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

In the Matter of	)	
	)	
Report on Timing of NECA Pool True-Up Submissions and FCC Form 492 Interstate Earnings Monitoring Reports	)	WC Docket No. 05-29
	)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's *Public Notice*[1] and Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, AT&T Corp. ("AT&T") submits these comments on the Report of the National Exchange Carrier Association ("NECA"), which was filed with the Commission on January 28, 2005, as required by the Commission's Memorandum Opinion and Order, released November 30, 2004, in WC Docket No. 04-372.[2]

In its *Investigation Order* (¶¶ 28-32), the Commission directed NECA to file a Report addressing a number of concerns raised in the record with respect to the timing of its true-up processes and the submission of its "final" Form 492 Interstate Earnings Monitoring Reports, that, per the Commission's Part 65 rules, NECA must file annually on September 30.[3] In particular, the *Investigation Order* (¶ 29) asked why NECA allowed its member carriers to submit cost adjustments over a 24-month rolling period, effectively allowing adjustments to be

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[1] *Public Notice*, Report on Timing of NECA Pool True-up Submissions and FCC Form 492 Interstate Earnings Monitoring Reports, WC Docket No. 05-29, DA 05-323, rel. Feb. 4, 2005.

[2] *July 1, 2004 Annual Access Charge Tariff Filings*, WC Docket No. 04-372, Memorandum Opinion and Order, FCC 04-277, rel. Nov. 30, 2004 ("*Investigation Order*" *or* "*Order*"), *Errata,* DA 04-4050, rel. Dec. 23, 2004.

[3] *See* Section 65.600(b) of the Commission's rules, 47 C.F.R. § 65.600(b).

made up to 15 months *after* the date established by the Commission's rules for filing a "final" Earnings Report. The *Order* (¶¶ 30-31) also points out that NECA files its September 30th Form 492 Report just before most of its carriers complete their cost studies, resulting in a significant volume of cost data not being captured until the following year. The *Order* questions why NECA member carriers are not required to submit their cost studies sooner, to allow the data to be included in the more recent year's report, and asks NECA to propose options for shortening the true-up process to allow final rate-of-return information to be filed by September 30. NECA was also directed to explain why it allows member carriers 24 months to file true-ups to NECA's pools rather than 12 months, as NECA requires for true-up of Interstate Common Line Support ("ICLS") data that are based on the same separations and cost studies (*Order* ¶ 32). The shorter true-up could allow NECA to file a more accurate final rate of return report after the close of the calendar year.

NECA's Report attempts to address each of these issues. First, it explains in great detail the mechanics of the 24-month true-up process that is a major cause of its late filings, but it *never* offers a cogent legal basis for submitting "[f]inal adjustments to the enforcement period," as required by Section 65.600(b), that are *not* truly final. However, NECA does offer some useful proposals that may lead to more timely and accurate earnings reports and improve the quality of the data in its tariff filings. As detailed below, AT&T supports most of the changes NECA proposes, even though they do not provide the entire answer to concerns over the timeliness and accuracy of NECA's data submissions.

Preliminarily, AT&T observes that none of the changes NECA proposes directly addresses NECA's consistent forecast bias. The NECA forecast process has consistently produced rates that exceed the Commission's authorized rate of return. During the course of this

investigation, the Commission learned that the earnings reported on the Forms 492 do not reflect the final rate of return earned by the NECA tariff participants. NECA suggests that much of the deviation between its final rate of return and the 492 report is simply the result of a timing issue, discussed below, that can be resolved by modifying the Commission's rules to synchronize the dates between filing Interstate Common Line Support ("ICLS") and LSS ("Local Switching Support") cost studies and the Form 492. However, the NECA proposal to align the Form 492 report date does nothing to eliminate the incentive of rate of return LECs to underestimate demand and overstate costs. If the Commission does decide to modify its rules to synchronize these filings, it should also revisit other aspects of its Part 65 rules which do address this fundamental problem.[4] The lack of alignment cited by NECA is but one of many issues the Commission should consider as it moves toward a more rational incentive based access system.[5]

NECA acknowledges (Report at 15-18) that it has a substantial internal problem in having its member companies comply with its requirement to submit cost studies by July 31 each year so the data can be reflected in NECA's Form 492, due September 30. Indeed, by NECA's account, only a bare majority of its member carriers submit timely data. NECA outlines some

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[4] For example, the Commission could amend Sections 65.700 (a) and (b) of its rules which create a built-in incentive to underestimate demand and overstate costs by providing buffer zones for category and overall earnings that are higher than the prescribed rate of return.

