

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

<b>In The Matter of</b>	)	
<b>Establishing Just and Reasonable</b>	)	
<b>Rates For Local Exchange</b>	)	<b>WC Docket No. 07-135</b>
<b>Carriers</b>	)	
	)	

**COMMENTS OF THE IOWA  
TELECOMMUNICATIONS ASSOCIATION**

**I. Introduction**

The Iowa Telecommunications Association (ITA) is the principal statewide trade association in Iowa for the wireline telecommunications industry. Nearly all of Iowa's 140+ incumbent local exchange carriers (ILECs) are members of ITA. Upon information and belief, all but a dozen or so of ITA's members are rate-of-return carriers who participate in the traffic-sensitive pool managed by NECA. This document presents the comments of the ITA and represents a consensus of the rural Iowa ILECs.

**II. The Commission Should Carefully Draft Rules to Ensure that Rates are Just and Reasonable.**

ITA has been watching with interest the numerous proceedings before the FCC, Iowa Utilities Board and Iowa federal court relating to traffic stimulation because each of these proceedings involves Iowa-based companies, and an allegation by large interexchange carriers that smaller carriers have used conference calling to stimulate traffic and earn allegedly excessive profits. ITA

agrees with the Commission when it states in this NPRM that “although it is reasonable for carriers to increase demand for their services, it is also critical to ensure that rates remain just and reasonable over time as costs and demand change.”

On the one hand, carriers, like any other business entity, should be encouraged to increase their revenues. On the other hand, to the extent that the Commission’s rules might be applied to allow for excessive returns, ITA agrees that certain rule modifications are necessary. ITA is careful to point out, however, that such modifications should be carefully tailored to not adversely impact either those carriers who remain in the NECA traffic sensitive pool or those who leave the pool and do not significantly increase their traffic.

ITA urges the Commission to narrow its focus to encompass the problem presented and not adversely impact the universe of rural local exchange carriers who are in no way involved in traffic stimulation efforts which have brought this matter to the Commission’s attention. As the Commission stated in the introduction of its Notice of Proposed Rulemaking, the docket is focused “on allegations that substantial growth in terminating access traffic may be causing carrier’s rates to become unjust and unreasonable because the increased demand is increasing carrier’s rates of return to levels significantly higher than the maximum allowed rate.” Consistent with that focus, it is the position of the ITA that the actions of the Commission should be limited to rule modifications which address the potentiality of a local exchange carrier’s rate of return being

significantly higher than the allowed rate as a result of significant increases in terminating access traffic.

**III. Changes in Rules Should Not Impact Carriers Participating in the NECA Pool.**

Since the National Exchange Carrier Association Inc. (NECA) processes continually adjust to assure that the LEC's realized rate of return does not significantly exceed the allowed rate of return, the carriers who participate in the NECA tariff should be unaffected by this rulemaking process.<sup>1</sup> As the Commission has recognized, the NECA processes and procedures are already sensitive to volume to assure appropriate rate of return levels to LECs. Accordingly, the Commission should not adopt rules that prevent a carrier from exiting the NECA pool or force a carrier back into the NECA pool. The ITA is confident that NECA will provide any information as to its processes and procedures necessary for the Commission's consideration and they will not be addressed in these comments. The comments made by the ITA will be limited to any potential changes to be made by the Commission for carriers who elect not to participate in the NECA processes and procedures.

**IV. The Commission Should Carefully Draft Rules to Avoid Placing New Requirements on Carriers Who Have Exited the NECA Pool But Do Not Realize Significant Increases in Traffic.**

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<sup>1</sup> The Commission in its Order Designated Issues for Investigation released August 24, 2007 in WC Docket No. 07-184 recognized participation in the NECA tariff as a "safe harbor" (¶28).

As to those carriers who opt out of the NECA process or who opt to use the Commission's 61.39 ratemaking process, the Commission's rules should not adversely affect those carriers except as it is necessary to consider the effect of significant volume increases on the authorized rate of return. The Commission's attention should be focused on outcomes - that is an increase in traffic which would be sufficient enough to impact the reasonableness of the rate of return

For example, the Commission should not require all carriers to certify (as proposed in Paragraph 27 of the NPRM) that the carrier was not currently stimulating traffic and would not do so during the tariff period. The Commission has recognized in Paragraph 1 of its NPRM that "it is reasonable for carriers to seek to increase demand for their services . . . ." and every carrier should have the right to market its services and increase traffic within the scope and intent of the Commission's rules. Issuance of a certificate of nonstimulation would seem to be inconsistent with an appropriate business interest to increase demand for services and would place burdens on carriers who are not involved in any significant increases in traffic.

Likewise, ITA questions the appropriateness of the proposal in Paragraph 28 of the NPRM suggesting "an ongoing requirement that carriers bring to the Commission's attention all significant operational changes that could materially affect the reasonableness of their rates." The Commission should focus its efforts on the resulting impact on rate of return being monitored by the Commission, not the manner in which the carriers seek to conduct their business and promote utilization of their services. Also, the reporting requirements would

place burdens on carriers who are not at all involved in any significant increases in traffic.

The same type of comments apply to the proposals of Paragraph 32 that an opt out of NECA be eliminated or be for an extended period. Again, the analysis should be based on an end result and not on the process. There should not be any limitations on the election to participate in the NECA pool, but rather measure results if you are not a NECA participant. Again, this proposal would materially and adversely impact carriers who have not realized significant traffic volume increases and are not a part of the problem sought to be addressed by this NPRM.

