

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Establishing Just and Reasonable Rates) WC Docket 07-135
for Local Exchange Carriers)

Comments of the National Exchange Carrier Association, Inc.

I. Introduction & Summary

By *Notice of Proposed Rulemaking* (NPRM) released on October 2, 2007,¹ the Commission seeks comment on whether current rules governing tariffing of traffic-sensitive switched access services by local exchange carriers (LECs) ensure that rates remain just and reasonable, as required by section 201(b) of the Communications Act of 1934, as amended (the Act).²

In these comments, the National Exchange Carrier Association, Inc. (NECA) responds to questions in the *NPRM* regarding the effects of demand stimulation on settlements for cost and average schedule companies participating in NECA's traffic sensitive (TS) pool. NECA also provides information requested by the Commission regarding observed ranges of costs and demand upon which the 2007-2008 average schedule formulas for switched access services were based, and explains methods used to assure the average schedule formulas accurately reflect costs of pooling companies across these ranges.

¹ Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, *Notice of Proposed Rulemaking*, 72 Fed. Reg. 64179 (2007) (*NPRM*).

² *Id.* at ¶ 1.

NECA encourages the Commission to recognize that many forms of demand stimulation – such as demand growth associated with rural economic development initiatives – are in the public interest and should not inadvertently be deterred by regulatory measures designed to deal with the activities that prompted this proceeding.

Finally, the Commission should refrain from adopting rule modifications that could impose unreasonable burdens on small companies or unfairly remove protections granted to these companies by the 1996 Act. For example, rather than forbearing from enforcing the “deemed lawful” provision of section 204(a)(3), the Commission could rely on a combination of existing statutory tools and certification requirements. NECA believes such narrowly-tailored regulatory approaches can be effective in dealing with the problems identified in the *NPRM*, without unfairly affecting small companies in general.

II. NECA’s Average Schedule Formulas Accurately Reflect Pool Participants’ Costs Over a Wide Range of Demand Levels

The *NPRM* invites parties to comment on whether carriers in the NECA traffic-sensitive (TS) pool have incentives to engage in traffic stimulation and what steps, if any, should be employed to address this issue.³ With respect to average schedule companies in particular, the *NPRM* tentatively concludes that the average schedule formulas can only yield reasonable estimates of costs when a company’s demand levels are within the range used to develop the formulas.⁴ The *NPRM* asks parties to comment on this conclusion with respect to carriers filing tariffs under section 61.39 of the Commission’s rules and

³ *Id.* at ¶ 21.

⁴ *Id.* at ¶ 25.

average schedule companies within NECA's pool,⁵ and specifically directs NECA to file data on observed ranges of costs and demand upon which the 2007-2008 average schedule formulas for switched access services were based.⁶

As a general matter, companies operating within the NECA pooling environment have little or no individual incentives to engage in the type of access stimulation activities at issue in this proceeding. Cost companies represent the majority of NECA pool members. They report all interstate access revenue to the pool, and receive their settlements based on actual reported expenses, investment and taxes. While pool earnings overall can be affected by unanticipated changes in demand or costs, a cost company experiencing significant increases in demand levels would report the additional revenues associated with that demand to the pool and would not receive any individual benefit as a result.

Further, the effects of additional revenues reported by one company in the pool can be entirely offset by unexpected reductions in demand and revenues (or increases in cost) experienced by other pool members. Where additional revenues in fact produce higher earnings for the pool, these earnings are shared by all pool members. In this environment, it is highly unlikely a cost company would have individual incentives to engage in the type of access stimulation activities at issue in this proceeding.

Average schedule companies participating in the NECA pools receive settlements based on demand-driven formulas (*i.e.*, formulas that produce settlements to individual companies based on reported traffic volumes). The Commission's rules require NECA to

⁵ *Id.*

⁶ *Id.* at ¶ 17.

develop average schedule formulas that “simulate” disbursements which would be received by a cost company that is representative of average schedule companies.⁷

Therefore, the formulas must recognize the extent to which similarly-situated cost companies experience incremental cost reductions at higher levels of demand. If a comparable cost company receives lower per-unit settlements as demand levels increase, the average schedule formulas should likewise produce lower per-unit settlements as demand levels increase.

