

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	WC Docket No. 12-254
National Exchange Carrier Association Tariff	)	
F.C.C. No. 5	)	Transmittal No. 1358
	)	

**ORDER**

**Adopted: September 7, 2012**

**Released: September 7, 2012**

By the Acting Chief, Pricing Policy Division:

**I. INTRODUCTION**

1. Pursuant to section 204(a)(3) of the Communications Act of 1934 as amended,<sup>1</sup> the National Exchange Carrier Association (NECA) filed Transmittal No. 1358 on August 24, 2012, seeking to increase special access rates in its Tariff F.C.C. No. 5 to become effective on September 8, 2012.<sup>2</sup>

2. AT&T Corp. (AT&T) filed a petition to suspend for one day, investigate, and issue an accounting order for the rate increases contained in NECA's tariff revisions.<sup>3</sup> On September 6, 2012, NECA filed its reply.<sup>4</sup> In this order, we grant AT&T's petition, and we suspend for one day and set for investigation the NECA revisions to its special access rates contained in its Tariff F.C.C. No. 5, Transmittal No. 1358.

**II. DISCUSSION**

3. We agree that NECA's tariff revisions raise substantial questions of lawfulness that require further investigation. According to NECA, these rate increases account for two recent events: (1) the withdrawal from the NECA pool of fifteen rate-of-return study areas that are affiliated with three price cap companies, and (2) Eastex Telephone Cooperative's (Eastex) reallocation of costs between jurisdictional cost categories.<sup>5</sup> AT&T argues that NECA's filing does not provide sufficient justification tying these events to its proposed rate increases. Specifically, AT&T argues that the data NECA provides concerning the impact of the exit of the carriers withdrawing from the NECA pool is inconsistent with information that those carriers have submitted in support of their own tariff filings.<sup>6</sup> Further, AT&T

<sup>1</sup> 47 U.S.C. § 204(a)(3).

<sup>2</sup> See NECA Transmittal No. 1358, Tariff F.C.C. No. 5 (filed Aug. 24, 2012).

<sup>3</sup> National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, Petition of AT&T Corp. for Suspension and Investigation, Transmittal No 1358 (filed Aug. 31, 2012) (AT&T Petition).

<sup>4</sup> National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, Reply of National Exchange Carrier Association (filed Sep. 6, 2012) (NECA Reply).

<sup>5</sup> Description and Justification, NECA Transmittal No. 1358, F.C.C. Tariff No 5at 1.

<sup>6</sup> AT&T Petition at 3-4.

argues that the Eastex reallocation should result in increases to NECA's special access revenue requirement and decreases in NECA's switched access revenue requirement.<sup>7</sup> However, NECA's filing does not include these offsetting changes to its traffic sensitive pooled revenue requirement.<sup>8</sup> For these reasons, we conclude that substantial questions of lawfulness of NECA's F.C.C. Tariff No. 5, Transmittal No. 1358, exist that require further investigation, and we suspend the rate increases contained in Transmittal No.1358 for one day, impose an accounting order and institute an investigation. The specific issues that will be the subject of the investigation will be identified in an upcoming designation order and may include, but not be limited to, the issues identified in this paragraph. We may also, by order, identify discrete issues that do not warrant further investigation.

### III. *EX PARTE* REQUIREMENTS

4. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>9</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

### IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that, pursuant to sections 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 204(a), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the revisions to the NECA Tariff F.C.C. No. 5 contained in Transmittal No. 1358 ARE SUSPENDED for one day and an investigation of Transmittal No. 1358 IS INSTITUTED.

6. IT IS FURTHER ORDERED that NECA SHALL FILE a supplement within five business days from the release date of this order reflecting the suspension. NECA should cite the "DA" number on the instant order as the authority for the filing.

7. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 204(a), and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, NECA SHALL KEEP ACCURATE ACCOUNT of all amounts received that are associated with the rates that

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<sup>7</sup> *Id.* at 4-6.

<sup>8</sup> *Id.*

<sup>9</sup> 47 C.F.R. §§ 1.1200 et seq.

are subject to this investigation.

8. IT IS FURTHER ORDERED that the petition filed by AT&T Corp. IS GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Victoria S. Goldberg  
Acting Chief, Pricing Policy Division  
Wireline Competition Bureau