

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

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

**COMMENTS OF AT&T ON NECA PETITION FOR EXPEDITED WAIVER**

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, AT&T submits these comments on NECA’s request in the above-captioned dockets for an expedited, temporary waiver of the Commission’s rules governing the calculation of Interstate Access Recovery Charge (ARC) rates and reporting of eligible recovery amounts adopted in the Commission’s *USF/ICC Transformation Order*.<sup>1</sup> In particular, NECA seeks a temporary waiver of section 51.909(b)(2)(ii), 47 C.F.R. § 51.909(b)(2)(ii), to the extent necessary to permit it to utilize interstate switched access demand to calculate a composite interstate rate that would be

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<sup>1</sup> Petition for Expedited Waiver filed by National Exchange Carrier Association, Inc. (NECA), WC Docket Nos. 05-337, 10-90; WCB Pricing File No. 12-08, at 1 (filed June 1, 2012) (Petition), citing *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).

multiplied by intrastate demand in calculating total estimated revenue from Transitional Intrastate Access Service, which is necessary to calculate ARC rates and preparing reports of initial estimated eligible recovery amounts for USAC.<sup>2</sup> NECA states that the relief it requests would apply only to calculations necessary to estimate Transitional Intrastate Access Service revenue for NECA's June 18, 2012 access filing, pending conclusion of intrastate proceedings, which will establish specific intrastate access rates in conformance with the Commission's rules, and thus "would *not* apply to the filing of Transitional Intrastate Access Service rates by [its member] companies before state regulatory commissions."<sup>3</sup> It further requests that such relief extend only until September 15, 2012, to give RLECs and state commissions time to establish transitional intrastate access rates pursuant to section 51.909(b), and to permit NECA, based on such rates, to make necessary corrections based on those rates to the ARC rates in its annual filing for pool members, and to submit revised data on Eligible Recovery amounts to USAC.<sup>4</sup>

In light of the looming deadline for NECA's annual access filing, and NECA's current lack of data necessary to calculate ARC rates, and report eligible recovery and maximum ARC revenues consistent with the Commission's rules, AT&T supports a temporary waiver of the requirements in section 51.909(b)(2) to allow NECA to utilize a composite rate methodology that relies upon the differential between a terminating intrastate composite rate and a terminating interstate composite rate to estimate Transitional Intrastate Access Service revenue reductions, subject to the following points.

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<sup>2</sup> Petition at 1-2.

<sup>3</sup> *Id.* at 2 (emphasis in original).

<sup>4</sup> *Id.*

First, any use of such a composite rate methodology must be strictly limited, both temporally and in scope.<sup>5</sup> As the Bureau recently emphasized in a letter to NECA, “(NECA) members are obligated to comply with rule sections adopted by the Commission requiring certain calculations as part of the intercarrier compensation reform process,” and the composite rate methodology NECA proposes to use on an interim basis to calculate ARCs “do[es] not comply with the Commission’s rules.”<sup>6</sup> As a consequence, the Commission should clarify, in no uncertain terms, that grant of this limited, temporary waiver to NECA *does not* relieve NECA’s RLEC members of the obligation to comply fully with section 51.909(b)(2) in modifying their intrastate tariffs to reduce their intrastate access rates consistent with the *USF/ICC Transformation Order* – thus, they cannot use NECA’s composite rate methodology in their intrastate tariff filings.<sup>7</sup> Such clarification is necessary insofar as many RLECs are taking the position that they can, or indeed must, use that composite rate methodology, in state proceedings to comply with the Commissions rules.<sup>8</sup>

The Commission also should make clear that this temporary waiver is limited only to such time as is necessary for the NECA RLECs to develop their transitional intrastate access rates pursuant to section 51.909(b)(2), and submit this information to NECA for it to update its

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<sup>5</sup> NECA and its participating RLECs should consider adopting a standardized process similar to the price cap ILEC TRP forms to facilitate future intrastate and interstate tariff filings.

<sup>6</sup> Letter of Sharon E. Gillett, Chief, Wireline Competition Bureau, FCC, to Regina McNeil, V.P. and General Counsel, NECA, WC Docket Nos. 10-90, 07-135, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208 (May 30, 2012).

<sup>7</sup> If a NECA RLEC requested a waiver to use NECA’s composite rate methodology, AT&T recommends use of a composite rate methodology more consistent with section 51.909(b)(2).

