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

FCC 95-94

In the Matters of)	
)	
Safeguards to Improve the)	CC Docket No. 93-6
Administration of the Interstate)	RM 7736
Access Tariff and Revenue)	
Distribution Processes)	
)	
Consideration of NECA's)	AAD 95-34
Incentive Compensation Plan)	

**REPORT AND ORDER AND
ORDER TO SHOW CAUSE**

Adopted: March 3, 1995;

Released: March 8, 1995

By the Commission:

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I. INTRODUCTION

1. The National Exchange Carrier Association, Inc. ("NECA") is an association of local exchange carriers ("LECs") established in 1984, at the direction of the Federal Communications Commission, to administer important Commission programs.¹ These programs now include the common line ("CL") and traffic sensitive pools,² the universal service fund, the lifeline assistance program, and the long term support program.³ Our rules require LECs to report revenue, cost, and demand data to NECA so that NECA can administer these programs in accordance with our requirements.⁴

2. In 1989 and 1990, the Common Carrier Bureau ("Bureau") audited certain data that the Bell Operating Companies ("BOCs") had reported to NECA's CL pool during late 1988 and early 1989. That audit disclosed that several NECA directors appeared to have participated in an attempt to influence improperly the CL pool earnings for 1988 by inducing certain large LECs to report data to NECA that were inconsistent with our accounting, separations, and access charge rules. In a November 9, 1990 letter to

¹ MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241, 333-34 (1983)(MTS and WATS Third Report and Order).

² These pools allow participating LECs to share the risks of providing interstate services by charging uniform rates for each pool. These rates are based on the pool participants' collective costs and demand, and are contained in tariffs that NECA files for the pool participants based on data that the participants provide to NECA. The LECs collect CL and traffic sensitive revenue directly from their customers. The participants report this revenue along with their CL and traffic sensitive investment, expenses, and revenue to NECA, which distributes the revenue by first paying its own administrative costs, then reimbursing the participants for their CL and traffic sensitive expenses, and then distributing any residue among the participating LECs in proportion to their average net investment.

³ The universal service fund, lifeline assistance, and long term support programs share a common purpose of promoting affordable telephone service throughout the nation. The universal service fund helps carriers operating in high cost areas maintain low intrastate service rates in those areas. See 47 C.F.R. §§69.116, 69.603(c). The lifeline assistance program helps low income persons pay for telephone service. See 47 C.F.R. §§69.117, 69.603(d). The long term support program requires LECs that do not participate in the CL pool to contribute part of their revenue to that pool. The contributions let NECA maintain a nationwide average CL rate equivalent to the rate that would result if all LECs participated in the CL pool. See 47 C.F.R. §§69.2(y), 69.612.

⁴ 47 C.F.R. §§69.116(c), 69.117(c), 69.605(a).

NECA,⁵ we expressed concern regarding the directors' apparent misconduct. We required NECA to hire an independent auditor to recommend safeguards to prevent manipulation of NECA's processes.⁶ NECA hired Ernst & Young, which filed its report on this audit with the Commission on December 9, 1991.⁷ This report acknowledged NECA's improvement since the Bureau audit and recommended additional measures to improve the interstate access tariff and revenue distribution processes further.⁸ NECA has implemented many of the recommendations that required no Commission action and has asked us to act when Commission action was required.⁹

3. In the Notice of Proposed Rule Making ("Notice") in this Docket,¹⁰ we proposed to adopt those of the independent auditor's recommendations that we found warranted Commission action. Our proposals focused on the composition and operation of NECA's Board, on the relationship between NECA and this Commission, and on methods for strengthening NECA's internal operations. Sixteen parties filed comments on the Notice, and five parties replied.¹¹

4. In this Report and Order, we adopt many of our proposals. To bring independent views to NECA's deliberations and to help ensure that NECA complies with Commission requirements, we change the composition of NECA's Board. Effective January 1, 1996, NECA's Board will consist of five directors from outside the LEC industry, two directors representing the BOCs, two directors representing other LECs having annual operating revenues in excess of \$40 million, and six directors representing LECs having annual operating revenues of less than \$40 million. These directors will

⁵ Letter from Donna R. Searcy, Secretary, FCC, to Lawrence C. Ware, Chairman of the Board of Directors, NECA, 5 FCC Rcd 7183 (1990) (November 9 Letter).

⁶ Our letter also required NECA to retain an independent auditor to review other data that the BOCs had reported to NECA for 1989 and 1990. In companion Orders, we address the independent auditor's findings in this audit. See, e.g., Ameritech Operating Companies, Order to Show Cause, FCC 95-72 (released March 3, 1995).

⁷ Ernst & Young, Review and Recommended Pool Safeguards, AAD 91-24 (filed Dec. 9, 1991)(Safeguards Report).

⁸ The improvements included a new emphasis on rule compliance, changes to NECA's bylaws that make NECA's Board deliberations more systematic, and better methods for ensuring that the data LECs submit to NECA comply with Commission requirements. We discuss these improvements in subsequent portions of this Order.

⁹ For instance, after the independent auditor recommended that the NECA Board include directors from outside the LEC industry, NECA petitioned the Commission for a rule change to add two outside director positions to its Board.

¹⁰ Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, Notice of Proposed Rulemaking, 8 FCC Rcd 1503 (1993) (Notice).

¹¹ Appendix A lists the commenters and replies, as well as the short names this Order uses to identify the parties.

serve one-year terms, but, if they seek reelection, must face contested elections at least every three years. We require that each NECA Board committee include at least one outside director, and we eliminate restrictions on the membership of NECA's CL and traffic sensitive committees.

5. We reiterate that, in preparing interstate access tariff filings and distributing interstate revenue, NECA must correct any data that it reasonably believes do not comply with our rules. To help ensure that NECA receives complete and accurate data from LECs, we require that responsible LEC officers or employees certify data submissions to NECA. We order NECA to show cause why we should not require it to amend its incentive compensation plan for its officers and employees to eliminate any incentives that may reward rule violations. We also require NECA to report annually to this Commission on the results of its cost study review process, but we decline to require LECs that do not participate in NECA's pools to obtain independent audits of their costs studies. We also decline to require NECA to provide the Commission with on-line access to NECA data bases at this time.

6. In taking these actions, we emphasize that we have no wish to superintend NECA's day-to-day operations, and we do not believe that our actions intrude upon NECA's managerial discretion. NECA, however, is an organization established at the Commission's direction, whose structure and principal functions are specified by Commission rules.¹² We believe that we must ensure that NECA is discharging its responsibilities under our rules if we are to discharge our own responsibility to ensure the reasonableness of interstate telephone rates.