Apparently concerned that this might not be the case, the Commission suggests two alternatives for establishing rates for section 61.39 companies and average schedule companies in NECA’s pool that experience significant changes in demand.⁸ One approach would be for NECA to define a range over which the formulas are valid. Once a carrier’s demand reached the top of this range, it would be presumed to have recovered all of its costs. Alternatively, the *NPRM* suggests that the range of the formulas could be extended in a manner that addresses the reduced incremental costs of increased traffic.

In each of its annual Modifications of Average Schedules, NECA uses data reported by a sample of cost and average schedule study areas to determine interstate revenue requirements for the upcoming period in which the formulas will be in effect.⁹

NECA then designs formulas that reflect, to the extent possible, economies of scale

⁷ See *NPRM* at ¶ 25, citing 47 C.F.R. § 69.606(a).

⁸ *Id.* at ¶ 26.

⁹ For example, in December 2006 NECA filed average schedule access formulas to be in effect for the 2007-2008 tariff period. National Exchange Carrier Association, Inc. *2007 Modification of Average Schedule Formulas* (filed Dec. 21, 2006) (*2007 Average Schedule Modification*). These formulas were approved by the Commission on June 8, 2007. See National Exchange Carrier Association, Inc. *2007 Modification of Average Schedules*, WC Docket No. 06-223, *Order*, 22 FCC Rcd 10319 (2007).

realized by average schedule companies across the full range of observed cost and demand levels.

Attachment 1 shows ranges and percentiles of all demand variables used as settlement units in the average schedule formulas. The report also shows ranges of key cost components associated with interstate switched access service, as well as key ratios of these variables including monthly access minutes per line and access minutes per exchange. Finally, this report shows ranges of selected key ratios of cost per demand unit, such as revenue requirement per access minute.

A notable point in Attachment 1 is the range of access minutes per line data of sample companies used to develop the current average schedule settlement formulas. The lowest reported value of average monthly access minutes per line was 86 and the highest value was 1,571 access minutes per line. NECA's study does not include data outside this range, and thus NECA is not able to conclude whether the average schedule formulas would be accurate for demand beyond these levels.

NECA's 2007 Average Schedule Modification documents steps taken by NECA to accurately target settlements with regard to observed values of minutes per line.¹⁰ The following exhibit shows per-minute central office settlements, and total per-minute traffic sensitive switched access settlements, paid to average schedule study areas in NECA's traffic sensitive pool. Data in this exhibit is grouped in ranges of access minutes per line that correspond to settlement rate bands in the formula.¹¹

¹⁰ See *2007 Modification of Average Schedules*, Section VII.E, at VII-10 through VII-35.

¹¹ For purposes of comparing effective settlement levels, all settlements in Exhibit 1 are shown on an average per-minute basis, even though the traffic sensitive formulas use other settlement units in addition to minutes.

Exhibit 1 Average Schedule Traffic Sensitive Settlements Per Access Minute July 2007 Data				
Minutes per Line		Study Areas	Central Office Settlement per Minute	Traffic Sensitive Settlement per Minute
From	To			
1	100	11	0.145	0.160
101	330	386	0.034	0.043
331	850	15	0.024	0.029
851	1571	3	0.014	0.017

Exhibit 1 shows that study areas with access minutes per line in the typical range (101 to 330) realize central office settlements of \$0.034 per minute.¹² Study areas with higher volumes realize much lower settlement rates, reflecting lower per-unit costs of pool members at these higher demand levels.

Exhibit 1 includes data only for study areas in NECA's traffic sensitive pool. For purposes of this proceeding, NECA also calculated Central Office settlements, and total traffic sensitive switched access settlements, that would apply if average schedule study areas with much higher minutes per line were participants in the pool. Results for selected minutes per line ratios are shown in Exhibit 2. This exhibit shows that, if an average schedule study area in NECA's pool had extremely high traffic volumes, its Central Office settlement rate and total traffic sensitive switched access rate would be significantly below normal rates, or even high volume rates, in the pool.¹³

¹² For most average schedule companies, about half of the interstate central office settlement is recovered through Local Switching Support payments. Remaining settlements are recovered via tariffed local switching charges.