<sup>8</sup> *See, e.g.*, Letter of Brian J. Rybarik, Administrator, Telecommunications Division, Public Service Commission of Wisconsin, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, CC Docket No. 01-92 (filed May 15, 2012); Comments of Minnesota Independent Coalition, *In the Matter of Intercarrier Compensation Reform Required by FCC Order*, Minnesota PUC Docket No. P999/M-12-356 (filed Apr. 27, 2012) (urging the Minnesota PUC to apply NECA’s composite rate methodology in reducing intrastate access rates pursuant to the *USF/ICC Transformation Order*) (Attachment 1).

interstate access tariff to correct ARC rates and revise the maximum ARC revenues and eligible revenue data submitted to USAC – but, in no event should such waiver extend beyond August 15, 2012.<sup>9</sup> Thus, if NECA can collect the data it needs to update its interstate ARC filing and data submitted to USAC before that date, it should do so.

Second, to the extent any individual RLEC member of NECA can show that it requires a waiver of the requirements of section 51.909(b)(2) because its intrastate rate structure for Transitional Intrastate Access is different from its interstate rate structure for functionally equivalent interstate access services, AT&T would not oppose such a waiver – provided the RLECs inter- and intrastate access rate structures are, in fact, different, and only so long as the Commission narrowly limited such a waiver only to the first step of the transition. As the Commission recently made clear in its *June 5, 2012, Clarification Order*, at step two of the transition (*i.e.*, July 1, 2013), intrastate switched access rates must move to parity with interstate switched access rate levels *and* must employ a carrier’s interstate rate structure.<sup>10</sup> Thus, because all carriers’ intrastate switched access rates must mirror their interstate rates – both in structure and in amount – beginning on July 1, 2013, the RLEC members of NECA have no need – and thus no justification for a waiver – to utilize a composite methodology to calculate revenue reductions for Transitional Intrastate Access services, and thus eligible recovery and ARC rates and revenues.

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<sup>9</sup> NECA’s request for September 15, 2012 was based, at least in part, on a desire to include approved intrastate switched access rates in its revised interstate tariff filing. It is impossible to estimate when each state commission will have acted on the tariff filings in their respective states. All other ILECs will base their interstate ARC and Eligible Recovery calculations on the intrastate switched access rates that were developed for their July 3, 2012 state tariff filings.

<sup>10</sup> *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Order, DA 12-870, at ¶ 5 (rel. Jun. 5, 2012) (*June 12, 2012, Clarification Order*).

Finally, if the Commission decides to grant NECA and/or an RLEC a waiver of portions of section 51.909(b) to permit them to use a composite rate methodology to calculate the Step 1 intrastate switched access rate reductions required by section 51.909(b)(2) in their Step 1 intrastate tariff filings, it should consider applying the following composite rate methodology and conditions, which we believe would produce results more consistent with the existing rule:

1. A composite methodology should only be used when a rate of return ILEC's intrastate rate structure is not the same as its interstate structure.
2. Calculate a composite rate for Transitional Intrastate Access Service as follows:
  - a) Identify all intrastate rate elements associated with Transitional Intrastate Access Service.
  - b) Calculate total Transitional Intrastate Access Service revenues by multiplying FY2011 intrastate demand<sup>11</sup> for each intrastate rate element times the intrastate rates that were in effect on December 29, 2011.
  - c) Divide total Transitional Intrastate Access Service revenues by FY2011 terminating intrastate local switching minute demand.
3. Calculate a composite rate for the interstate switched access services that are functionally equivalent to Transitional Intrastate Access Service as follows:
  - a) Identify all interstate rate elements for the interstate services that are functionally equivalent to Transitional Intrastate Access Service.
  - b) Calculate total interstate revenues for these interstate rate elements by multiplying FY2011 interstate demand for each interstate rate element times the interstate rates that were in effect on December 29, 2011.
  - c) Divide total interstate revenues by FY2011 terminating interstate local switching minute demand.

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<sup>11</sup> FY2011 demand refers to service provided during the period beginning October 1, 2010 through September 30, 2011 for which payment was received by March 31, 2012.

4. If the composite intrastate rate for Transitional Intrastate Access Service is greater than the composite rate for the functionally equivalent interstate services, then a Step 1 intrastate access reduction should be calculated as follows:
  - a) Subtract the composite interstate rate for functionally equivalent interstate services from the composite intrastate rate for Transitional Intrastate Access Service.
  - b) Divide the difference between the two composite rates by 2 to derive the Step 1 composite rate reduction.
  - c) Multiply the Step 1 composite rate reduction times FY2011 terminating intrastate local switching minute demand to derive the total Step 1 Transitional Intrastate Access Service revenue reduction.
5. Reduce Transitional Intrastate Access Service rates to levels that will produce the total Step 1 revenue reduction.