II. COMPOSITION OF NECA'S BOARD

A. Number of Outside Directors and Overall Composition

1. Background

7. Section 69.602 of our rules¹³ states that NECA's Board shall consist of fifteen directors, of whom three are selected by and represent the BOCs, three are selected by and represent other LECs having annual operating revenues in excess of \$40 million, and nine are selected by and represent LECs having annual operating revenues of less than \$40 million. These directors are referred to as subset I, subset II, and subset III directors, respectively, or collectively as industry directors. They are elected for one-year terms that begin on the first of January following their election. Since January 1, 1992, two additional directors from outside the LEC industry have served on NECA's Board pursuant

¹² See 47 C.F.R. §§69.601-69.612.

¹³ 47 C.F.R. §69.602.

to waivers granted by the Bureau.¹⁴ NECA's members have elected these outside directors.

8. Prior to the completion of the Safeguards Report, NECA filed a petition for rulemaking to amend Section 69.602 to add two directors from outside the telephone industry to NECA's Board. In the Notice, we tentatively concluded that we should amend Section 69.602 to add at least two permanent outside director positions to NECA's Board.¹⁵ We also requested comment on whether we should change that Board's composition and, in particular, on whether a Board composed of three outside directors, two subset I directors, two subset II directors, and six subset III directors would improve NECA's administrative processes.¹⁶

2. Comments

9. Many commenters support the permanent addition of outside directors to NECA's Board.¹⁷ These commenters state that outside directors would bring a different perspective to Board deliberations,¹⁸ force the LEC Board members to clarify their own positions in the process of educating the outside directors,¹⁹ help assure that NECA's members comply with Commission's rules,²⁰ and increase public confidence in NECA's processes and overall management.²¹ While most of these commenters maintain that we should add two outside directors, GCI asserts that three or more outside directors would

¹⁴ Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, 9 FCC Rcd 2042 (Com. Car. Bur. 1994)(1994 Waiver Order); Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, 8 FCC Rcd 7580 (Com. Car. Bur. 1993); Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, 7 FCC Rcd 4401 (Com. Car. Bur. 1992); Expansion of the NECA Board to Include Two Directors from Outside the Telephone Industry, 6 FCC Rcd 5403 (Com. Car. Bur. 1991).

¹⁵ Notice, 8 FCC Rcd at 1505, para. 9.

¹⁶ Id. at 1505, para. 11.

¹⁷ ALLTEL Comments at 2; Ameritech Comments at 2; Bell Atlantic Comments at 1; CHA Comments at 6; GCI Comments at 2; ICORE Comments at 4-5; NARUC Comments at 4-5; NECA Comments at 10-11 & NECA Reply Comments at 2; NTCA Comments at 7, at 21 & NTCA Reply Comments at 2; OPASTCO Comments at 3; SWBT Comments at 2; USTA Comments at 3.

¹⁸ ALLTEL Comments at 2; Bell Atlantic Comments at 1; CHA Comments at 6; NARUC Comments at 4; NECA Comments at 11; NTCA Comments at 7; SWBT Comments at 2.

¹⁹ Ameritech Comments at 2.

²⁰ ALLTEL Comments at 2; CHA Comments at 6.

²¹ NARUC Comments at 4-5.

reduce each outside director's workload on NECA committees.²²

10. Ameritech maintains that the Commission should reduce NECA's Board from seventeen to eleven members. Ameritech suggests that a Board this size should have two outside directors, two subset I directors, two subset II directors, and five subset III directors. Ameritech contends that this configuration would preserve the voting balance among the three subsets and would permit obvious cost savings. Ameritech states that an eleven-member Board would be large enough because the Board's workload has decreased, participation in NECA's pools has declined, and the amount of money the Board must administer has decreased.²³

11. Other commenters argue that the Commission should not reduce the number of subset I, subset II, or subset III directors.²⁴ NECA and NTCA dispute Ameritech's premise that the time and effort needed to resolve pooling issues has decreased.²⁵ NECA explains that the resolution of many complex issues, such as those raised by signalling system 7 implementation, require extensive review by NECA's Board.²⁶ NTCA maintains that a smaller Board would not reduce NECA's costs. NTCA also states that each Board member contributes a significant perspective to the Board and that fewer directors would decrease the Board's collective knowledge.²⁷ Staurulakis argues that the Commission should not dilute the voting power and representation of the subset III companies.²⁸ ICORE states that displacing existing directors to add more than two outside directors would create unnecessary chum within NECA's Board and would make it less effective.²⁹

3. Discussion

12. NECA has improved its administrative processes considerably since we reprimanded it, in our November 9 Letter, for the apparent failures of several NECA

²² GCI Comments at 2.

²³ Ameritech Comments at 2-3.

²⁴ ALLTEL Comments at 1-2; Bell Atlantic Comments at 1; CHA Comments at 6; ICORE Comments at 5; JSI Comments at 2-3; OPASTCO Comments at 3-4; NECA Comments at 8, 11-13; NTCA Comments at 8; SWBT Comments at 2; USTA Comments at 3; UTA Comments at 1-2.

²⁵ NECA Reply Comments at 5; NTCA Comments at 3-4.

²⁶ NECA Reply Comments at 5.

²⁷ NTCA Reply Comments at 3-4.

²⁸ Staurulakis Comments at 2.

²⁹ ICORE Comments at 5.

directors to discharge their responsibilities under Commission rules and of the Board as a whole to display sufficient vigilance with regard to those directors' actions. We believe that this improvement stemmed, in large part, from NECA's constructive response to that letter. As the independent auditor found, NECA's employees "have a strong and sincere commitment to the integrity of NECA and to restoring the public's perception of that integrity."³⁰ This commitment has manifested itself in NECA's voluntary implementation of many of the independent auditor's recommendations.

13. We also believe that the presence of outside directors on NECA's Board since January 1, 1992 has contributed to NECA's improved administrative processes. Those directors have brought independent perspectives to NECA's deliberations and reduced any tendency there may have been for NECA not to comply with Commission requirements. The permanent addition of outside directors to NECA's Board should preserve these gains.

