS digital cross-connect (DSX). At present, there are no cross-connects provided by this DSX, and GCI's coaxial cable is therefore not connected to a trunk port on ACS-AK's switch.[2] ACS-AK will permit GCI to order such cross-connects for interstate exchange access traffic, but only by ordering an entrance facility pursuant to NECA Tariff No. 5. GCI would also order multiplexing from DS-1 to DS-3 to accompany this cross-connect. Because these cross-connects and multiplexing facilities are not currently provided by ACS-AK, they are depicted in Exhibit 5 by dashed lines.

18. Exhibit 5 also illustrates the interstate switched entrance facility service that ACS-AK provides to GCI. For a single entrance facility charge, pursuant to NECA Tariff No. 5, ACS-AK provides GCI with an interstate switched access circuit over ACS facilities from the trunk side of ACS-AK's host switch in the Globe wire center to an ACS fiber terminal in GCI's Van Horn Road switching center/POP. GCI orders multiplexing in addition to that entrance facility. Notably, the entrance facility charge for this ACS-AK provided facility is the same as the entrance facility charge ACS-AK would assess on GCI pursuant to NECA Tariff No. 5 in order to provide the cross-connects described in paragraphs 16-17, above, when GCI seeks to use such cross-connects to provide interstate exchange access service.

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[2] GCI's statement in its Petition to Suspend and Investigate NECA's Tariff Transmittal No. 1030 that it had ordered such cross-connects was an error.

19. If ACS-AK did not charge GCI an interstate entrance facility charge when GCI orders cross-connects, as described in paragraphs 16-17, supra, to provide interstate exchange access service, but instead charged a cost-based cross-connect fee, GCI would migrate traffic from ACS entrance facilities (#6 in Exhibit 5) to GCI entrance facilities (#2 and 5 in Exhibit 5), reducing the demand for ACS entrance facilities, and thus the demand for such entrance facilities under NECA Tariff No. 5. In that situation, GCI would be providing exchange access service for its long distance affiliate, rather than using ACS exchange access services.

20. Moreover, if ACS-AK did not charge GCI an interstate entrance facility charge when GCI orders cross-connects, as described in paragraphs 16-17, supra, to provide interstate exchange access service, but instead charged a cost-based cross-connect fee, GCI could provide exchange access services to other carriers in competition with ACS-AK. GCI has filed an interstate access tariff under which it offers entrance facility service. In addition, GCI is a certified CLEC vendor for AT&T Alascom, a long distance carrier in Juneau not affiliated with GCI. In the absence of a full entrance facility charge for a cross-connect between GCI entrance facilities and ACS' switch, GCI could provide AT&T Alascom with exchange access services. To the extent GCI did so, the demand for entrance facilities provided pursuant to NECA Tariff No. 5 would fall. However, when ACS-AK charges GCI a full entrance facility charge for a cross-connect even when

GCI uses its own fiber transport facilities, GCI cannot feasibly provide exchange access entrance facility service to a third party, because GCI would have to charge the ACS entrance facility charge plus a charge for use of GCI facilities, when ACS-AK offers the same service for only its entrance facility charge.

