

**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 an 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

PETITION FOR EXPEDITED WAIVER

The National Exchange Carrier Association, Inc. (“NECA”)¹ hereby requests expedited waiver of the Commission’s rule 51.909(a)(4), which requires NECA to adjust its pool switched access rate caps to reflect changes when carriers enter or exit NECA’s Traffic Sensitive Pool.² Twenty-four companies, representing twenty-three study areas, have notified NECA they will change their Traffic Sensitive pool participation status for the 2014-2015 Tariff Period. The

¹ NECA is a non-stock, not-for-profit association formed in 1983 pursuant to the Commission’s Part 69 access charge rules. *See generally*, 47 C.F.R. § 69.600 *et seq.* NECA is responsible for filing interstate access tariffs and administering associated revenue pools on behalf of over 1100 incumbent local exchange carriers (“ILECs”) that choose to participate in these arrangements.

² 47 C.F.R. § 51.909(a)(4).

resulting impact on switched access rates, however, is only -0.049%.³ As the rule appears to require NECA to notify all companies in its Traffic Sensitive Pool by May 1 of this change, and in turn, requires these companies to include such *de minimis* changes in their state access tariff revisions within a very short timeframe, the costs of strictly adhering to this rule clearly outweigh the benefits. NECA therefore requests the Commission waive application of the rule for the 2014-2015 Tariff Period. Waiver would avoid the need for tariff revisions at the federal and state levels required to effectuate these *de minimis* changes in rates associated with 2014 pool election changes.

I. Background

The rules adopted in the Commission's *USF/ICC Transformation Order* capped interstate and certain intrastate switched access rates for rate-of-return ("RoR") carriers at the rates that were in effect on December 29, 2011.⁴ The *Transformation Order* created a new recovery mechanism whereby RoR carriers annually establish an amount they are eligible to recover from end users through an Access Recovery Charge ("ARC") or Connect America Fund ("CAF") intercarrier compensation ("ICC") support in each year of the ICC transition.⁵

³ The Commission previously granted NECA a waiver of section 51.909(a)(4) for the 2013-2014 Tariff Period for essentially the same reasons. See *Connect America Fund*, WC Docket No. 10-90, *et al.*, Order, 28 FCC Rcd. 7074 (2013) (*2013 Order*).

⁴ See *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 an 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 – Mobility Fund*, WT Docket No. 10-208, Report and Order and FNPRM, 26 FCC Rcd. 17663 (2011), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (*USF/ICC Transformation Order*).

⁵ See 47 C.F.R. § 51.909(a) (4).

The Wireline Competition Bureau revised the Commission's rules in March 2013 to require NECA to adjust its switched access rate caps when a carrier enters or exits the NECA pool.⁶ The Bureau indicated these rule revisions effectuate the Commission's intent that NECA pooling remain available during the ICC transition, consistent with its historical operation, and ensure the balance between interstate switched access revenues and CAF ICC support is maintained and does not affect a RoR carrier's decision to enter or exit the NECA pool. These rule revisions were also intended to ensure that no party entering or exiting the NECA pool will receive a windfall as a result of its election.⁷

Rule 51.909(a)(4) states "[t]he Association shall proportionately adjust its June 30 switched access rate caps by the percentage amount determined in paragraph (a)(4)(iii)(B) of this section," and shall provide support in its annual access tariff filing to justify the revised interstate switched access rate caps, the ARC that will be assessed, and the amount of CAF ICC support each carrier will be eligible to receive.⁸

As explained in NECA's March 10, 2014 annual notification letter to the Commission,⁹ twenty-four carriers representing twenty-three study areas have notified NECA they will exit NECA's Traffic Sensitive Pool for the July 2014 - June 2015 Tariff Period. Per section

⁶ *Connect America Fund*, WC Docket No. 10-90, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 12-63, *Consolidated Communications Companies Tariff F.C.C. No. 2*, Transmittal No. 41, *Frontier Telephone Companies Tariff F.C.C. No. 10*, Transmittal No. 28, *Windstream Telephone System Tariff F.C.C. No. 7*, Transmittal No. 57, Order, DA 13-564, ¶ 11 (rel. Mar. 27, 2013) (*March 27, 2013 Order*). See Appendix at 20-22. Prior to the *Transformation Order*, when carriers entered or exited the NECA pool, the pool switched access rates were adjusted to reflect changes to the pool.

⁷ *Id.* ¶ 14.

⁸ *Id.* at 21.

⁹ Letter from Jennifer Leonard, Director-Access, Tariffs & Costs, NECA, to Julie Veach, Chief, WCB (filed March 10, 2014).