AT&T supports grant to NECA of a temporary and limited waiver of section 51.909(b) of the Commission's rules, consistent with the foregoing.

Respectfully submitted,

/s/ Christopher M. Heimann

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*Its Attorneys*

June 8, 2012

# Attachment 1

April 27, 2012

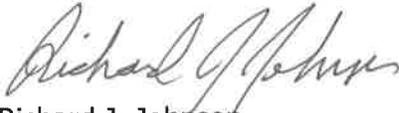
Dr. Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place E, Suite 350  
St. Paul, MN 55101-2147

Re: In the Matter of Intercarrier Compensation Reform Required by FCC Order  
MPUC Docket No.: P-999/M-12-356

Dear Dr. Haar:

Enclosed via e-filing, please find the Comments of Minnesota Independent Coalition in the above-entitled docket. Also enclosed is an Affidavit of Service.

Very truly yours,



Richard J. Johnson  
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RJJ/keb  
Enclosures  
cc: All parties of record  
2002953v1

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Phyllis A. Reha  
David C. Boyd  
J. Dennis O'Brien  
Betsy Wergin

Vice Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of Intercarrier  
Compensation Reform Required  
by FCC Order

Docket No. P999/M-12-356

**COMMENTS OF MINNESOTA INDEPENDENT COALITION**

The following Comments are submitted to the Minnesota Public Utilities Commission (the "Commission") on behalf of the Minnesota Independent Coalition ("MIC")<sup>1</sup> in response to the Commission's April 16, 2012 Notice of Comment Period ("Notice") concerning a Petition and proposed Protective Order filed by AT&T Communications of the Midwest, Inc. and TCG Minnesota ("AT&T").<sup>2</sup>

These Comments address the data identified in the Notice, the proposed Protective Order attached to the Petition of AT&T, and the AT&T proposal for a presumption that intrastate access tariffs become "null and void" based on the data submitted by carriers in relation to the their respective proposals for modification of intrastate tariffs (to become effective July 1, 2012).

For the reasons set forth more fully below:

1. The MIC generally supports the schedule and data proposed in the Commission's Notice,

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<sup>1</sup> The MIC is an unincorporated association of over seventy-five small, Incumbent Local Exchange Carriers ("ILECs") providing local exchange service to primarily rural areas in Minnesota. MIC members are responsible for telecommunications service to customers throughout 50% of Minnesota's land mass - including service to over 250 small communities and their surrounding rural areas. MIC members average approximately 4,800 access lines, although half of the MIC members have fewer than 1,800 access lines. The average number of access lines per exchange is approximately 1,100 with half serving fewer than 600 access lines.

<sup>2</sup> *Petition to Establish Procedures and Timelines for Filing Intrastate Access Tariffs in Accordance with the FCC's Intercarrier Compensation Reform Order*, April 12, 2012 (the "Petition").

with the modifications identified below;

2. The proposed Protective Order is generally appropriate; and
3. The Commission should reject AT&T's arbitrary, unsupported, and unlawful recommendation that a subjectively determined defect in data would lead to some "presumption" of non-compliance with the Commission's order and a declaration that existing intrastate tariffs become "null and void."

#### **1. Introduction.**

Representatives of the MIC member companies have been taking steps to facilitate compliance with the July 1, 2012 intrastate access adjustment required by the Federal Communication Commission ("FCC") intercarrier compensation order,<sup>3</sup> since January 2012. These steps have included: (i) participation in several workshops directed to understanding and compliance with the requirements of the FCC Order; (ii) participation in meetings with representatives of the Commission and Department of Commerce ("Department") to consider and discuss compliance requirements and steps that would facilitate the provision of appropriate and useful information by MIC member companies and review by the Department and Commission; (iii) participation in discussion with AT&T; and (iv) participation in large meetings and presentations that included MIC member companies and Commission and Department staff. These efforts have been significant and the process has been transparent. The MIC is committed to continuing in this manner. However, the Commission should not and need not accept recommendations from AT&T that move the current open and cooperative process to an adversarial proceeding that would be likely to increase the effort by all stakeholders without any improvements in information or the quality of review.