14. The only questions on this record are whether we should add more than two outside directors, as GCI suggests, and reduce the number of subset I, subset II, or subset III directors, as Ameritech urges. In this regard, we find that two outside director positions are insufficient to ensure that the outside directors are able to contribute independent views on each issue NECA faces, many of which are highly technical. We also find that the present composition of two outside directors serving pursuant to waiver and fifteen industry directors may leave the outside directors at a severe disadvantage in NECA Board deliberations. Additional outside director positions would appear to be a useful, and perhaps essential, measure for ensuring that NECA always gives rule compliance the highest priority.

15. Based on the understanding we have acquired of NECA's processes in this proceeding and in other proceedings regarding NECA,³¹ we believe that five outside directors would avoid problems similar to those that led to the independent audit. While no single Board composition is perfect, we also conclude that five outside directors, two subset I directors, two subset II directors, and six subset III directors would create a balanced Board in which the outside directors, the subset I and II directors, and the subset III directors would exert roughly equivalent influence in Board deliberations.³² In addition to ensuring the effectiveness of the outside directors as a group, this composition will reduce the Board to the fifteen members provided for in Section 69.602 of our rules while preserving the present proportional relationship among the various industry groups. Therefore, we amend Section 69.602 of the rules to require that Board configuration. To

³⁰ Safeguards Report, supra at 26.

³¹ These other proceedings include those discussed in note 6, supra.

³² Because most subset I and II companies do not participate in NECA's CL and traffic sensitive pools, these companies have similar interests.

give NECA reasonable time to prepare for this change, we make it effective as of January 1, 1996. Pending that effective date, NECA's Board will include two outside directors pursuant to the Bureau's 1994 Waiver Order.³³

B. Eligibility Criteria for Outside Directors

1. Background

16. Our rules do not set eligibility criteria for NECA directors. The directors elected pursuant to Section 69.602 have been employees of NECA member companies. In its petition for rulemaking, NECA proposed to make current or former officers or employees of NECA or any of its members, and anyone related to such persons, ineligible to become outside directors, and to require that outside directors have no business relationships or other interests that could interfere with their judgment. In the Notice, we proposed to adopt these criteria. We stated that they would exclude current federal and state regulators as well as former officers and employees of NECA and its member LECs from becoming NECA outside directors.³⁴

2. Comments

17. Several commenters support the proposed criteria. These parties contend that those criteria would prevent outside directors from having conflicts of interest from business or other sources. They assert that outside directors who meet the criteria will be independent and objective.³⁵ NECA argues, however, that the proposed criteria are too restrictive because they would make relatives of LEC employees ineligible to become outside directors. In NECA's view, individuals with family relationships to current or former officers or employees of NECA or NECA members should be eligible to hold such positions, unless the relationships could interfere with their judgment.³⁶ SWBT supports this position.³⁷

3. Discussion

18. We adopt the proposed eligibility criteria identified in the Notice, subject to minor revisions. The criteria we adopt should provide a large pool of qualified candidates

³³ See 1994 Waiver Order, 9 FCC Rcd at 2042, para. 6.

³⁴ Notice, 8 FCC Rcd at 1505, para. 14.

³⁵ ALLTEL Comments at 2-3; Ameritech Comments at 3; Bell Atlantic Comments at 1; GCI Comments at 2; ICORE Comments at 5-6; NTCA Comments at 8; USTA Comments at 4.

³⁶ NECA Comments at 14.

³⁷ SWBT Comments at 3.

able to exercise independent judgment as outside directors. We continue to believe that current federal and state regulators should not be eligible, because they might find it impossible to act as NECA directors without compromising confidential information obtained in course of their official employment and without encountering substantial conflicts of interest.³⁸ In addition, we believe that current and former officers and employees of NECA and its members may be too partial to LEC interests, or could be too vulnerable of perceptions of partiality, to function as independent outside directors. In contrast, many relatives of such officers and employees should be able to exercise independent judgment as NECA outside directors. We believe, however, that spouses of current LEC officers and employees have a financial interest that could interfere with the exercise of independent judgment as outside directors.³⁹ Subject to these exceptions, we agree with NECA that relatives of LEC officers and employees should be able to serve as outside directors, if they meet the eligibility criteria, and we do not exclude all relatives from eligibility.

C. Selection of Outside Directors

1. Background

19. In its petition for rulemaking, NECA described the procedures it intended to use to select outside directors. NECA proposed that the election committee of its Board would screen outside director candidates after soliciting nominees from the business, professional, financial, and academic communities. NECA also proposed to list those nominees its Board deemed qualified on the ballot for NECA's annual election and to have its members select outside directors from among the listed candidates.⁴⁰ In the Notice, we stated that these procedures appeared reasonable, but we expressed concern that they might not provide NECA's members with an opportunity to choose from among a range of candidates for outside directors. Therefore, we invited comment on whether we should require NECA's Board to nominate multiple candidates for each outside director position.⁴¹

2. Comments

20. Several commenters support the procedures NECA proposed for selecting outside director candidates. These commenters argue that we should leave the selection

³⁸ Notice, 8 FCC Rcd at 1505, para. 14.

³⁹ NECA's screening of outside director candidates should identify financial and other interests that could interfere with the exercise of independent judgment as an outside director.

⁴⁰ NECA Petition at 4-5.

⁴¹ Notice, 8 FCC Rcd at 1506, para. 17.

of outside directors to NECA's discretion.⁴² NECA contends that once its members elect an outside director, that person should be encouraged to run for reelection unopposed to ensure continuity on the NECA Board. NECA maintains that the high eligibility standards NECA proposed would make it difficult to attract multiple candidates for each outside director election and that it is unusual to require directors to run annually against multiple candidates. Nevertheless, NECA promises to hold elections with multiple candidates periodically and in any year in which an incumbent outside director chooses not to run for reelection.⁴³ NECA states that contested outside director elections every three years or when an unforeseen vacancy occurs would assure a balanced Board that combines experience and continuity with ample turnover.⁴⁴

21. Other commenters favor requiring NECA to nominate a specified number of candidates for each outside director position. GCI argues that there should be at least two candidates for each outside director position and that finding a minimum of six candidates should not be difficult.⁴⁵ Ameritech maintains that no more than three candidates should be nominated for each outside director position.⁴⁶ SWBT agrees that the outside director elections should be contested, but only if the Commission creates sufficiently long terms or allows for outside directors to run unopposed for some shorter term.⁴⁷ ICORE contends that requiring NECA to list multiple candidates for each outside director election would eliminate a normal Board prerogative and would reduce NECA's flexibility to respond to unforeseen circumstances.⁴⁸

3. Discussion

22. Although we agree that the procedures for selecting outside directors should generally be left to NECA's discretion, we believe that we have a responsibility to ensure that those procedures are reasonable. In the Notice, we stated that the procedures NECA proposed appeared reasonable, but we expressed concern that they might not assure NECA's members an opportunity to choose among a range of candidates for each

⁴² ICORE Comments at 6-7; NECA Comments at 15-17; NTCA Comments at 9; USTA Comments at 4.