F. W. Hitz III
Frederick W. Hitz, ~~III~~

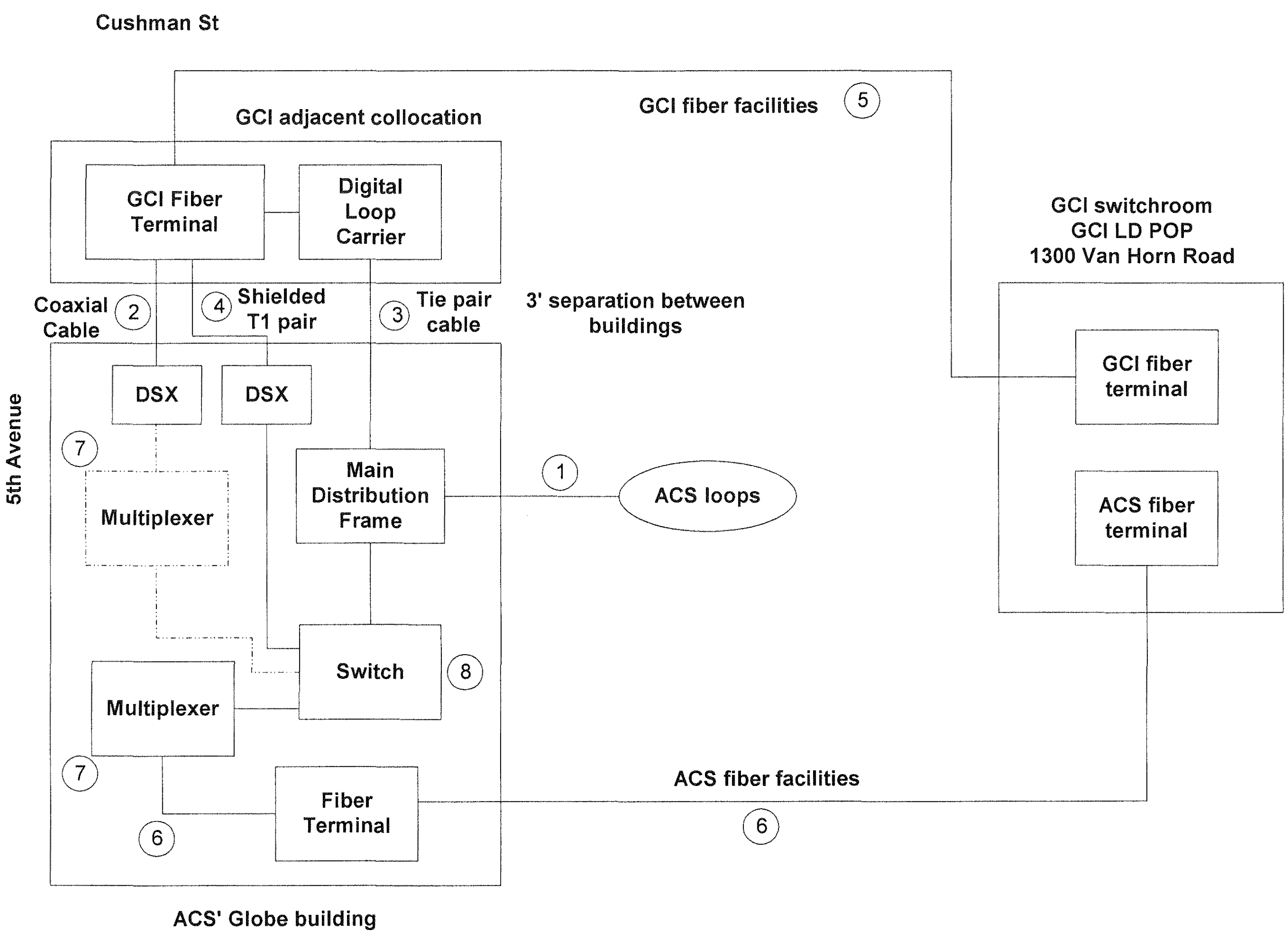
Dated: 10/22/04

GCI Opposition to NECA's Direct Case

WC Docket No. 04-372

Exhibit 4

Fairbanks Switched Network



1. ACS' loops - UNE-L, UNE-P, ACS end user, total resale.

2. Coaxial cable provided by GCI for interconnection.

3. Tie pair cable provided by GCI for interconnection to ACS Loops.

4. Shielded T1 tie pair carrying local interconnection traffic to ACS switch.

2, 3, 4. ACS provides the conduit space used to enter the ACS premises from the manhole between the ACS and GCI buildings. In the interconnection agreements, this is referred to as "entrance facilities," but it does not include the trunk facility, which GCI provides.

5. GCI fiber transport facilities. These facilities carry local from GCI's collocated loops to GCI's switch, local traffic to and from GCI's switch for exchange with ACS, and can provide interstate or intrastate GCI exchange access service entrance facilities service from GCI's (or any other interexchange carrier's) POP to the ACS central office.