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<sup>3</sup> *Connect America Fund; a National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, etc.*, WC Docket No. 10-90, etc., Report and Order and Further Notice of Proposed Rulemaking (Nov. 18, 2011) ("FCC Order").

The MIC member companies, which are required to modify their intrastate tariffs, intend to file worksheets (electronically in PDF, excel spreadsheet format) detailing the calculation of required reductions in their intrastate switched access rates. The rate methodology will conform with 47 C.F.R. § 51.909(b)(i), (ii) and (iii), and is amply disclosed and demonstrated in the worksheet calculations. The rate structure will be displayed on the worksheets and the tariff pages filed, and will conform to 47 C.F.R. § 51.909(b)(iv) and (v). Representatives of the MIC have shared this proposed format with representatives of the Department of Commerce.

A substantial portion of the data required for intrastate tariff filings will be taken from a data request being completed by the companies and submitted to the National Exchange Carrier Association (“NECA”) for use in the interstate tariff development. The attached Exhibit 1 is the NECA data request which, when completed by the MIC member companies, will provide a consistent basis for the necessary data collection to perform the calculations. However, while preliminary data is to be filed with NECA by April 27, 2012, the companies and NECA will have until May 23, 2012, to review, revise and certify the accuracy of the data. It is therefore possible that final rate calculations will not be available on June 1, 2012 for all companies, due to late changes in the NECA data provided to and by the companies. The MIC member companies will use best efforts to make their filing by June 1, 2012, based on preliminary data that is available, but that information may need to be amended as the final information becomes available. Changes or additional filings made after June 1, 2012, to incorporate the final data, should not result in any presumption that the filing or tariffs are “unjust and unreasonable” or should be considered null and void.

**2. The Proposed Supporting Data Is Generally Appropriate.**

The MIC generally supports the submission of information identified in the six (6) bullet

points of data identified in the Commission's Notice. The following are more specific responses to each of the bullet points.

- **Fiscal Year 2011 intrastate demand (volume) for intrastate access services (by rate element)**

The FCC Order requires that 50% of the difference between the interstate and intrastate rate levels be eliminated as of July 1, 2012. The key to accomplishing this requirement is to compare interstate and intrastate revenues and composite rates. Making this comparison is complicated by the fact that most, if not, all MIC members have different interstate and intrastate rate structures for transport services. There are different interstate and intrastate rate elements associated with providing the same services. These different rate elements are the result of changes required by the FCC for the interstate rate elements referred to as "Local Transport Restructure" ("LTR"), which was implemented pursuant to order and rules promulgated by the FCC.

For local transport rates, for both interstate LTR structure and intrastate non-LTR structure, various rates may be billed based on demand units of: (i) minutes; (ii) the number of terminations owned by the carrier for each transport segment or leg; or (iii) on transport facility minute-mile basis. However, the method of counting the demand units for terminations and facility minute-miles used for intrastate non-LTR billing purposes is different than the method of counting the demand units used for interstate billing purposes. As a result, no meaningful data for determining transitional intrastate access rates, pursuant to FCC rules, can be generated by simply multiplying current intrastate non-LTR demand times interstate LTR access rates.

As a result of these differences, a meaningful comparison and compliance with the FCC Order can be made by using a common basis for comparison of the interstate and intrastate rates for switched transport. Revenue per local switch minute can serve as a common basis for

comparison.

- **All intrastate access rates in effect as of December 29, 2011.**

This information will be provided on the worksheets.

- **All interstate access rates in effect as of December 29, 2011.**

This information will be provided on the worksheets.

- **If the carrier's intrastate rate structure and interstate rate structure are not the same, a full explanation of how the LEC will map its Fiscal Year 2011 intrastate demand for intrastate access services into its interstate rate structure to determine the interstate revenues used in the FCC mandated revenue reduction calculations. See 47 C.F.R. §§ 51.907, 51.909, and 51.911.**

As a result of these differences in rate structure, as discussed above, a meaningful comparison and compliance with the FCC Order can be made using a common basis for comparison of the interstate and intrastate rates. A common basis for comparison and mapping is: (i) the aggregate revenue per minute under intrastate rates, before and after the July 1, 2012; and (ii) the aggregate revenue per minute under interstate rates. This method is consistent with the methodology used by NECA in its calculation of intrastate access reductions. NECA is required to make the calculations to determine the Connect America Fund (CAF) amount and the Access Recovery Charge (ARC) applicable to each company in order to comply with the FCC Order.

