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

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

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COMMENTS

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SUMMARY

In these comments, NECA demonstrates that new federal universal service programs should build on existing mechanisms if universal service is to be preserved and advanced. Existing universal service programs, including Universal Service, Lifeline Assistance, Dial Equipment Minutes (DEM) weighting, and carrier common line (CCL) support (Long Term Support) should be maintained with minimal disruption. Changes to current rules and procedures should be introduced as necessary to meet the requirements of the 1996 Act. For example, rules governing current programs can be adapted with transitions where necessary to make current support mechanisms explicit. New costing methodologies could be allowed on an optional basis but should not be mandated, especially for small rural carriers. Care must be taken not to jeopardize current universal service achievements or compromise universal service principles and goals.

NECA suggests that the current Lifeline Assistance procedures can provide a model for a new support program for the public services required by the 1996 Act (*i.e.*, discounted services to rural health care providers, educational institutions and libraries). NECA also supports replacement of the current presubscribed lines (PSL)-based universal service contribution methodology with a revenue-based system applicable to all interstate carriers. The 1996 Act requires broadband contributions, and revenues have worked well as a basis for TRS contributions.

Finally, these comments show that the Commission should continue to rely on NECA to administer federal universal service mechanisms. NECA, as administrator of existing universal service programs and the TRS fund, has proven itself capable of administering support funds in a fair, efficient and competitively-neutral manner. One-third of NECA's board now consists of directors outside the telephone industry. As a means of broadening participation in fund administration,

however, the Commission may wish to consider establishing a universal service advisory council to advise NECA with respect to fund issues. This group could include fund recipients, contributors, state regulators, and consumer representatives, with members to be selected by constituent groups.

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COMMENTS

The National Exchange Carrier Association, Inc. (NECA)¹ submits its comments in response to the Commission's Notice of Proposed Rulemaking and Order Establishing Joint Board in the above-captioned matter.²

Universal service has long been the cornerstone of United States telecommunications policy. In sixty-two years of regulation under the Communications Act of 1934, the Commission, state regulators and the telephone industry have developed a number of policies and programs to advance universal service, including the Universal Service Fund (USF), Lifeline Assistance (LA) programs,

¹ NECA is a not-for-profit association that administers the current interstate Universal Service and Lifeline Assistance programs and the interstate Telecommunications Relay Services (TRS) fund. NECA is also responsible, under Subpart G of Part 69 of the Commission's rules, for activities including the preparation of access charge tariffs on behalf of all telephone companies that do not file separate tariffs, and the collection and distribution of access charge revenues. See 47 C.F.R. §§ 69.603 and 64.604.

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, 61 Fed. Reg. 10499 (March 14, 1996), FCC 96-93 (rel. March 8, 1996) (NPRM). The NPRM seeks comment on various approaches to implementing the universal service provisions contained in the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et. seq.) (the "1996 Act"). Issues to be addressed include the definition of which services should be included within the "universal service" concept, support mechanisms for such services, and other changes that must be made to Commission regulations to implement the 1996 Act.

Dial Equipment Minutes (DEM) weighting rules, common line cost recovery methodologies,³ and the Telecommunications Relay Services (TRS) fund. These programs have demonstrably been successful in promoting universal service. The USF, in particular, has been said to “represent a proven method of promoting the goal of universal service by holding down local service rates while promoting further deployment of advanced telecommunications infrastructure.”⁴

The record in CC Docket No. 80-286⁵ amply demonstrates the success of current universal service mechanisms. NECA’s comments in that proceeding described how its member companies (many of which are very small, serving extremely rural areas) have been able to install digital switching technology, and are offering equal access, SS7, high capacity digital services (including in some areas ISDN, SONET rings, etc.).⁶ Many other parties filed comments in CC Docket No. 80-

³ Commission rules currently require LECs to allocate a flat 25% of their common line costs to interstate, for recovery via end user common line charges and per-minute carrier common line charges. To assure that carrier common line rates of small ECs remain reasonable, the rules require LECs that do not participate in NECA’s carrier common line pool to contribute Long Term Support (LTS) amounts to the NECA pool. See NPRM at ¶¶ 112-115.

⁴ National Governor’s Association (NGA), *Telecommunications, the Next American Revolution* (1994) at 38.

⁵ Amendment of Part 36 of the Commission’s Rules And Establishment of a Joint Board, Notice of Inquiry, 9 FCC Rcd 7404 (1994) (1994 NOI), comments filed October 28, 1994 (1994 NOI Comments), replies filed December 2, 1994 (1994 NOI Replies); Amendment of Part 36 of the Commission’s Rules And Establishment of a Joint Board, Notice of Proposed Rulemaking and Notice of Inquiry, 10 FCC Rcd 12309 (1995) (1995 NPRM), comments filed on October 10, 1995 (1995 NPRM Comments), replies filed November 9, 1995 (1995 NPRM Replies).