¹³ NECA reflects cost efficiencies in the design of other formulas as well. The transport formulas, for example, include an absolute limit on minutes per line for purposes of calculating settlements. The formulas also reflect cost efficiencies related to circuit density and length. For example, under NECA's current distance sensitive line haul formula, monthly access minutes per line are limited to 330 for settlement purposes. A study area with 3000 access lines and 3000 monthly minutes of use per line (9

Exhibit 2				
Traffic Sensitive Settlement Rates for Extremely High Traffic Volumes With Typical Levels of Transport Settlements				
Monthly Access Minutes per Line	Central Office Settlements Per Minute		Traffic Sensitive Switched Settlements per Minute	
	500 Access Lines	2000 Access Lines	500 Access Lines	2000 Access Lines
5,000	0.011	0.004	0.019	0.006
10,000	0.007	0.002	0.014	0.004
20,000	0.005	0.001	0.010	0.003
30,000	0.004	0.001	0.009	0.002

NECA is confident its average schedule formulas accurately reflect incremental costs of companies participating in its pools. Exhibit 2 shows that if an average schedule study area in NECA’s traffic sensitive pool experienced extreme demand stimulation, its settlement rate would decline very sharply from the rate for companies with normal traffic volumes. For example, a study area with 30,000 monthly minutes per line and 2,000 access lines would see its Central Office settlement rate decline to one-thirty-fourth of the normal volume rate. While NECA has no pool members with such volumes, and no cost data to compare to these settlement rates, the theoretical reduction in settlement rates further explains why pool members using average schedule formulas are unlikely to engage in the type of access stimulation at issue in this proceeding.

million minutes per month total) would receive \$3,713 per month for its distance sensitive line haul facility. Absent this limit, monthly settlements would triple to \$11,139, which would not be consistent with the costs of transporting this volume of minutes. In addition, NECA’s formula reduces line haul settlement rates as total line haul circuits per exchange increase. For a company with a small capacity route (e.g., 50 circuits), the formula produces an overall distance sensitive settlement per circuit mile of \$1.36. For a company with a 400-circuit route, the formula assigns a much lower settlement rate to the circuit mile variable, resulting in a lower overall settlement per circuit mile of \$0.31.

Recognizing ongoing changes in networks and cost characteristics, NECA continues to study additional changes to the formulas to assure they comply with the “simulation” criteria of section 69.606(a). For example, NECA currently expects to propose in December 2007 firm upper bounds on values of two demand ratios used in settlement calculations for the central office and line haul formulas. Expected values to be proposed are displayed in Exhibit 3. These ranges result from NECA’s study of data reported for settlements by pooling average schedule study areas over the past two years.

Exhibit 3 Settlement Variable Limits Planned by NECA Proposed to Take Effect in July 2008	
Demand Ratio	Upper Limit
Monthly Access Minutes per Line	2000
Interstate Circuits per Exchange	3000

These additional formula modifications, if approved, will apply for the upcoming 2008/2009 tariff period and will provide additional assurance that NECA’s formulas reflect cost economies at demand levels experienced by companies within NECA’s pool. NECA cannot say what formula levels or demand limits, if any, would reasonably simulate cost disbursements for non-pooling average schedule companies with higher demand levels because NECA has no carriers in its average schedule study reporting such volumes.

III. No Additional Reporting Requirements or Tariff Revisions Are Needed to Address Demand Changes Among NECA Pool Participants

The *NPRM* appropriately recognizes that some amount of variance from historical demand levels is typical of normal telephone operations, and requests comment on what growth rate might serve as a “trigger” for requiring carriers to file revised tariff rates.¹⁴

To assist the Commission in its review of this matter, Exhibit 4 summarizes demand variations that have been experienced by individual carriers in NECA’s pool.