For MIC companies using this methodology, the NECA interstate aggregate revenue per minute will be developed by dividing the interstate revenues by the interstate local switch minutes of use for the last five months of 2011. This period was chosen by NECA since it includes LTR demand units billed at the interstate rates that were in effect as of December 31, 2011.

For MIC companies using this methodology, the current intrastate aggregate revenue per

minute will be developed by dividing the Fiscal Year (FY) 2011 intrastate revenues by the FY 2011 intrastate local switch minutes of use. The Fiscal Year is defined by the FCC as the period of October 1, 2010 to September 30, 2011.

The adjustment will be mapped by reducing the current intrastate rate elements by amounts sufficient to reduce the difference between the 2011 aggregate interstate revenue per minute and the 2011 aggregate intrastate revenue per minute by 50%.

While other approaches are possible and will be used, it is anticipated that the substantial majority of MIC member companies will employ the methodology discussed above. The calculations of MIC companies using different methodologies will comply with the FCC Order and will be detailed in worksheets and descriptions filed by those companies.

- **A full description of the methodology the carrier will use to set reduced intrastate rates to reflect the calculated revenue reductions.**

The rate methodologies conform with FCC rule 51.909 (b)(i), (ii) and (iii). The adjustment will be made by reducing the current intrastate rate elements by amounts sufficient to reduce the difference between the 2011 aggregate interstate revenue per minute and the 2011 aggregate intrastate revenue per minute by 50%. Also see the explanation above.

- **A full description of the rate structure option that the carrier will utilize as of July 1, 2012 (if the carrier in fact currently has different intrastate and interstate rate structures for carrier access charges).**

The rate structure will be displayed on the worksheets and the intrastate tariff pages and will conform to FCC rule 51.909 (iv) or (v). Many MIC members will maintain their current intrastate access rate structures, as described above.

### **3. The Proposed Protective Order.**

The Protective Order and process for providing access to non-public data that has been proposed by AT&T is generally acceptable to the MIC.

**4. The Commission Should Reject AT&T's Proposals Which Are Arbitrary, Unsupported, And Unlawful.**

The AT&T petition includes proposals: (i) for a presumption that any carrier that fails to provide the data ordered by the Commission has failed to file tariffs as required by the FCC Order; and (ii) that such a carrier's current intrastate access tariffs be considered null and void as of July 1, 2012. AT&T's proposals are arbitrary, unsupported, and unlawful. Accordingly, the Commission should reject these proposals.

To place AT&T's proposals in context, it is helpful to briefly review the relevant parts of the FCC Order and the Commission's authority. The FCC Order requires default intercarrier compensation rates to be reduced, and ultimately eliminated, through a series of defined steps. State commissions are to oversee the reduction of intrastate access rates under the schedule and requirements set by the FCC Order and codified in regulations at 47 C.F.R. § 51.901, et seq. The reductions shall be implemented by filing tariffs "with the appropriate state regulatory authority." 47 C.F.R. § 51.907 (price cap carriers) and § 51.909 (rate of return carriers). Step 1 requires tariff changes to reduce intrastate rates 50% of the way to interstate access rate levels effective July 1, 2012. Step 2 requires tariff changes to match interstate rate levels effective July 1, 2013. 47 C.F.R. §§ 51.907 and 51.909. The FCC contemplated that "states will oversee changes to intrastate access tariffs to ensure that modifications to intrastate tariffs are consistent with the framework and rules we adopt today."<sup>4</sup>

As a result of the FCC Order, state commissions no longer have exclusive jurisdiction over terminating intrastate access, but rather the charge to oversee the implementation of the reform as outlined by the FCC Order. The Commission clearly has authority to address issues related to intercarrier compensation reform and to assure that Minnesota telecommunications

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<sup>4</sup> FCC Order at 803.

services are offered at just and reasonable rates.<sup>5</sup> Moreover, Minn. Stat. § 237.081 sets out a procedure for the Commission to investigate whether a telephone company's rates or practices "...affecting or relating to the...transmission, delivery, or furnishing of telephone service or any service in connection with telephone service, is in any respect unreasonable" and, if they are not, the Commission has the authority to "...establish just and reasonable rates and prices."

