

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

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

REPLY OF AT&T CORP.

AT&T respectfully submits this Reply to the Comments filed in response to the Commission's *Public Notice*¹ seeking comment 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

Comments were filed by AT&T, General Communication, Inc. ("GCI") and, collectively, by a group of five organizations representing rural rate of return and other incumbent local exchange carriers (the "Associations"). The Associations' Comments uncritically accept NECA's Report and its proposed changes, all of which have no significant impact upon, or are favorable to, its member companies. GCI and AT&T both point out larger problems which NECA's Report does not adequately address and which should be addressed in their entirety, rather than be subject to the piecemeal tinkering that NECA proposes. In particular, AT&T

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.

pointed out (Comments at 3) that NECA's 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, and urges that any change in rules to synchronize filing dates should be part of a comprehensive review of the Commission's Part 65 rules.

GCI agrees with these concerns and advances several thoughtful and constructive proposals which address the larger issues of the quality of NECA's tariff support and its compliance with rate-of-return regulations that should be addressed as an integral part of any rule change the Commission may consider. As discussed further below, AT&T agrees with the major points GCI advances regarding additional tariff support material and the filing of overearnings complaints. While AT&T did not actively oppose changing the date for filing the annual Form 492, on that score as well, GCI advances cogent arguments for keeping the existing schedule, at least until NECA demonstrates that it has expended reasonable good faith efforts to comply with the current rule or shown that compliance is not feasible - - which it has not done.

GCI's first proposal, to improve the quality and relevance of data submitted in support of NECA's tariff filings, is consistent with AT&T's long-standing request that the Commission address the systemic bias in NECA's tariff filing support that has consistently resulted in rates that earn unlawfully high returns.³ The *Investigation Order* (¶¶ 15-18) specifically recognized this concern and found that NECA had not adequately addressed it. AT&T agrees with GCI's Comments (at 5) that NECA's response is still not adequate and that NECA's tariff filings should include a full evaluation of prior period overearnings. GCI proposes a three-part

³ See, e.g., Petition of AT&T Corp., *In the Matter of July 1, 2004 Annual Access Charge Tariff Filings*, WCB/Pricing 04-18, filed June 28, 2004, at 5-6; Opposition of AT&T Corp. to Direct Case, *In the Matter of July 1, 2004 Annual Access Charge Tariff Filings*, filed October 22, 2004, at 9-11.

submission that includes (i) calculation and accounting for any excess returns earned in the most recent completed monitoring period or year, both for the year for which final Forms 492 have been filed as well as projected earnings for any year for which a final Form 492 has not yet been filed; (ii) NECA's explanation for its inaccurate projection; and (iii) a full explanation of the adjustment it has made to its current rate setting methodology to prevent a recurrence of the error. GCI's proposal provides a common-sense, logical method for addressing NECA's systemic bias: identify the error, find the reason for it, and correct it so it is not repeated. If such analyses are publicly filed and available to interested parties, it would clearly increase the likelihood that flaws in NECA's methodology would be uncovered before they resulted in excess earnings. There is no substitute for NECA providing this information and submitting an analysis of its own prior filings because no other party has access to this information or reliable, first-hand knowledge of the methodology NECA uses. Such a requirement should be part of any change the Commission adopts in connection with the NECA Report.⁴

With respect to coordinating the timing of the Form 492 with the true-up of ICLS and LSS cost studies, NECA has proposed sliding the September 30 filing date by four months to make it consistent with the 24-month time frame used by NECA to submit its final cost studies. In its Comments (at 3), AT&T did not oppose this change outright, stating, if the Commission does decide to modify the filing date of the Form 492 to synchronize these filings, it should do so as part of a comprehensive review of its Part 65 rules, which address the fundamental problem of NECA's forecasting bias. However, AT&T believes GCI has raised some valid concerns as to

⁴ AT&T also strongly endorses GCI's request (at 6) that the Commission reaffirm that NECA is already legally required to make mid-course corrections during a monitoring period when it concludes that existing rates may result in excessive category or overall earnings for the full monitoring period.

extending the September 30 filing date which must be addressed before the Commission considers changing that date. As GCI notes (at 7-8), the Commission retained the September 30 date after careful consideration of the proper balance between timely rate-of-return enforcement and consistency with NECA true-up filings. GCI (at 9) also correctly observes that if filing of the final Form 492 is delayed until January 31, due to the timing of the annual July 1 NECA tariff, the Commission would *never* receive a final Form 492 during the five months permitted by law to investigate that tariff filing. GCI points out (at 8) that many NECA member companies already comply with the existing schedule by submitting reports in the month preceding the September 30 deadline and that it is NECA's responsibility to assure compliance by its member companies. AT&T made the same observation in its Comments (at 4), that "assuring compliance with deadlines by member carriers is an internal management responsibility that rests squarely on NECA." While NECA indicates that if it is given additional time, its final 492 Reports are likely to be more accurate and may actually even be "final", AT&T urges that before the Commission considers changing the September 30 filing date, it require that NECA more strenuously assert its management responsibility and put procedures in place to assure that its member companies file under the current schedule. Also, the Commission should first adopt the other proposals recommended by GCI and AT&T that directly address the fundamental problem of forecast bias, before considering a change in the September 30 filing date.⁵

GCI's third point (at 10), asking the Commission to clarify that access customers may bring complaints directly against NECA and need not file against each individual member company, as NECA has asserted in the past, is also well-founded. GCI persuasively explains

⁵ As GCI notes (at 8), a preferable means for coordinating the timing of the NECA pool true-up and the ICLS and LSS true-ups is to complete the latter in time to allow submission of accurate final Forms 492 on their current schedule, not to slide the date for the NECA pool true-up.

that under NECA's current structure any refunds awarded against a particular NECA member carrier would ultimately be the financial responsibility of all pool members. Thus there should be no need - - and AT&T believes there is none - - to name each individual company when filing an overearnings complaint against a NECA member company. Such a requirement would impose onerous and unnecessary logistical and procedural burdens on a party that has been overcharged and seeks to recover amounts to which it is lawfully entitled, in those limited instances where such complaints even remain available after passage of Section 204(a)(3).⁶

⁶ GCI's proposals (at 10-11) that NECA be required to file reports with the Commission that provide details of its overearnings and the information necessary to calculate refunds, should also be adopted because that information is uniquely available to NECA and will improve the ability of the Commission and NECA's customers to guard against unlawful overcharges.

CONCLUSION

For the reasons stated above, AT&T does not oppose the changes proposed by NECA, if adopted as part of the comprehensive review of Part 65 and made subject to the other conditions described herein, which include retaining the current filing date for Form 492 until the changes proposed by GCI and AT&T are implemented.

Respectfully submitted,

AT&T Corp.

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