**V. The Commission Rules Should Consider the Impact on the Rate of Return of Significant Increases in Traffic.**

As to those carriers who opt out of the NECA process and do experience significant increases in volumes of traffic, ITA has no data addressing the issue of what increased costs may be incurred to support particular increases in volumes of traffic. While supporting the consideration of increased traffic on the appropriateness of the rate of return, the ITA makes a couple of observations concerning the mere increased volumes of traffic.

The first observation is that anomalous and nonrecurring spikes in traffic should be excluded from whatever review process may be developed. These would include the spikes which occur in connection with adverse weather events or with disasters of varying types. It would also include special events which

bring thousands of people into a location with a significant spike in traffic for the short term<sup>2</sup>. Any method of analyzing traffic increases must allow for short term spikes.

The second aspect of increased traffic is that there are many types of incentives which would enhance the business of the company and increase traffic utilization. There are standard programs for volume discounts and for bundled services and bundled minutes of use. Each of these stimulate traffic, although they generally do not result in the level of substantially increased traffic that is the subject of this NPRM. However, in rural areas there are other economic development programs with which the carrier cooperates in its efforts to promote additional business activity in the market. Many of these activities may result in a significant increase in the volumes of traffic given the underlying size of the traffic base. Care needs to be taken to assure that any proposed rule changes do not result in any adverse impact on these efforts in small rural markets.

ITA does agree that it would be appropriate to have reporting for carriers not participating in the NECA pool who have significantly increased the level of their traffic beyond a trigger point which may be developed by the Commission. While we have no data or position regarding appropriate trigger points, we believe that the measurement time period for reporting out of norms traffic should be on a semi-annual basis.

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<sup>2</sup> For example, a uniquely Iowa event is the Register's Annual Great Bike Ride across Iowa (RAGBRAI), a week-long bicycle trek across Iowa. Tens of thousands of bicyclists and others travel between small towns in Iowa in July, and their communications to family and friends may substantially stimulate telecom traffic in the host exchanges. Numerous other special events throughout the state would have a similar impact.

**VI. The Commission Should Not Forebear from “Deemed Lawful” Provisions.**

The ITA does not believe that the Commission should forbear from deemed lawful provisions applicable under the rules. It seems that the rate deemed lawful initially should apply until such time as the volumes trigger calls for a re-review by the Commission. Rates from the reporting time to the time that a revised rate pursuant to further review has been established may be subject to refund. After a new reasonable rate has been established, it should be lawful until such time as there is another period for further review.

If there is to be a re-review of the reasonableness of rates based on increases in traffic volumes, it would be necessary to also provide concomitant provisions for rate review for rate increases if there would be traffic reductions which would also meet predetermined trigger points.

**VII. Carriers’ Marketing Efforts Should Not Be Subject to Scrutiny**

Concerning the issue of sharing of access revenue or the payment of compensation by a carrier to a customer, it is the position of the ITA that the marketing efforts of a carrier should not be a subject of scrutiny by the Commission. Companies have the reasonableness of their rates established and how they market their services is a legitimate cost of doing business. LECs have the opportunity to market their services directly to consumers and should be equally able to contract with other persons to promote the services of the carrier.

While there has been terminology such as “kick-back” or “rebate” used in connection with the sharing of access revenue, the concept seems misapplied. The carrier provides to the customer an intrastate service at applicable local service rates. Any payment of fees to that customer based in part on the volume of interstate access service revenue charged to another customer (the interexchange carrier) is unrelated to the intrastate local service.

**VIII. The Commission Should Stop the Interexchange Carriers’ Self-Help Tactics of Refusing to Pay Access Billings**

The large interexchange carriers (IXCs) have wholly disproportionate bargaining power in relationship to the rural exchange carriers. The Commission is aware that IXC’s have engaged in self-help activities and have on numerous occasions, under numerous theories, simply refused to pay the tariffed access charges of the rural exchange carriers instead of pursuing the complaint and dispute resolution mechanisms contained in the Commission’s rules.

This form of “self help” is prohibited by the Commission. While the Commission is clear that it does not intend to operate as a collection agency, it should exercise its regulatory authority to assure that there are appropriate penalties to dissuade IXC’s from exercising its power through unlawful self-help means to bully the rural exchange carriers.

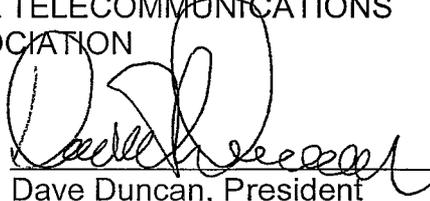
## IX. Conclusion

In concluding, ITA reiterates its observation that this docket should be limited to the resolution of the problems and issues for which the docket was opened. IXC's have searched for opportunities in numerous venues to limit or eliminate the opportunity for rural carriers to recover their access costs which are admittedly higher than large urban carriers. This docket is neither the time nor the place for exploration of the reasonableness or appropriateness of the access charge regime. That matter should be reserved to the Commission's docket on intercarrier compensation.

Respectfully submitted,

IOWA TELECOMMUNICATIONS  
ASSOCIATION

By:



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