Minnesota law thus requires LEC's telecommunications services to be sold at fair and reasonable rates, and authorizes the Commission to proceed with an investigation following a complaint that a telecommunications provider is not maintaining just and reasonable rates. However, the Commission's authority to take remedial steps is dependent on the premise of a factual foundation.<sup>6</sup> The foundation of Commission action is a finding of fact, and nothing in Minnesota Statutes or in the record in this case supports either a presumption that rates are unlawful or the imposition of a penalty (such as a declaration that rates are "null and void") without a factual basis. As a result, AT&T's proposal for the threats and premature penalties is without a factual foundation and contrary to the basic pattern of Minnesota Statutes. Accordingly, the AT&T proposal should be rejected.

Further, the cases cited by AT&T do not support its request in that the cases were not

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<sup>5</sup> Minn. Stat. § 237.06.

<sup>6</sup> Minn. Stat. § 237.081, Subd. 2 provides:

**Subd. 2. Procedure after investigation.**

(a) If, after making an investigation under subdivision 1 or 1a, the commission finds that a significant factual issue raised has not been resolved to its satisfaction, the commission shall follow the appropriate procedure prescribed by this subdivision.

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**Subd. 4. Establishment of rate and price.**

Whenever the commission finds, after a proceeding under subdivision 2, that ... (2) that any rate, toll, tariff, charge, or schedule, ... is in any respect unreasonable, insufficient, or unjustly discriminatory, ... the commission shall make an order respecting the tariff, regulation, act, omission, practice, or service that is just and reasonable and, if applicable, shall establish just and reasonable rates and prices. (Emphasis added.)

based on a subjective evaluation of the quality of information filed. Rather, the cases were based on the simple question of whether a proposed rate change was made within the required time, and did not impose penalties based on the adequacy of complex information that was required on short notice. The cases only required a basic proposal, which the FCC order already requires. AT&T's recommendation goes far beyond these cases and would impose penalties based on whether the supporting information filed was deemed adequate.

The Order in the Massachusetts case<sup>7</sup> followed the Department of Telecommunications and Cable issuing a "Filing Procedure Reminder for Compliance Tariffs" to instruct on filing procedures and deadlines. A subsequent Reminder Notice had been issued in the proceeding because a number of CLECs had either not filed compliance tariffs or had failed to do so timely relative to CLEC access charge rate caps. Page 1 of the Order states:

For carriers that have not filed tariffs to comply with the Department's rate cap in this case by the June 21, 2010 deadline, the Department hereby determines that all existing intrastate switched access tariffs in effect and on file with the Department as of June 22<sup>nd</sup>, **which are above the tariffed rate of the dominant incumbent local exchange carrier ("ILEC") of the region, are unjust, unreasonable, and in violation of Department Order. (Emphasis added.)**

AT&T mischaracterizes its proposal as the approach used in Massachusetts.<sup>8</sup> However, this case does not support AT&T's request as this order was clearly tailored to violations of tariffed rates for noncompliant carriers. Nothing in the Massachusetts order deals with the adequacy of the subject matter data contained in a filing. Rather, the case refers to noncompliant CLECs charging rates above the tariffed rate.

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<sup>7</sup> Commonwealth of Massachusetts Department of Telecommunications and Cable, DTC 07-09, Order on Compliance Tariffs, dated June 16, 2010.

<sup>8</sup> AT&T Petition at 4.

The Ohio case<sup>9</sup> similarly does not provide support for AT&T's request. The Order provides at paragraph 5:

In order to allow for the timely review and implementation of the requisite reductions, the Commission directs all affected ILECs to file, in this docket, the appropriate application on or before March 21, 2012, and all affected CLECs to file the appropriate application on or before April 4, 2012. All applications shall include supporting calculations for the proposed transitional intrastate access rates. ... Applications suspended by the Commission will be subject to a true-up as of July 1, 2012, once approved. **For those local exchange companies that fail to file the requisite application on a timely basis**, the applicable effective intercarrier compensation rates will be deemed as unjust and unreasonable as of July 1, 2012, and such carriers will be prohibited from charging for intrastate intercarrier traffic until they have Commission approved tariffs. **(Emphasis added.)**

While supporting information was required, nothing in the Ohio case references inadequacy of filing materials resulting in a penalty. Rather, a penalty resulted only from failure to make a basic filing which would enable the Commission to take action.

Implementation of the FCC's Order for filing intrastate access tariffs cannot reasonably take place with the penalty requested as part of AT&T's procedural plan. Such a penalty is clearly unnecessary and unsupported, since the Commission has authority to investigate complaints of unjust and unreasonable rates and the FCC's rules are independently enforceable. The FCC's Order includes a framework to transition current compensation rules to a new unified system over a multi-year period. Including AT&T's requested penalties as part of that plan would be overreaching and abusive. A rational approach to a procedural plan cannot include the penalties requested by AT&T.

