

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL  
TELECOMMUNICATIONS COMPANIES; and  
WESTERN TELECOMMUNICATIONS ALLIANCE  
ON  
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.  
PETITION FOR EXPEDITED WAIVER OF  
INTERSTATE ACCESS RECOVERY CHARGE RULES**

The foregoing Associations, representing rural rate-of-return regulated incumbent local exchange carriers (“RLECs”),<sup>1</sup> support the petition filed by the National Exchange Carrier Association (“NECA”) on June 1, 2012, for “a temporary expedited waiver of the Commission’s rules and related orders governing the calculation of Interstate Access Recovery Charge (“ARC”) rates and reporting of initial estimated Eligible Recovery amounts.”<sup>2</sup> Specifically, NECA requests an expedited waiver until September 15, 2012, of the requirement set forth in Section 51.909(b)(2)(ii) of the Commission’s Rules to calculate total estimated revenue from Transitional Intrastate Access Service by using intrastate switched access demand for each rate element. The calculation would be used in establishing ARCs under Section 51.917(e) of the Commission’s Rules and for reporting initial estimated Eligible Recovery amounts for NECA pool members to the Universal Service Administrative Company (“USAC”).

For these limited specified purposes in connection with the calculations necessary to estimate Transitional Intrastate Access Service revenue for NECA’s June 18, 2012, annual interstate access tariff filing, NECA proposes to utilize interstate switched access demand to calculate a composite interstate rate to be multiplied by intrastate demand. The requested waiver relief specifically would **not** apply to the filing of Transitional Intrastate Access Service rates by RLECs with their state regulatory commissions.

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<sup>1</sup> The National Telecommunications Cooperative Association (“NTCA”) is a national trade association representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) is a national trade association representing approximately 420 small incumbent local exchange carriers (“ILECs”) serving rural areas of the United States. The Western Telecommunications Alliance (“WTA”) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

<sup>2</sup> NECA Petition, at p. 1.

As the Commission is well aware, NECA's annual interstate access tariff filing is a very large and complicated undertaking, comprising the collection and analysis of data for the study areas of over 1,000 issuing carriers. For the June 18, 2012 filing, the size and difficulty of this task is exacerbated greatly by the additional data and calculations required to be made in connection with Step 1 of the transition of intercarrier compensation ("ICC") to a bill-and-keep methodology<sup>3</sup> and the implementation of the new Connect America Fund ("CAF") ICC support mechanism. This task is complicated even further by the facts that: (a) Sections 51.909(b)(2)(iv) and (v) of the Commission's Rules give each RLEC the option of using its intrastate access rate structure or its interstate access rate structure to establish the Step 1 rates for its Transitional Intrastate Access Service; (b) there are a substantial variety of intrastate access rate structures, state access regulatory systems, state access tariff and price list requirements, and state access rate filing schedules and implementation periods; and (c) there are some states that have not yet determined the nature and extent of the changes (if any) they need to make to address and/or accommodate the intrastate access rate reductions contemplated by the Commission. Finally, it is likely that there will be changes in the calculation of interstate ARC rates and estimated Eligible Recovery amounts after the June 18, 2012, filing as the Commission addresses and resolves both known and unforeseen ambiguities and issues with respect to its regulations,<sup>4</sup> and

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<sup>3</sup> The Associations are appellants and/or intervenors in Case No. 11-9900 before the United States Court of Appeals for the Tenth Circuit, and believe that various portions of the Commission's new intercarrier compensation rules are unlawful for various reasons. However, unless and until such rules are voided, remanded, stayed, reconsidered or modified, members of the Associations are proceeding to comply with them.

<sup>4</sup> For example, as recently as this week, the Commission issued another order clarifying some but not all pending ICC implementation questions. *In the Matter of Connect America Fund et al.*, Order, WC Docket Nos. 10-90 *et al.*, DA 12-870, released June 5, 2012. The relatively frequent issuance of clarification and reconsideration orders only underscores the complexity and uncertainty associated with interpretation and implementation of the many significant changes required by the Commission's November 2011 order.

as state commissions address the inquiries and disputes that are likely to arise regarding various post-July 3, 2012, intrastate terminating access rates.

As NECA has indicated in its waiver petition, the calculation of Transitional Intrastate Access Service revenues for the June 18, 2012, filing is extraordinarily complex, particularly due to the dozens of different individual rates in switched access tariffs and the significant differences between interstate and intrastate access rate structures.<sup>5</sup> NECA reasonably attempted to address this problem by utilizing a method whereby carriers could divide their interstate terminating switched access revenues by interstate terminating local switching minutes, thereby developing a terminating interstate composite rate that could then be applied to terminating intrastate demand to determine transitional intrastate revenue amounts based upon interstate rates.<sup>6</sup>

If NECA were instead required to multiply each interstate terminating rate element by a corresponding intrastate demand amount to determine intrastate revenues, the result could create major inaccuracies that require substantial time and effort to correct and disrupt and delay the Commission's desired ICC changes. Given the variety of intrastate access rate structures, this approach would require NECA to collect data on thousands of individual carrier rate elements, and then to accurately compile and classify the data and make the appropriate calculations from it. This would be a substantial task even with several months to accomplish it. However, if NECA is forced to do all of this in the few days remaining before the June 18, 2012, filing, it simply will not have even a reasonable fraction of the time needed to collect accurate and complete information from its member companies (even assuming that outstanding state issues are resolved by the times of their responses), to accurately compile and classify the data and

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<sup>5</sup> NECA Petition, p. 3.

<sup>6</sup> *Id.*, pp. 4-5.

match it with appropriate rate elements, and to make the requisite revenue, ARC and Eligible Recovery calculations. The result of such a “rush job” is likely to be calculations that are inaccurate and unreliable due to a variety of inadvertent errors and omissions.

The Commission can more effectively and efficiently implement its new ICC rules and mechanisms by allowing NECA to use its proposed initial composite interstate rate. This is a far more sensible and rational approach than requiring NECA to provide hundreds of rushed individual company calculations that will have to be examined and likely corrected for a variety of errors and omissions.

If the requested waiver is granted, NECA has indicated that it will be able to gather test period Transitional Intrastate Access Service revenue data from filed and effective intrastate tariffs and price lists during the period from the present to September 15, 2012. By the latter date, NECA will be able to use this far more complete, accurate and reliable data to file corrected ARC rates with the Commission if such corrections are necessary, and to provide USAC with the data necessary to calculate Eligible Recovery amounts with respect to the new CAF ICC support mechanism.

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). Here, the unique and increased complexities of the June 18, 2012, interstate access tariff filing make strict compliance with Section 51.909(b)(2)(ii) of the Rules inconsistent with the public interest due to complexity of the changes now being implemented and the likely

unreliable and error-ridden nature of the resulting ARC rate and Eligible Recovery calculations if rushed. Waiving this rule until September 15, 2012, and allowing NECA to use its proposed composite interstate rate for the June 18, 2012, filing will avoid needless expenditures of time and effort by the Commission's staff, as well as NECA and its members, to identify and correct errors and omissions in these calculations. Moreover, it will enable the Commission's new ICC rules and mechanisms to be implemented in a much more efficient and effective manner.

Respectfully submitted,

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