Exhibit 4
NECA Pool Member Demand Changes from 2006 to 2007
Largest Monthly Access Minutes Change from 12 Months Prior

Access Minutes Growth	Study Areas
-70% to -60%	1
-60% to -50%	1
-50% to -40%	2
-40% to -30%	1
-30% to -20%	14
-20% to -10%	110
-10% to 0%	331
0% to 10%	276
10% to 20%	132
20% to 30%	54
30% to 40%	26
40% to 50%	19
50% to 60%	12
60% to 70%	6
70% to 80%	3
80% to 90%	3
90% to 100%	6
100% to 200%	11
Total ¹⁵	1008

¹⁴ *NPRM* at ¶ 22.

¹⁵ In addition, two study areas experienced one-month of growth of 230% and 640% respectively, which was reversed in the following month. This exhibit also excludes companies involved in merger and acquisition transactions, which can have changes beyond the ranges displayed.

Exhibit 4 shows that most companies in NECA's pool experience only moderate changes in demand compared to the prior year. Indeed, data reported to NECA by carriers in NECA's pool show almost no cases of extremely high traffic volumes.¹⁶

Changes in demand can occur in small study areas for a variety of reasons, such as the addition of a new housing development or the opening of a new business. Demand increases that occur as a result of such marketplace changes are obviously beneficial to rural telephone companies and the communities they serve. The Commission should exercise extreme caution before imposing burdensome tariff filing requirements that would, in effect, penalize companies when such developments occur.

Variations in demand levels among individual pool members are unlikely to have any significant effect on the NECA pool as a whole. As the Commission is aware, overall demand levels for the NECA pool are trending downward.¹⁷ Consequently, there is no need to impose additional reporting requirements on NECA or individual pool participants, nor is there any need to require NECA to include in its tariff any language that would trigger the need for rate revisions based on changes in demand experienced by individual companies.

The *NPRM* asks for comment on a variety of proposals for addressing access stimulation issues among companies filing individual tariffs. In addition to proposed rules requiring carriers to re-file tariffs if demand exceeds certain trigger points, the *NPRM* discusses possible additional certification requirements for section 61.39 companies, rule amendments setting standards for carrier representations regarding

¹⁶ The few cases where carriers report high minute levels to the pool appear to occur just prior to when carriers leave the pool, or in other cases, occur for a temporary period just after they join the pool.

¹⁷ NECA 2007 Annual Access Tariff Filing, Trans. No. 1172, Vol. 1, at 36 (June 15, 2007).

demand estimates, and possible forbearance from the “deemed lawful” provision of section 204(a)(3) of the Act.¹⁸

The Commission should seek to address the problems identified in the *NPRM* in a targeted fashion. As the *NPRM* correctly points out, for example, section 205 of the Act grants the Commission full authority to investigate the lawfulness of effective tariffs.¹⁹ In the event a company filing under section 61.39 does not act promptly to revise rates when conditions warrant, section 205 would appear to authorize the Commission to find the tariff unlawful and to prescribe lawful rates prospectively.

Beyond use of its section 205 authority, the Commission should give consideration to imposing reasonable additional certification requirements and revising its rules governing carrier representations, as described in the *NPRM*.²⁰ As a recent Commission order makes clear, existing rules do not require companies filing tariffs under part 61.39 to make representations regarding expected costs or demand in future periods.²¹ Should the Commission adopt such requirements, a carrier filing a tariff under section 61.39 going forward would have to affirm, to the best of its knowledge at the time of filing, that historical costs and demand will in fact serve as a reasonable proxy for the effective period of the tariff.²²

¹⁸ *NPRM* at ¶ 27. Under the approach described in the *NPRM*, “deemed lawful” treatment might not apply for the remainder of the two-year filing period if a mid-course tariff filing is triggered by a sufficient increase in demand. The *NPRM* also asks whether the Commission should forbear from enforcing the deemed lawful provision of section 204(a)(3) if a carrier fails to file revised rates when required. *Id.*

¹⁹ *Id.* at ¶ 4.

²⁰ *Id.* at ¶ 28.