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<sup>9</sup> Public Utilities Commission of Ohio, Case No. 10-2387-TP-COI, February 29, 2012 Entry.

## CONCLUSION

The MIC respectfully requests that the Commission permit the use of rate methodologies as described above, which shall be disclosed and demonstrated in worksheets filed by carriers and which shall comply with applicable FCC rules. The MIC further requests that the Commission reject AT&T's proposal that any defect in a carrier's intrastate access filing leads to a presumption that the carrier's intrastate tariffs become "null and void."

Dated: April 27, 2012.

Respectfully submitted,



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Attorneys on Behalf of the Minnesota Independent  
Coalition

Exhibit 1



2012 CAF ICC Data Collection

NECA Home NECA Data Collections Contact Us General Instructions Logout

Logged in User: Tom Campbell



Home Select Company Main Page Support Election Study Area Data Input Exchange Level Data for ARC CAF ICC Support ARC Output

Study Area: BALDWIN TELECOM (ID: 330846)

Study Area Data to calculate CAF ICC Support

Base Period Revenue and Demand Base Period Reciprocal Compensation Revenue & Demand Residential Revenue Test Period 2012/2013

Base Period Revenue and Demand  
(Fiscal Year 2011 - October 1, 2010 through September 30, 2011)

Note: Interstate Revenues and Minutes are for 5 months in 2011 (August 1, 2011 - December 31, 2011).

Study Area ID	Line 1 --- Intrastate Terminating Switched Access End Office Billed Revenue	Line 2 --- Intrastate Terminating Switched Access Transport (including total dedicated transport) and Other Billed Revenue	Line 3 --- Intrastate Terminating Switched Access Billed Minutes	Line 4 --- Intrastate Terminating Switched Access Composite Rate	Line 5 --- Intrastate Terminating Total Switched Access Received Revenue	Line 6 --- Interstate Total Switched Access Billed Revenue	Line 7 --- % of Total Interstate Switched Access Revenue in Local Switching	Line 8 --- Interstate Local Switching Billed Minutes	Line 9 --- Interstate Switched Access Composite Rate
330846	\$ 127987	\$ 26105	2205439	\$ 0.069869	\$ 154092	\$ 116360	61.08 %	3957198	\$ 0.029405

Submit Response

[Records response entered/updated on the above part of the screen]