[5] The Commission has already noted that it would not be inclined to modify its Part 65.101 rule in the absence of a review of all of its Part 65 procedures. *See In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 04-31, ¶¶ 208-210, rel. March 18, 2004.

internal management measures it intends to take to improve performance, but acknowledges that even with its remedial steps, full compliance is not likely (Report at 18). In cases where studies are not submitted on time, NECA offers to create estimates of final cost study results. AT&T does not support the use of projections for this purpose and urges the Commission to require NECA to use actual preliminary (*i.e.*, not trued-up) pool settlement data, as it currently does.

Based on past experience with NECA's projections, AT&T is concerned that creation of projections for this purpose will *not* improve accuracy. Use of actual data does not present the opportunity for manipulation and subjective judgment that are inherent in creating projections, as NECA proposes. Whatever proposal is adopted, assuring compliance with deadlines by member carriers is an internal management responsibility that rests squarely on NECA, which has a legal obligation to file accurate data.[6]

Nor does AT&T oppose NECA's proposal (Report at 20) to replace its current rolling 24-month adjustment window—a practice NECA acknowledges no longer makes sense—with a calendar year adjustment mechanism. This practice should result in a marginal increase in the accuracy of NECA's data. Likewise, it makes sense to require all carrier-initiated adjustments to be finalized on the same schedule as the submission of ICLS and LSS true-ups, as NECA proposes. One consequence of conforming to the ICLS and LSS data true-up schedule and filing final Forms 492 on a calendar-year basis is the need to amend Section 65.600(b) to reflect this change.

[6] While any improvement in data quality is desirable, it is unclear from the Report how significant the impact of filing cost data on a more timely basis would be. The dollar volumes NECA identifies (Report at 16), although not trivial, are small compared to the total NECA base.

AT&T does not oppose NECA's proposal, which would result in extending the date for filing final adjustments to the Form 492 Earnings Report by four months, from September 30 of the year following the enforcement period, to January 31 of the next year. NECA explains that it can replace its current "rolling" 24-month adjustment window with a calendar-year adjustment and require all carrier-initiated adjustments to be finalized by December of the year following the study period (Report at 20). This would allow a final Form 492 to be filed by the end of the following month, *i.e.,* January 31. While the additional 4-month delay in filing is certainly not desirable, if those reports are more accurate and more likely to be actually "final," as NECA indicates, AT&T does not oppose such rule change.[7]

NECA, no doubt, recognizes that such a change would effectively extend the time by which a cause of action accrues for purposes of filing over-earnings complaints under Section 415 of the Act, 47 U.S.C. § 415, by four months. Indeed, if NECA were to file a further revised Form 492, as the Commission has held it is required to do if there are subsequent "final adjustments," the statute would be extended even further to reflect such adjustments. *See Investigation Order,* ¶ 27 and n.76; and *Errata,* ¶ 2, n.70. NECA's Report (at 14) acknowledges this requirement and NECA indicates it has filed further adjustments to its final 2001-2002 Form 492 monitoring report (due September 30, 2003) concurrently with this Report. Thus, for example, a cause of action that arose from the newly reported 2001-2002 earnings data would necessarily accrue as of January 28, 2005, the date NECA filed this latest adjustment. *See Investigation Order* n.70 and *Errata,* ¶ 2 and n.70.

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[7] Even with these changes, NECA indicates there may be instances when it might have to file a revised earnings report after January 31, for example, because of companies that still do not file timely studies. *See* Report at 18, 21-22.

CONCLUSION

For the reasons stated above, AT&T does not oppose the changes proposed by NECA, except its use of projected rather than actual data, and urges the Commission also to consider further revisions to its Part 65 rules.

Respectfully submitted,

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