⁴³ NECA Comments at 15-17; NECA Reply at 7.

⁴⁴ Letter from Robert E. Lloyd to Bill Caton, Acting Secretary, Federal Communications Commission, Attachment at 5, CC Docket No. 93-6 (Aug. 31, 1994)(August 1994 Ex Parte Letter).

⁴⁵ GCI Comments at 2.

⁴⁶ Ameritech Comments at 3.

⁴⁷ SWBT Comments at 4.

⁴⁸ ICORE Comments at 6.

outside director position.⁴⁹ In response to this concern, NECA now represents that it will hold contested elections for each outside director's seat every three years and in years in which an incumbent outside director does not choose to run for reelection.⁵⁰ We find this approach reasonable and we will incorporate it into our rules.

D. Terms of Office

1. Background

23. Section 69.602 of our rules sets one-year terms for subset I, II, and III directors, and the outside directors elected pursuant to Bureau waivers have also served one-year terms. In the Notice, we invited comment on whether we should set two-year terms for all NECA directors. We also invited comment on whether to adopt staggered terms for any directors serving two-year terms.

2. Comments

24. In its comments, NECA states that subset I and subset II companies rotate directors' seats among themselves, with each director generally serving three one-year terms. NECA also states that its subset III members have an open nomination process under which incumbents that wish to run again appear on the annual ballot along with any qualified subset III representative that obtains 25 authorized signatures.⁵¹

25. Several commenters argue that this process is working well and should not be changed.⁵² ICORE maintains that rules governing term limits and overlapping director positions would reduce the Board's flexibility to manage what should be its own internal processes.⁵³ USTA states that NECA should be able to control its own operations and governance.⁵⁴ NECA contends that its current nomination and election criteria for the industry directors make staggered terms unnecessary.⁵⁵ NTCA argues that there are no overriding regulatory concerns requiring the Commission to dictate the length of directors' terms and that the Commission should allow NECA to adopt two-year, staggered terms

⁴⁹ Notice, 8 FCC Rcd at 1506, para. 17.

⁵⁰ NECA Comments at 15-17; NECA Reply at 7; Ex Parte Letter, Attachment at 5.

⁵¹ NECA Comments at 16.

⁵² E.g., Bell Atlantic Comments at 2; ICORE Comments at 6-7; NECA Comments at 8.

⁵³ ICORE Comments at 7.

⁵⁴ USTA Comments at 3.

⁵⁵ NECA Comments at 17.

for all director positions.

26. Other commenters support alternative processes. GCI argues that outside directors should serve for a minimum of two years and have staggered terms, but that the industry directors should continue to serve one-year terms.⁵⁶ Ameritech states that the Commission should consider limiting directors to one two-year term, with one additional term being granted those elected Chairman or Vice Chairman of NECA's Board.⁵⁷ SWBT suggests that, for continuity's sake, the Commission should permit outside directors' terms to be longer than two years or allow those directors to be reelected annually without opposition.⁵⁸

3. Discussion

27. In this Order, we permanently add four seats for outside directors to the NECA Board and permit outside directors to run unopposed for reelection to second and third terms. We believe that this structure makes two-year terms for outside directors unnecessary. The purpose behind such terms would be to enhance the outside directors' ability to ensure that NECA initiatives are carried through to completion in accordance with Commission requirements.⁵⁹ Two-year terms, however, would have only a marginal effect on that ability and would reduce the system's flexibility. In contrast, having four outside directors, who are eligible for reelection to additional terms, should provide a degree of continuity among the outside directors and help them assure against rule violations. Although newly elected outside directors may not be familiar with NECA initiatives, we expect that, in most years, one or more outside directors would be reelected. Any holdover outside directors would be able to help incoming outside directors understand those initiatives. In these circumstances, we decline to specify two-year terms for outside director positions.

28. We also believe that two-year terms are not needed to ensure the effectiveness of the industry directors. Because those directors may continue to be LEC employees, each incoming director should have sufficient familiarity with NECA initiatives to make an immediate contribution. Therefore, we retain one-year terms for industry director positions.

E. Voting Privileges on Committees

⁵⁶ GCI Comments at 2.

⁵⁷ Ameritech Comments at 4.

⁵⁸ SWBT Comments at 4-5.

⁵⁹ See Notice, 8 FCC Rcd at 1506, para. 19.

1. Background

29. The NECA Board has eleven committees: executive; CL; traffic sensitive; audit; average schedule; billing and collection; budget and finance; communications; compensation; election; and lifeline and universal service. Section 69.602(e) of our rules restricts voting membership on the CL and traffic sensitive committees to directors from companies that participate in the associated pools. After the independent auditor recommended that these committees be expanded to include outside directors as well as directors from non-pooling LECs,⁶⁰ the Bureau waived Section 69.602(e) and authorized the outside directors to serve as voting members of all NECA Board committees, beginning with the January 1, 1992 through December 31, 1992 term.⁶¹ The Bureau deferred to this proceeding consideration of NECA's proposal to allow directors from non-pooling LECs to vote on the CL and traffic sensitive committees.⁶²

30. In the Notice, we proposed to require that each NECA Board committee include at least one outside director, and that both the CL and traffic sensitive committees include at least one director from non-pooling LECs. We stated that having outside directors serve as voting members of NECA committees would increase the committees' accountability and help the Board as a whole monitor the committees' actions. We also stated that directors from non-pooling LECs would broaden the perspectives within the CL and traffic sensitive committees.⁶³

2. Comments

31. The commenters generally support our proposals to include at least one outside director as a voting member of each NECA committee⁶⁴ and at least one director from non-pooling LECs as a voting member of both the CL and traffic sensitive committees.⁶⁵ Ameritech argues that an outside director and a director from a non-pooling LEC should be included on all NECA committees that deal with NECA's regulated operations.⁶⁶ GCI maintains that the CL and traffic sensitive committees should include

⁶⁰ See Safeguards Report, *supra* at 28-29.

⁶¹ E.g., Expansion of Voting Membership on Voluntary Access Tariff Committees, 7 FCC Rcd 2050, para. 6 (1991) (Voting Membership Order).