⁶ See National Exchange Carrier Association, Inc., *Telecommunications: America’s Vital Link* (December 1995) (report is based upon data gathered in NECA’s Access Market Survey).

286 documenting these and other achievements.⁷ The high quality of service, at reasonable prices, currently enjoyed by consumers throughout the United States is largely attributable to current universal service funding programs, which help keep local service rates reasonable while facilitating deployment of advanced telecommunications infrastructure.⁸

Yet more work needs to be done. Telephone companies serving large urban areas already offer new switching services such as ATM, Frame Relay, and SMDS, and are deploying “Advanced Intelligent Network” technology, which enables them to provide customers with new database services at reduced cost. Federal and state initiatives, including those taken in response to the 1996 Act, will require additional expensive network upgrades. Telephone companies are already incurring substantial expenses meeting requirements for 800 database service, deployment of 888 calling, Caller ID functionalities (*67 and *82), and other required network features. Failure to insure sufficient

⁷ To cite only two examples, Cowiche Telephone Company, serving approximately 1,800 access lines in Washington State, indicated in its 1995 NPRM Comments (at 4) that USF and DEM weighting have allowed its customers to “enjoy access to state of the art services that as a matter of public policy, all Americans should receive” (these services include digital switching, fiber optic transmission, custom calling features, and enhanced 911). Ketchikan Public Utilities (serving approximately 9,500 access lines to residents on four islands in Alaska) also stated in its 1995 NPRM Comments (at 1) that USF and DEM have enabled it to supply basic telephone service in adverse conditions at affordable costs (its subscribers have equal access capability, enjoy touch-tone service, one-party service and special access).

⁸ The Commission itself has recognized the value of current federal programs in its Subscribership NPRM. See Amendment of the Commission’s Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket No. 95-115, Notice of Proposed Rulemaking, 10 FCC Rcd 13003, ¶ 1 (1995) (Subscribership NPRM). See also JSI and Patricia Lum, Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), *Keeping Rural America Connected: Costs and Rates in the Competitive Era*, pp. 2-1 through 2-14, 3-6 and 3-7, 4-1 through 4-15, 5-2 through 5-12, 5-20 through 5-27, 6-1 through 6-17 (1994) (OPASTCO Study). The OPASTCO Study provides a detailed description of the benefits of universal service programs and the negative impacts that would result from their elimination.

universal service funding in this proceeding will result in two unequal networks -- a modern network for the “haves” and an outdated network for the “have nots.” Avoiding this result is precisely the intent of the 1996 Act.

The 1996 Act firmly establishes a pro-competitive policy for our nation’s telecommunications markets. Equally firm is the Act’s commitment to universal service. Congress clearly recognized that the introduction of competition poses grave risks for universal service in rural areas, and that a continuing and strong universal service program is needed. The “plain language” of new section 254(b), as well as the Act’s legislative history,⁹ make clear Congress’ intent to protect and advance existing universal service achievements.

In these comments, NECA suggests, first, that revised federal universal service programs should build on existing mechanisms. Changes to current rules and procedures should be introduced as necessary to meet the requirements of the 1996 Act, but should not jeopardize current universal service achievements or compromise universal service principles and goals. Second, NECA suggests that mechanisms similar to those used for the current Lifeline Assistance programs (*i.e.*, discounts provided to customers reimbursed from an explicit fund) can be developed to provide support for new types of universal service assistance required by the 1996 Act (*i.e.*, discounted services to schools, libraries, and rural health care providers). Third, NECA supports replacement of the current PSL-based universal service contribution methodology with a revenue-based system applicable to all interstate carriers. Finally, these comments show that the Commission should continue to rely on NECA to administer federal universal support mechanisms.

⁹ See 142 Cong. Rec. H1145-06, at H1169, H1173 (Feb. 1, 1996); 142 Cong. Rec. S687-01, at S688 (Feb. 1, 1996); and 141 Cong. Rec. S17847-02, at S17847-S17848 (Nov. 30, 1995)

The Commission and the industry must find ways to maintain and advance universal service achievements in the new, competitive environment. The NPRM is a positive step in this process. As further Notices proposing specific rule language are developed, NECA will evaluate them in terms of their likely impact on universal service recipients and contributors, and offer suggestions for improvements as necessary.