# Exhibit 1

## Study Area Data Needed in Support of CAF ICC

Line	Data Elements	Instructions
<b>Base Period Revenue and Demand</b>		
1	Intrastate terminating switched access end office billed revenue	Enter revenue for fiscal year (Oct 1, 2010 through Sept 30, 2011). Intrastate switched access billed revenue associated with terminating end office, CCL if applicable (including revenue associated with 8XX minutes) for intrastate, or revenue from functionally equivalent services in effect.
2	Intrastate terminating switched access transport and other billed revenue	Enter revenue for fiscal year (Oct 1, 2010 through Sept 30, 2011). Intrastate switched access billed revenue associated with terminating tandem switched transport and total dedicated transport revenue. Please also include non-recurring revenue associated with intrastate terminating end office, terminating transport and total dedicated transport, or revenue from functionally equivalent services in effect.
3	Intrastate terminating local switching billed minutes	Enter local switching billed minutes for fiscal year (Oct 1, 2010 through Sept 30, 2011). It should already include the 800 originating minutes rated as terminating for CCL only, if billed that way.
4	Intrastate terminating switched access composite rate	Intrastate terminating switched access composite rate is the intrastate terminating switched access revenue divided by local switching minutes (Line1+line2)/Line3.
5	Intrastate terminating total switched access received revenue	Intrastate terminating switched access includes terminating end office, terminating tandem switched transport, and total dedicated transport. Enter fiscal year 2011 intrastate terminating total switched access revenue received (rather than billed) as of March 31, 2012. Received revenue is billed revenue less uncollected revenue. For companies in a state pool, please use settlement revenue associated with terminating switched access traffic as received revenue, instead of billed revenue. This line will be used in the revenue requirement calculations. Pending clarification from the FCC, to avoid duplicative recovery, please exclude state USF from intrastate base period.
6	Interstate total switched access billed revenue	NECA will populate this revenue for TS pool companies based on the total of 5 months (August through December 2011). Company can override based on its own financial records. Interstate total switched access billed revenue include local switching, tandem switched transport, dedicated transport, non-recurring and other interstate switched access revenue.
7	% of total interstate switched access billed revenue in local switching	NECA will populate this ratio for TS pool members, but company can override based on its own financial records. The % is the local switching revenue out of total switched access revenue from NECA settlements. The interstate local switching revenue is calculated based on rate band specific tariff rate and local switching minutes for the 5 months (August through December) of 2011.
8	Interstate local switching billed minutes	NECA will populate this field for TS pool members. Interstate local switching minutes for 5 months (August through December) of 2011. Company can override based on its own records.
9	Interstate switched access composite rate	NECA will populate this rate for TS pool members. Interstate switched access composite rate is 5 months average of 2011 billed switched revenue divided by local switching minutes from NECA settlement (Line6/Line8).
10	Terminating Reciprocal Compensation revenue received from other carriers	Enter reciprocal compensation revenue received from other carriers for fiscal year (Oct 1, 2010 through Sept 30, 2011). The revenue should include both CMRS and non-CMRS revenue. Treatment of transit revenue is pending FCC clarification.
11	Originating Reciprocal Compensation expense paid out to other carriers	Enter reciprocal compensation expense paid out to other carriers for fiscal year (Oct 1, 2010 through Sept 30, 2011). The expense should include both CMRS and non-CMRS expense. Please ensure that the sign is negative. Treatment of transit revenue is pending FCC clarification.
12	Terminating Reciprocal Compensation minutes	Enter minutes for fiscal year (Oct 1, 2010 through Sept 30, 2011). Terminating reciprocal compensation minutes are minutes from the other carrier's end users that terminate on your network.
13	Originating Reciprocal Compensation minutes	Enter minutes for fiscal year (Oct 1, 2010 through Sept 30, 2011). Originating reciprocal compensation minutes are minutes from your end users that terminate on the other carrier's network.
<b>Residential Revenue and Lines</b>		
January 2012		
14	Local residential billed revenue	Please use January 1, 2012 local tariff. Enter Local residential billed revenue for the month of January, 2012. Local residential billed revenue is defined as: federal SLC, mandatory EAS, State SLC, state high cost and/or access replacement universal service contributions, flat rate for residential service (1FR or R1 rate), state E911 charges, state TRS charges. Local residential billed revenue excludes lifeline customers.

**AFFIDAVIT OF SERVICE**

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

In the Matter of Intercarrier Compensation  
Reform Required by FCC Order

MPUC Docket No.: P-999/M-12-356

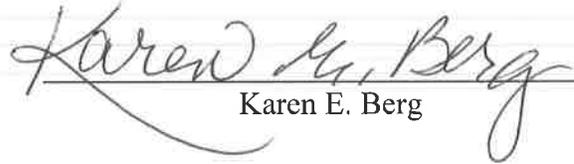
Karen E. Berg, being first duly sworn on oath, deposes and states that on the 27th day of April, 2012 copies of the Comments of Minnesota Independent Coalition in the above-referenced matter were filed electronically or mailed by United States first class mail, postage prepaid thereon, to the following:

Dr. Burl W. Haar *Electronic*  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101

Linda Chavez *Electronic*  
Minnesota Department of Commerce  
85 Seventh Place East, Suite 500  
St. Paul, MN 55101

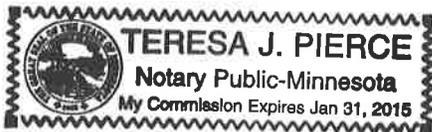
John Lindell *Electronic*  
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900 Bremer Tower  
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St. Paul, MN 55101

Julia Anderson *Electronic*  
Office of the Attorney General - DOC  
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445 Minnesota Street  
St. Paul, MN 55101

  
Karen E. Berg

Subscribed and sworn to before me this  
27<sup>th</sup> day of April, 2012.

  
NOTARY PUBLIC



**CERTIFICATE OF SERVICE**

I, Shandee R. Parran, hereby certify that on this 8<sup>th</sup> day of June 2012, a copy of AT&T's Comments on NECA Petition for Expedited Waiver filed in CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; and WT Docket No. 10-208 was served via Electronic Mail and First Class U.S. Mail postage prepaid to the following:

Belinda Nixon  
Federal Communications Commission  
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/s/Shandee R. Parran  
Shandee R. Parran