⁶² Id. at 2050-51, para. 7.

⁶³ Notice, 8 FCC Rcd at 1506, para. 22.

⁶⁴ E.g., Bell Atlantic Comments at 2, n.7; ICORE Comments at 7; NECA Comments at 18; NTCA Comments at 9.

⁶⁵ E.g., ICORE Comments at 7; NECA Comments at 18; NTCA Comments at 9; SWBT Comments at 5.

⁶⁶ Ameritech Comments at 4.

at least two outside directors.⁶⁷ SWBT states that including representatives from non-pooling LECs on the CL and traffic sensitive committees would go far toward maintaining equitable representation within NECA.⁶⁸ ICORE states that in lieu of amending Section 69.602(e) as proposed, the Commission could eliminate that rule to give the NECA Board the freedom to make committee assignments on its own.⁶⁹

3. Discussion

32. As we stated in the Notice, much of NECA's work is done in its committees.⁷⁰ We believe that each NECA committee has an important role to play in ensuring that NECA complies with Commission requirements. Including at least one outside director as a voting member of each of these committees should help ensure that NECA fulfills its responsibilities to the Commission. For instance, although NECA's billing and collection committee deals only with activities that are classified as nonregulated for federal accounting purposes,⁷¹ that committee is a primary vehicle for assuring that NECA's billing and collection operations are restricted to activities that have been expressly authorized by Commission rule or order.⁷² Therefore, we amend Section 69.602 to require that NECA include at least one outside director on each committee of its Board. NECA, of course, remains free to include one or more additional outside directors on each of its committees.

33. We also find that, as we stated in the Notice,⁷³ including at least one director from non-pooling LECs as a voting member of both the CL and traffic sensitive committees would broaden the perspectives of those committees and assure a fairer representation among the committees' members. Therefore, we amend Section 69.602 to require that the CL and traffic sensitive committees include at least such director.

F. Prohibition of "Ad Hoc" Committees

34. In the Safeguards Report, the independent auditor recommended that the

⁶⁷ GCI Comments at 3.

⁶⁸ SWBT Comments at 5.

⁶⁹ ICORE Comments at 7.

⁷⁰ Notice, 8 FCC Rcd at 1506, para. 22.

⁷¹ Of the remaining committees, four (CL, traffic sensitive, average schedule, and lifeline and universal service) address activities that are classified as regulated for federal accounting purposes, and six (executive, audit, budget and finance, communications, compensation, and election) support both regulated and nonregulated activities.

⁷² See 47 C.F.R. §69.603(a).

⁷³ Notice, 8 FCC Rcd at 1506, para. 22.

Board prohibit ad hoc committees, because unlike "standing committees," such committees did not maintain official records of committee deliberations and decisions. In response to this recommendation, NECA amended its bylaws to require that all Board committees be appointed by Board resolution, keep formal minutes, and report all their actions to the full Board. In the Notice, we found that these amendments should help assure that NECA administers the interstate access tariff and revenue distribution processes in accordance with our rules. We observed, however, that NECA's bylaws permit NECA committees to establish subcommittees, without making clear whether the subcommittees also must be appointed by committee resolution, keep formal minutes, and report all their actions to a full committee. We proposed to require NECA to amend its bylaws to specify these procedures.⁷⁴ In response to this proposal, NECA amended its bylaws to require that each of its subcommittees be created through committee resolution, keep formal minutes, and report all its actions to the committee that created it.⁷⁵ In view of this amendment, we take no further action on this matter.

G. Other Matters

35. Commenters suggest that we should impose term limits on NECA directors,⁷⁶ open NECA Board meetings to interested parties,⁷⁷ and require NECA to file the minutes of its Board meetings with the Commission and make those minutes available to interested parties.⁷⁸ In light of the actions we take herein, we see no need to act on these suggestions at this time.

III. NECA'S OPERATIONS

A. NECA's Overall Responsibilities

1. Background

36. In the Notice, we stated our expectation that NECA will make reasonable efforts to interpret our rules correctly and to implement those interpretations. We observed that, in the course of its operations, NECA receives much data that LECs must assemble to comply with our accounting, separations, and access charge rules. We recognized that NECA cannot review each LEC submission in minute detail and that NECA has adopted review standards, methods, and procedures designed to detect LEC

⁷⁴ Id. at 1507, paras. 23-24.

⁷⁵ NECA Comments at 19.

⁷⁶ Ameritech Comments at 3.

⁷⁷ GCI comments at 3.

⁷⁸ Id.

noncompliance. We stated that if, as a result of its review, NECA concludes that LEC data do not comply with our rules, NECA must correct revenue requirement and revenue distribution computations that include the noncompliant data.⁷⁹

2. Comments

37. Several commenters dispute our statement that NECA must correct LEC-submitted data in its revenue requirement and revenue distribution computations. Bell Atlantic and SWBT contend that our statement must be rejected because it delegates regulatory authority to NECA, in violation of both our purpose in creating NECA and LEC rights to have their rule interpretations reviewed by the Commission.⁸⁰ ICORE argues that allowing NECA to correct data that LECs submit assumes without adequate foundation that NECA's staff is more knowledgeable than highly skilled, well-trained, and conscientious LEC personnel and the consulting firms upon whom the LECs rely to develop their submissions to NECA.⁸¹ NTCA asserts that NECA, NECA pool participants, and other LECs should all be allowed to weigh the advantages and disadvantages of different interpretations of Commission rules and implement the ones that most benefit their own collective interests.⁸² GCI, however, contends NECA must exercise its own independent interpretative judgment and implement that interpretation.⁸³

3. Discussion

38. We reiterate our requirement that, in preparing interstate access tariff filings and distributing interstate revenue, NECA must correct any data that it reasonably believes do not comply with our rules. The arguments against that requirement assume a role for NECA different from that which the Commission has prescribed for NECA ever since its creation. Prior to divestiture, AT&T had acted as the tariff filing agent for the BOCs and other LECs, and had distributed revenues among those LECs using its "Division of Revenues" and settlements processes. When AT&T agreed to divest the BOCs, the Commission recognized that it would be inappropriate for AT&T to continue these roles in a post-divestiture environment. The Commission proposed a LEC association to develop interstate access tariffs and administer interstate access revenue pools. The Commission recognized that this association would require:

⁷⁹ Notice, 8 FCC Rcd at 1507, paras. 25-26.