²¹ *Qwest Communications Corporation. v. Farmers and Merchants Mutual Telephone Company*, File No. EB-07-MD-001, *Memorandum Opinion and Order*, 22 FCC Rcd 17973 (2007), at ¶ 27.

²² Had such certification requirements been in place, it is entirely possible that a different result would have been reached in the *Qwest* case cited above. *See Id.*

In adopting any such additional certification requirements, however, the Commission should make clear a carrier's failure to anticipate unexpected but normal marketplace developments (such as, for example, a large corporate customer opening a new office in town) would not be considered as evidence of misrepresentation by the carrier at the time of filing. The Commission must also bear in mind that demand levels at individual companies can appear more volatile in proportion to company size. For a company with only a few hundred lines, for example, it is entirely possible that small changes in demand levels can appear large when measured on a percentage basis.

NECA respectfully suggests, in any event, that the Commission should not seek to forbear from enforcing the deemed lawful provision of section 204(a)(3) of the 1996 Act. Section 10 of the 1996 Act requires the Commission to forbear from applying specific regulations or provisions of the Act to a telecommunications carrier or service, or class of telecommunications carriers or services, if it determines that

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.²³

In making the public interest determinations required under subsection (a)(3), the Commission is required to consider whether forbearance will promote competitive

²³ 47 U.S.C. § 160(a).

market conditions.²⁴ If so, that determination may be the basis for finding that forbearance is in the public interest.²⁵

Since 1996, the Commission has used its section 10 forbearance authority numerous times to reduce regulatory burdens on carriers.²⁶ Forbearing from the “deemed lawful” provision of section 204(a)(3), however, would actually increase rather than decrease regulatory burdens on telecommunications carriers. The Act’s forbearance provision permits the Commission to impose less regulation where marketplace forces and competitive conditions warrant, but does not appear to permit the Commission to impose more stringent regulation on carriers or to remove statutorily-granted rights, such as deemed lawful protection for streamlined tariff filings. Since, as noted above, it seems likely that the Commission can effectively address access stimulation problems in other, more narrowly-targeted ways, there should be no reason for the Commission to seek to apply its forbearance authority in such a questionable manner.

²⁴ 47 U.S.C. § 160(b).

²⁵ *Id.*

²⁶ See e.g., Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of *Computer Inquiry* and Certain Title II Common-Carriage Requirements, WC Docket No. 06-147, Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Their Broadband Services, *Memorandum Opinion and Order*, FCC 07-184 (rel. Oct. 24, 2007); Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Its Broadband Services, WC Docket No. 06-125, Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and *Computer Inquiry* Rules with Respect to Its Broadband Services, *Memorandum Opinion and Order*, 22 FCC Rcd 18705 (2007); Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, WC Docket No. 06-109, *Memorandum Opinion and Order*, 22 FCC Rcd 16304 (2007).

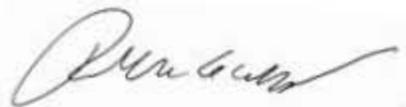
IV. Conclusion

The information provided above shows that companies participating in NECA's traffic sensitive pool have little incentive to engage in the extreme demand stimulation activities described in the *NPRM*. In particular, NECA believes that its current average schedule formulas reasonably reflect economies of scale associated with higher traffic volumes. Additional formula modifications are currently being prepared to provide additional assurance in this regard.

NECA respectfully suggests the Commission refrain from adopting rule modifications that could impose unreasonable burdens on small companies facing routine changes in demand levels, changes which may reflect positive economic activity in rural communities. In particular, the Commission should not seek to forbear from enforcing the "deemed lawful" provision of section 204(a)(3), but should instead seek to adopt more narrowly-targeted requirements that recognize the limited extent of access stimulation activities as well as the diverse circumstances faced by small rural telephone companies.