6. ACS exchange access entrance facility trunks.

7. DS3/DS1 multiplexing - can be ordered either through interexchange tariffs or as 251(c)(2) interconnection/ UNEs.

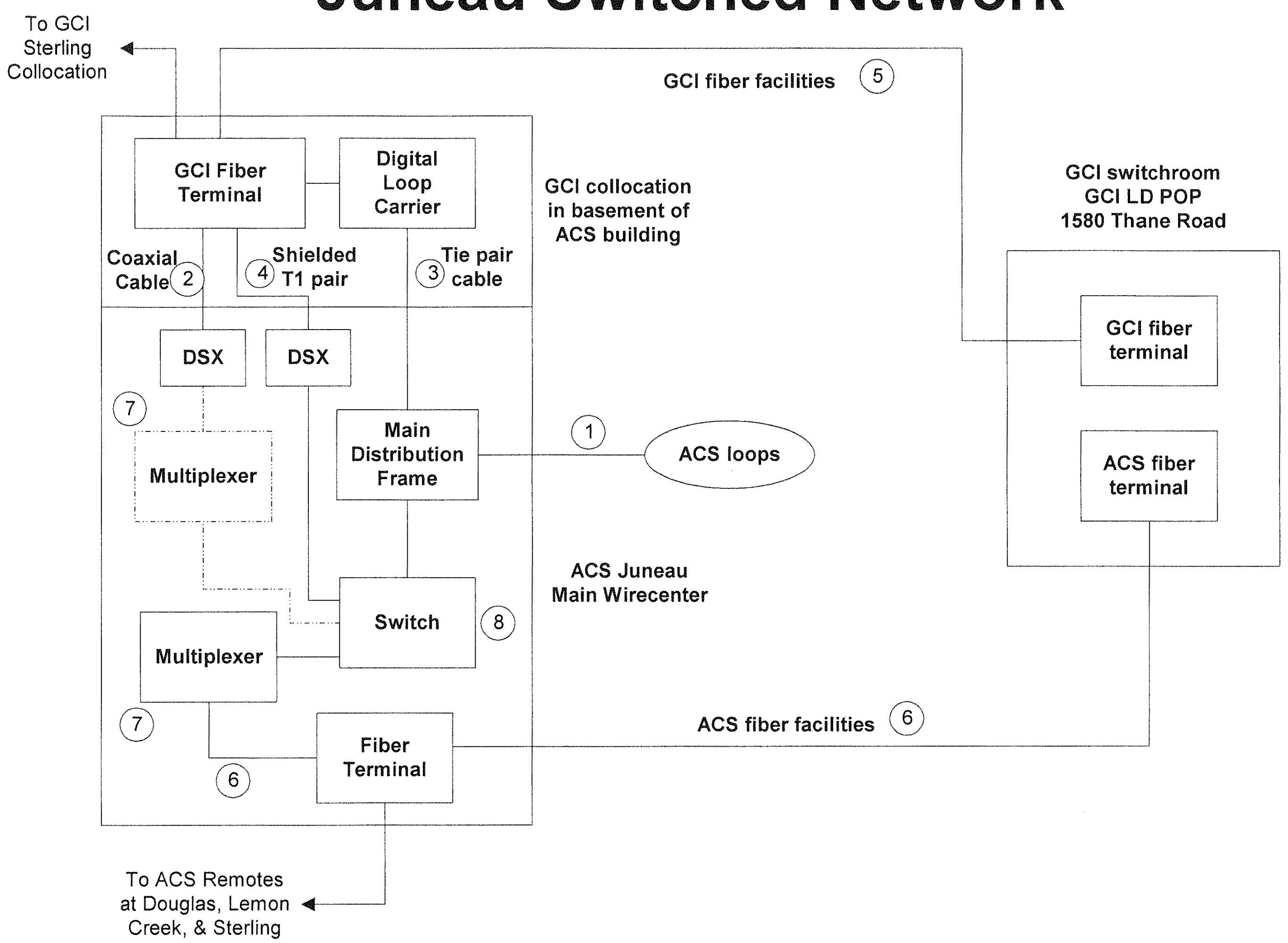
8. Access end office switch for ACS end users and total service resale end users

GCI Opposition to NECA's Direct Case

WC Docket No. 04-372

Exhibit 5

Juneau Switched Network



1. ACS' loops - UNE-L, UNE-P, ACS end user, total resale.

2. Coaxial cable provided by GCI for interconnection.

3. Tie pair cable provided by GCI for interconnection to ACS Loops.

4. Shielded T1 tie pair carrying local interconnection traffic to ACS switch.

5. GCI fiber transport facilities. These facilities carry local from GCI's collocated loops to GCI's switch, local traffic to and from GCI's switch for exchange with ACS, and can provide interstate or intrastate GCI exchange access service entrance facilities service from GCI's (or any other interexchange carrier's) POP to the ACS central office.

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