⁸⁰ Bell Atlantic Comments at 3, citing MTS and WATS Market Structure, Memorandum Opinion and Order, CC Docket No. 78-72, Phase I, 97 FCC 2d 682, 754-55, para. 180 (1983)(MTS and WATS Reconsideration Order); SWBT Comments at 5-6.

⁸¹ ICORE Comments at 8-9.

⁸² NTCA Comments at 18.

⁸³ GCI Comments at 4.

[B]oth a governing board to establish policy and a staff to implement that policy and to perform the day-to-day administration of access charges. The access plan we ultimately adopt would, of course, determine the nature of these policies and administrative tasks. The governing board might, in appropriate circumstances, also review staff actions challenged by individual members.⁸⁴

39. Thereafter, the Commission mandated the association's creation, and stated that it would "prepare and justify the [access charge] tariffs on behalf of" pool participants and "compute the distributions each participant is entitled to receive from the pool."⁸⁵ The Commission required that the tariffed charges "be computed, assessed, and collected and [that] revenues from such charges...be distributed as provided" in the access charge rules.⁸⁶ These requirements remain in effect today.⁸⁷

40. This history makes clear that when the Commission created NECA, it contemplated that NECA would implement the access charge system in accordance with Commission rules. To prepare access charge tariffs, NECA must use data that complies with our accounting, cost allocation, jurisdictional separations, and access charge rules. To justify its tariff filings, NECA must believe in good faith that the data in the filings comply with those rules. To distribute access charge revenues, NECA also must use data that comply with those rules.

41. Some commenters would have us depart from this structure so that LECs that disagree with NECA's rule interpretations could have their own interpretations incorporated into NECA's tariff filings or receive revenue based on those interpretations. This we refuse to do for several reasons. First, it would impose unnecessary burdens on the tariffing process. NECA's CL tariff filings, for instance, reflect data from over 800 LECs. Allowing those filings to reflect multiple interpretations of Commission rules would needlessly complicate our review and interested parties' review processes.

42. Second, the data each LEC reports to NECA affect not only its own earnings, but also the earnings of other carriers. For instance, because NECA distributes CL revenue based on each pool participant's CL costs,⁸⁸ each increase in an individual

⁸⁴ MTS and WATS Market Structure, Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135, 150, para. 52 (1982)(internal citation omitted).

⁸⁵ Id. at 333, para. 339.

⁸⁶ See MTS and WATS Order, 97 FCC 2d at 344 (adopting Section 69.1(b) of the Commission's rules).

⁸⁷ See 47 C.F.R. §69.1(b).

⁸⁸ See supra, n.2.

participant's reported costs reduces each other participant's CL revenue, at least temporarily. It would be unfair to those participants' that implement NECA's rule interpretations to allow more aggressive participants to increase their revenue at the group's expense.

43. Third, although LECs reduce the amounts they receive from NECA when they reduce their reported CL costs, experience has shown that such reductions could be used to disguise improper concerted action. To ensure that this does not happen, we decline to allow NECA to depart from its own good faith interpretations of our rules without Commission approval.

44. We reject the argument that requiring NECA to correct inaccurate data improperly delegates regulatory authority to NECA. We retain our full authority to review NECA's tariff filings in accordance with constitutional and statutory standards. LECs that disagree with NECA's interpretations of our rules are free to present their arguments to the Commission, either in comments on those filings or petitions for declaratory rulings.⁸⁹ Absent Commission action to the contrary, NECA must implement its rule interpretations.

B. On-line Access to NECA Data Bases

1. Background

45. NECA maintains computer-based files of data that LECs provide pursuant to our rules. These files include cost and demand data that NECA uses to prepare interstate access tariffs and to distribute revenues received under those tariffs. These files constitute a relatively complete source of company-specific data on NECA pool participants. NECA computer-based files also contain extensive information that pool non-participants submit to NECA to enable it to administer the universal service fund, lifeline assistance, and long term support programs.⁹⁰

46. In the Notice, we proposed that NECA provide us with on-line, dial-up access to these computer-based files to enhance our ability to regulate the activities and programs administered by NECA. We acknowledged, however, that before such access could be provided, safeguards would be necessary to guarantee data base integrity and prevent unauthorized access.⁹¹

2. Comments

⁸⁹ For this reason, the above structure does not constitute an improper delegation of governmental power to NECA. See MTS and WATS Reconsideration Order, 97 FCC 2d at 754-55, para. 180.

⁹⁰ We describe these programs in footnote 3, supra.

⁹¹ Notice, 8 FCC Rcd at 1508, para. 32.

47. NECA and a majority of the LECs strongly oppose granting the Commission access to NECA's files.⁹² They believe that data access is unnecessary because the Commission can currently request and obtain data at any time.⁹³ These commenters assert that the computer data is preliminary information and therefore unreliable and confusing.⁹⁴ They also assert that the Commission does not require non-pooling LECs to provide on-line access to their data bases, that requiring on-line access to NECA's data bases would provide incentives for small LECs to leave the pools, and that such a requirement would be inconsistent with the Commission's efforts to minimize burdens on small telephone companies.⁹⁵

48. On the other hand, AT&T, ICORE, GCI, JSI and Ameritech support the Commission's acquiring on-line access to NECA's data base, subject to proper safeguards. These commenters believe that having data access would aid the overall process. They contend that such access would enable the Commission to monitor NECA's activities more closely and assert that NECA's data will be more accurate at earlier stages, as opposed to 24 months later.⁹⁶ They emphasize that data access would enable the Commission to obtain data at any time, which would eliminate delays spent waiting to receive requested information from NECA.⁹⁷

49. In addition, AT&T suggests that not only should the Commission be allowed data access but that the interexchange carriers also should have on-line access to selected NECA data files, subject to proper authorization and safeguards.⁹⁸ AT&T believes that allowing carriers access would increase data accuracy because carriers have a strong incentive to scrutinize such information.⁹⁹ AT&T also asserts that data access would allow individuals to conduct an analysis of the changing cost and revenue requirement base, to develop multi-year trend analyses, and to provide valuable insight

⁹² NECA Comments at 25-27; ALLTEL Comments at 5-6; Bell Atlantic Comments at 3; NTCA Comments at 19-20, NECA Reply Comments at 4; SWBT Comments at 8; USTA Comments at 4-5; and VTA Comments at 1-2.

⁹³ NECA Comments at 26; Bell Atlantic Comments at 3; SWBT at 8, SWBT Reply Comments at 4; NTCA Comments at 19-20, NTCA Reply Comments at 4; USTA comments at 4.