51.909(a)(4), NECA has calculated the net impact of these changes would be a mere 0.049% decrease in NECA's switched access rates.¹⁰ About 60% of the pool's switched access revenue comes from the Local Switching charge. Required changes to the interstate local switching access rates for any of NECA's tariff Rate Bands would be reflected, at most, in the 5th decimal place of NECA's local switching rates.¹¹ Grant of the requested waiver would cause an estimated decrease in CAF ICC support for all carriers in NECA's pool for the 2014-2015 Tariff Period, close in magnitude to the estimated CAF ICC increase for last year's similar petition, which was \$138,500. NECA has just started collecting all the projection data from carriers needed to fully develop the CAF ICC support estimate for the 2014-2015 Tariff Period.

The *March 27, 2013 Order* also amended the Commission's rules so as to require pooling carriers to reduce or increase their intrastate access rates if NECA's interstate switched access rates decrease or increase as a result of carriers entering or exiting the pool, consistent with the framework established in the *USF/ICC Transformation Order*.¹² As a result of the changes NECA is required to make to its capped interstate switched access rates, companies may be required to implement changes to their intrastate access rates by comparably miniscule amounts to equalize them with interstate rates. These changes could entail significant expense for individual carriers not otherwise required to make rate adjustment filings, as well as for state commissions reviewing such tariff filings.

¹⁰ While the aggregate effect of the exits is not significant, the changes for individual study areas can be significant. NECA's waiver request in no way relieves exiting companies of their 51.909(a)(5) obligations to file their own rates upon exiting our tariff.

¹¹ Currently, NECA's local switching rate is taken out to the 6th decimal place.

¹² In all cases, these new or revised rates will become the capped switched access rates set pursuant to 51.909(a)(1) for purposes of applying other rules relying on such rates or rate caps. In addition, the revised rate caps will be used to establish a carrier's Eligible Recovery going forward.

II. The Commission Should Waive Rule 51.909(a)(4) for the 2014-2015 Tariff Period.

Section 1.3 of the Commission's rules states that "rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."¹³ The "good cause shown" standard has been interpreted to grant the Commission discretion to waive application of its rules in situations where strict compliance would not be in the public interest. More specifically, the Commission may exercise its discretion to waive a rule where, due to special circumstances, deviation from the general rule would better serve the public interest than strict adherence to the general rule.¹⁴ In addition, the Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ As demonstrated herein, the relief requested by NECA is necessary to prevent undue hardship and would better serve the public interest.

Strict compliance with new section 51.909(a)(4) is not necessary nor in the public interest. For tariff periods where changes in NECA's pool composition cause *de minimis* changes to NECA's interstate switched access rate caps, strict compliance would generate much larger costs associated with implementing the rate changes at both the interstate and intrastate levels. As noted above, during the 2014-2015 Tariff Period, pool composition changes will result in changes of about -0.049% to NECA's switched access rate caps. Any potential impacts on the CAF ICC Recovery Mechanism or on intrastate rates associated would also be minor.

¹³ 47 C.F.R. § 1.3.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁵ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

The Bureau granted NECA a similar waiver last year on May 14, 2013, for the 2013-2014 Tariff Period.¹⁶ At that time, NECA had informed the Commission that the net impact of these changes would be a mere 0.053% increase in NECA's switched access rate caps, per section 51.909(a)(4).¹⁷ NECA also pointed out grant of its request would cause, at most, an estimated increase in CAF ICC of approximately \$138,500 for all carriers in NECA's pool for the 2013 - 2014 Tariff Period.¹⁸ In its Order, the Commission agreed with NECA that the impact of these rate changes were *de minimis* and the costs that would be incurred by companies and state commissions to mirror these miniscule changes in intrastate tariffs would far outweigh any benefits.¹⁹ Similarly, requiring strict compliance with section 51.909(a)(4) for the upcoming 2014-2015 Tariff Period is again not in the public interest. As noted above, changes attributable to pool participation changes in the upcoming period are again at a *de minimis* level and the costs of strict compliance with the rules would be disproportionately large. Thus, the Commission should grant waiver of the rule for the 2014-2015 Tariff Period.

III. Conclusion

NECA respectfully requests the Commission waive, on an expedited basis, its rule 51.909(a)(4) for the 2014-2015 Tariff Period, as waiver will better serve the public interest than strict enforcement for the upcoming year. The benefits of making the *de minimis* changes in NECA's interstate switched access rates resulting from Traffic Sensitive pool participation

¹⁶ See *supra* note 3.

¹⁷ Petition of the National Exchange Carrier Association for Expedited Clarification or Waiver, WC Docket No. 10-90, *et. al.*, at 5 (filed April 9, 2013).

¹⁸ *Id.*

¹⁹ 2013 Order ¶ 5.

changes this Tariff Period do not warrant the costs of strictly adhering to this rule, and thus a waiver will better serve the public interest than strict enforcement for the upcoming year.

Respectfully Submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

March 12, 2014

By:

A handwritten signature in black ink, appearing to read "Richard A. Askoff", written over a light gray rectangular background.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of NECA's Petition for Expedited Waiver was served this 12th day of March, 2014 by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

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