Respectfully submitted,

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December 17, 2007

ATTACHMENT 1
NECA COMMENTS ON WC DOCKET 07-135
COST AND DEMAND DATA IN NECA'S 2006 AVERAGE SCHEDULE STUDY

Demand Variables	Minimum	Maximum	Percentiles *	
			95th	99th
Exchanges	1	79	13	26
Access Lines	37	291,044	28,561	108,351
Monthly Interstate Switched Access Minutes	5,806	46,477,231	6,832,803	28,378,042
Intertoll Dial Circuits	14	6,625	2,021	6,625
Long Route Interstate Circuit Miles	25	281,914	45,073	281,914
Normal Route Interstate Circuit Miles	18	919,265	107,357	182,529
Interstate Circuit Miles	18	919,265	133,880	440,998
Interstate Circuit Terminations	9	21,591	2,237	6,229
Interstate Circuits	9	23,124	2,431	6,513
Monthly Interstate Special Access Revenues	265	772,939	171,528	628,672
Interstate Host Remote Circuit Miles	33	439,635	44,700	439,635
Monthly Interstate Switched Access Minutes Per Line	86	1,571	507	1,174
Monthly Interstate Switched Access Minutes Per Exchange	5,806	9,459,347	2,035,917	8,271,517
Access Lines Per Exchange	37	36,117	10,424	22,996
Monthly Total Unseparated Revenue Requirement Per Access Line	\$31	\$268	\$156	\$200
Monthly Total Unseparated Revenue Requirement Per Exchange	\$8,119	\$2,064,735	\$635,545	\$1,357,962
Monthly Total Unseparated Revenue Requirement Per Minute	\$0.0748	\$1.3983	\$0.8917	\$1.3188
Total Unseparated Telephone Plant In Service Per Access Line	\$1,485	\$11,657	\$7,496	\$11,536
Total Unseparated Telephone Plant In Service Per Exchange	\$194,889	\$119,000,661	\$28,976,074	\$70,633,178
Total Unseparated Telephone Plant In Service Per Minute	\$1.82	\$89.53	\$44.81	\$75.96
Monthly Total Unseparated Expense Per Access Line	\$28	\$253	\$132	\$151
Monthly Total Unseparated Expense Per Exchange	\$5,713	\$1,700,738	\$524,858	\$1,126,102
Monthly Total Unseparated Expense Per Minute	\$0.0661	\$1.1519	\$0.8066	\$0.9965
Interstate Switched Access Plant In Service Per Access Line	\$203	\$2,729	\$1,642	\$2,607
Interstate Switched Access Plant In Service Per Exchange	\$29,281	\$12,668,592	\$4,914,314	\$11,987,614
Interstate Switched Access Plant In Service Per Minute	\$0.69	\$14.22	\$8.19	\$13.01
Monthly Interstate Switched Access Expense Per Access Line	\$3	\$77	\$28	\$51
Monthly Interstate Switched Access Expense Per Access Exchange	\$817	\$185,518	\$82,387	\$182,869
Monthly Interstate Switched Access Expense Per Minute	\$0.0187	\$0.2002	\$0.1367	\$0.1928
Monthly Interstate Switched Access Rev. Requirement Per Access Line -- Pre Mag Shift	\$3	\$76	\$29	\$53
Monthly Interstate Switched Access Rev. Requirement Per Exchange -- Pre Mag Shift	\$1,080	\$192,764	\$93,107	\$191,441
Monthly Interstate Switched Access Rev. Requirement Per Minute -- Pre Mag Shift	\$0.0179	\$0.1960	\$0.1411	\$0.1896
Monthly Interstate Switched Access Rev. Requirement Per Access Line -- After Mag Shift	\$2	\$59	\$22	\$44
Monthly Interstate Switched Access Rev. Requirement Per Exchange -- After Mag Shift	\$836	\$156,086	\$74,557	\$148,177
Monthly Interstate Switched Access Rev. Requirement Per Minute -- After Mag Shift	\$0.0146	\$0.1597	\$0.1084	\$0.1500

* The 95th percentile is 9th largest value used in NECA's Average Schedule study (167 sample study areas * .95 = 159). The 99th percentile is the 2nd largest value used in NECA's 2006 Average Schedule Study.

CERTIFICATE OF SERVICE

I hereby certify that a copy of NECA's Comments was served this 17th day of December 2007, by electronic filing and email to the persons listed below.

By: /s/ Elizabeth R. Newson
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