⁹⁴ SWBT Comments at 8, SWBT Reply at 4; NECA Comments at 26; ALLTEL Comments at 5-6; Bell Atlantic Comments at 3; USTA Comments at 2, 5; NTCA Comments at 19-20.

⁹⁵ NECA Comments at 26; ALLTEL Comments at 5-6; VTA Comments at 1; USTA Comments at 2.

⁹⁶ NECA procedures allow the LECs 24 months to reconcile and correct data submitted to the CL pool.

⁹⁷ AT&T Comments at 2-4; ICORE Comments at 10; GCI Comments at 4; and JSI Comments at 5; Ameritech Comments at 5.

⁹⁸ AT&T Comments at 2-4.

⁹⁹ Id. at 2-3.

into the cost growth characteristics of individual LECs and of the universal service fund.¹⁰⁰

50. GCI also believes that the Commission should grant all interested parties on-line access to NECA's data files.¹⁰¹ GCI asserts that data access would help both federal and state regulatory commissions in their evaluation of LECs' costs and separations studies, and help ensure that LECs comply with the Commission's rules.¹⁰²

51. SWBT opposes the recommendations of AT&T and GCI, and states that in an era in which distinctions between interexchange carriers and LECs are blurring, unlimited data access would provide interexchange carriers with a significant and unwarranted competitive advantage.¹⁰³ NTCA states that it is contrary to common business practices for business customers such as the interexchange carriers, in this instance, to have direct access to the internal business matters of a company.¹⁰⁴

3. Discussion

52. In the past, we have routinely obtained much data from NECA through data requests. We see no compelling need to depart from that approach at this time. If circumstances change and on-line access becomes necessary, we can address these problems in a separate proceeding.

53. In addition, before on-line access becomes feasible, a number of technical questions must be resolved. First, many of the data bases NECA maintains are working files that evolve, during NECA's review processes, from preliminary data to NECA's final figures. At this time, we see no advantage flowing from routine, on-line access to data before NECA completes its review processes. In addition, the data are aggregated in different ways and, we believe, maintained in different formats. If we had a particular data requirement, we would need the guidance of the NECA staff to determine which NECA data files might satisfy that requirement, thus, negating in many instances the possibility of quick access to data. Finally, if we were to obtain on-line access, we would have to establish safeguards to guarantee data base integrity and prevent unauthorized access. The record in this proceeding does not make clear what those safeguards might be.

¹⁰⁰ Id. at 3.

¹⁰¹ GCI Comments at 4.

¹⁰² Id. at 4-5.

¹⁰³ SWBT Reply Comments at 5.

¹⁰⁴ NTCA Reply Comments at 4-5.

C. Certification of Data Submitted to NECA

1. Background

54. As indicated previously,¹⁰⁵ NECA has a responsibility to take reasonable precautions to ensure that the data it uses in preparing interstate access tariff filings and distributing interstate revenue comply with our rules. To discharge this responsibility, NECA attempts to gather, analyze and disseminate information on our rules to its membership. These efforts are designed to give NECA's members sufficient time to reflect rule changes in the data submitted to NECA. NECA attempts to detect instances of noncompliance through various data review processes. In the Notice, we stated that it might help NECA detect rule violations if responsible LEC officers or employees were to certify whether data submitted to NECA comply with our rules. We invited comment on whether we should require such a certification and on how we might implement it for data submitted only in computer format.¹⁰⁶

2. Comments

55. NECA states that it currently requires LEC officers or general managers to certify all final cost study data, all USF data reports, and specific data submissions for which it deems certification necessary.¹⁰⁷ NECA argues that these requirements balance the administrative burdens on the LECs with the need to assure LEC compliance with the Commission's rules.¹⁰⁸ JSI and VTA oppose our establishing a certification requirement, because they believe that it is unnecessary. These commenters contend that a requirement that LECs certify all data submitted to NECA would be unworkable because most information LECs provide to NECA for tariffs involves estimates that cannot be certified. Consequently, these commenters contend that a certification requirement would not help detect instances of noncompliance.¹⁰⁹ GCI, however, maintains that a certification requirement would further the Commission's goal of ensuring that LEC data submissions comply with Commission rules.¹¹⁰ SWBT contends that such a requirement would place the responsibility for rule compliance where it properly belongs--on the

¹⁰⁵ See supra, Part III(A).

¹⁰⁶ Notice, 8 FCC Rcd at 1508, para. 37.

¹⁰⁷ NECA Comments at 27-28; Letter from Robert E. Lloyd, NECA, to Bill Caton, Acting Secretary, FCC, Attachment at 7 (Oct. 18, 1994)(October Ex Parte Letter).

¹⁰⁸ NECA Reply Comments at 18.

¹⁰⁹ JSI Comments at 5-6; VTA Comments at 1-2.

¹¹⁰ GCI Comments at 5.

carrier--rather than on NECA.¹¹¹

3. Discussion

56. After considering the comments, we require that data LECs submit to NECA shall be accompanied by a certification signed by the LEC officer or employee having overall responsibility for the preparation of the data. This certification may be based on information provided to the signing officer or employee by the employees who prepared the data. In the certification, the signing officer or employee shall state that the submission is accurate, complete, and consistent with the Commission's rules. We believe that this certification will improve the quality, completeness, and accuracy of the data provided NECA by underscoring the individual accountability of those responsible for providing the data to NECA. We also believe that this certification will impose no additional burden on LECs, because they already have an obligation to give NECA accurate and complete data that are consistent with our rules.

57. We recognize, however, that the certifying officer or employee cannot, in every instance, have personal knowledge of the completeness and accuracy of the data submission, and of the rule interpretations it reflects. At times, that person must rely on the representations of those who prepare the various component parts of the overall data submission. Therefore, our certification requirement recognizes that the certification may be based on the representations of other individuals who helped prepare the data submission.

D. Cost Study Review Process

1. Background

58. Our rules require LECs to use factors, such as "average cost per working loop," to divide their investments and expenses between regulated and nonregulated activities, between the interstate and state jurisdictions, and among the access elements.¹¹² To calculate these factors, LECs perform periodic studies that are referred to as cost studies. Among its responsibilities, NECA reviews the cost studies prepared by participants in the CL and traffic sensitive pools. At the time of the independent audit, the NECA staff checked each of these studies for data entry and methodological errors, and ran the study through NECA's jurisdictional cost allocation program to see if NECA's and the LEC's results agreed. NECA also attempted to identify the "riskiest" cost studies

¹¹¹ SWBT Comments at 8.

¹¹² See 47 C.F.R. §36.154(a).

for further review.¹¹³ This review was generally "streamlined,"¹¹⁴ but NECA conducted a limited number of on-site, cost study reviews each year.¹¹⁵

59. The independent auditor recommended that NECA redesign its process to provide greater assurance of LEC compliance with Commission rules. The independent auditor stated that NECA should do more selective and effective field reviews. According to the independent auditor, these on-site reviews should focus on compliance in areas where the audited LEC has demonstrated problems before or where the nature of the LEC's operations suggests "certain risk factors."¹¹⁶ In discussions with the Commission staff prior to release of the Notice, NECA indicated that it had refined and focused its cost study review efforts in response to the independent auditor's recommendations.

60. In the Notice, we invited NECA to state in its comments how it had improved its cost study review process and suggested that, after we reviewed this information, we might make additional proposals for strengthening NECA's cost study review process. We also invited comment on whether we should require NECA to report annually on the results of that process.¹¹⁷

2. Comments

61. In its comments, NECA states that it has made substantial efforts to improve its cost study review process since the independent audit began. According to NECA, these efforts include the application of its "streamlined" cost study validation procedures to all cost companies in 1992. NECA indicates that it has developed an additional review process that focuses on areas where there has been a rule change, a dispute regarding the Commission's requirements, or a history of noncompliance. NECA also states that it updates its cost study review process quarterly and that it is improving its procedures for measuring the adequacy of that process.¹¹⁸

62. Ameritech, ICORE, and VTA support a Commission requirement that NECA

¹¹³ NECA considered 14 factors in assessing risk. These factors included, inter alia, the size of the LEC's CL revenue requirement and whether the LEC's cost studies had received further review in the two preceding years. See Safeguards Report at 18.

¹¹⁴ This review, which NECA applied to about half the LECs in the CL pool each year, compares the data used and the results of the LEC's cost studies for two successive periods, calculates the absolute and percentage changes between the two periods, and calculates the potential effect of the changes on CL pool earnings. Id. at 16-17.

¹¹⁵ Id. at 19-21.

¹¹⁶ Id. at 33. The independent auditor does not identify what these risk factors should be. Id.

¹¹⁷ Notice, 8 FCC Rcd at 1509, paras. 44.

¹¹⁸ NECA Comments at 20-21.

submit its cost study review results annually.¹¹⁹ Ameritech and ICORE argue that reviewing those results would help the Commission measure NECA's effectiveness in securing compliance with the rules and keep the Commission informed of some issues raised in the administration of the pooling process.¹²⁰ VTA contends that the report should summarize review findings and not provide company-specific information.¹²¹

3. Discussion

63. Cost studies are important tools for determining the proper allocation of LEC costs. Using these studies, LECs apportion investment and expense between regulated and nonregulated activities, separate costs between the interstate and state jurisdictions, and apportion costs among interstate access elements. Cost studies involve significant data collection, analysis, reporting, and auditing. The larger carriers have the expertise and other resources to perform these studies efficiently. On the other hand, smaller carriers may lack the expertise or other resources needed to perform these studies for themselves. In some cases, they may be forced to hire outside consultants to perform them.

64. We believe that NECA's cost study review process is critical to ensuring that the pooling LECs' cost studies are reliable and consistent with Commission rules. In response to our invitation, NECA has described how it has improved its process in response to the Safeguards Report.¹²² We agree that these improvements strengthen the process. We believe that the process should continue to improve, and we believe that NECA now is committed to that end. So that we may stay informed of further changes to that process, we require NECA to submit an annual report on that process. This report will help us assess NECA's effectiveness in securing compliance with our rules and keep us informed of any issues NECA faces. The report will be due February 1 of each calendar year.

65. This report shall describe NECA's cost study review process for the preceding calendar year, highlighting any changes to the process made since the preceding report and explaining why the change was made, as well as the results of that process. The report shall also contain the following information for each cost study revision made or recommended by NECA that would change the respective carrier's annual CL or traffic sensitive revenue requirement by ten percent or more: the carrier's name; a detailed description of the revision; the dollar amount of the revisions; the impact of the revision

¹¹⁹ Ameritech Comments at 5; ICORE Comments at 13; VTA Comments at 3.

¹²⁰ Ameritech Comments at 5; ICORE Comments at 13.

¹²¹ VTA Comments at 3.

¹²² See supra, para. 65.

on the carrier's CL and traffic sensitive revenue requirements; and the carrier's total annual CL and traffic sensitive revenue requirements. We do not intend to classify this report as routinely available information. We will address any confidentiality issues related to information appearing in this report, if we receive a request for its disclosure.

E. Independent Audits for Non-pooling LECs

1. Background

66. Under our rules, LECs may leave NECA's CL and traffic sensitive pools, and may file their own interstate tariffs with the Commission.¹²³ In the Safeguards Report, the independent auditor recommended that the same cost study review standards, methods, and procedures apply to all LECs, regardless of pool participation.¹²⁴ According to the independent auditor, applying more stringent requirements to pool participants than to non-participants may drive LECs from the NECA pools. The independent auditor suggested that, if the Commission lacks the resources to perform cost studies for all the LECs, it could "outsource" to NECA the responsibility for reviewing the cost studies of small LECs that have elected not to participate in the pools.

67. In the Notice, we determined that we could not properly delegate to NECA the responsibility for reviewing LEC cost studies that do not affect NECA's revenue requirement or revenue distribution computations.¹²⁵ We expressed concern, however, that LECs may leave NECA's pools to avoid NECA's review process. Therefore, we invited comment on whether we should require a sample of rate of return LECs that file their own tariffs to retain independent auditors to report annually on the sufficiency of those LECs' cost studies. We also invited comment suggesting alternative measures that might achieve comparable benefits at lower cost.¹²⁶

2. Comments

68. Many commenters oppose the Commission's requiring a randomly selected set of LECs that file their own tariffs to retain independent auditors to report annually on the sufficiency of the LECs' cost studies.¹²⁷ They assert that, because the LECs' filings are already scrutinized, independent audits are unnecessary. They explain that the tariffs

¹²³ See, e.g., 47 C.F.R. §69.3.

¹²⁴ Notice, 8 FCC Rcd at 1509.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Ameritech Comments at 5; Anchorage Comments at 1; Bell Atlantic Comments at 5; ICORE Comments at 13; JSI Comments at 7-8; USTA Comments at 6-7; VTA Comments at 3.