I. REVISED UNIVERSAL SERVICE SUPPORT MECHANISMS SHOULD BUILD ON CURRENT, SUCCESSFUL PROGRAMS.

Section 254(b) of the Act establishes seven “universal service principles” on which policy decisions by the Commission must be based. These include (1) the availability of quality services at just, reasonable and affordable rates; (2) access to advanced telecommunications and information services in all regions of the Nation; (3) that consumers in all regions, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services (including interexchange services and advanced telecommunications and information services) that are reasonably comparable in quality and price to those in urban areas; (4) that all providers of telecommunications services should make equitable and nondiscriminatory contributions to the preservation and advancement of universal service; (5) that there should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service; (6) that elementary and secondary schools and classrooms, health care providers and libraries should have access to advanced telecommunications services; and (7) such other principles as the

Joint Board and Commission determine are necessary and appropriate for the protection of the public interest, convenience and necessity and that are consistent with the 1996 Act.¹⁰

Development of new federal universal service funding methodologies that fulfill all of these criteria is a complex endeavor and should be approached carefully. Various proposals to identify costs by means of proxy formulas, for example, may work for some larger companies, but should not be applied on a mandatory basis to all companies. As NECA explained in its comments in CC Docket 80-286, the cost of serving rural areas can vary greatly among small company study areas.¹¹ This variability is not captured by current proxy formulas,¹² and the Commission should therefore not mandate their use for rural companies. Companies interested in using these alternative costing approaches should, however, be permitted to experiment with them.

Pending possible development of acceptable alternative methods that assure the availability of “sufficient” funds for universal service, NECA believes that the Commission should continue to allow carriers to use current cost-based accounting methodologies to identify universal service funding requirements. Continued availability of cost-based funding, including amounts determined pursuant to the Commission’s USF and DEM weighting rules, is critical to the maintenance of current

¹⁰ 47 U.S.C. § 254(b)(1) - (7). To these goals, the NPRM adds that a new federal system should be as simple to administer as possible, technology-neutral, well-targeted, and have distribution procedures that are “direct, explicit and specific.” NPRM at ¶ 27.

¹¹ See NECA 1995 NPRM Comments at 10-11.

¹² See id. at 81-82.

universal service achievements, and should not be modified in ways that fail to reflect the intent of the universal service goals and principles established by the 1996 Act.¹³

The NPRM expresses concern that continued use of Part 36 procedures to identify support requirements may be inconsistent with the statutory requirement that support mechanisms be “explicit.”¹⁴ To the extent that rates for interstate services currently reflect universal service support amounts, concerns that these charges are not sufficiently “explicit” can be resolved by removing support requirements from current rates and recovering them through explicit funding mechanisms. For example, DEM weighting revenue requirements, which are currently recovered through traffic sensitive switched access charges, could be removed from access rates and recovered from all interstate carriers and other telecommunications providers through a separate, national bulk-billed charge.¹⁵ Recovery of DEM weighting revenue requirements in this manner would not only satisfy the 1996 Act’s requirement that support mechanisms be “explicit”, it would also support the goals of new section 254(g) of the Communications Act, which requires the Commission to develop rules that prohibit geographic rate deaveraging by interexchange carriers.¹⁶

¹³ To assist the Commission in evaluating alternative methodologies, NECA intends to prepare, wherever possible, detailed comparative analyses of specific proposed costing mechanisms.

¹⁴ See NPRM at ¶ 28.

¹⁵ NECA proposed adoption of this methodology in its CC Docket 80-286 1995 NPRM Comments at 44-47. No Part 36 rule changes would be required to accomplish this change. The only rule revisions necessary would be modifications to the Part 69 access charge rules to remove DEM weighting revenue requirements from traffic sensitive local switching rates and to provide for recovery through a separate, national bulk-billed charge.

¹⁶ The Commission may determine that portions of interstate-assigned common line costs now recovered through carrier common line (CCL) charges (e.g., LTS amounts) should be removed from CCL rates of contributing companies and recovered on an explicit basis as well.

As the Joint Board and Commission explore ways to modify current programs to accommodate competitive entry, they should consider a number of important issues. First, it is not clear whether there will be any significant number of entities qualifying for designation as “eligible” in high-cost rural areas. Passage of the 1996 Act did not alter the underlying economics of serving rural America. As NECA pointed out in its 1995 NPRM Comments, competition simply may not be viable in rural areas. Complicated support mechanisms designed to make support payments available to new entrants in these areas may only distort competition, without producing any real benefits for consumers.

The 1996 Act recognizes these concerns. Under section 214(e), carriers seeking designation as “eligible” must both offer and advertise universal service throughout an area designated by the state commission as a “service area.”¹⁷ Further, designation as an “eligible” carrier in rural areas is not automatic. In areas served by rural telephone companies, state commissions may designate more than one carrier as “eligible,” but only where it would be consistent with the public interest, convenience, and necessity to do so. Commission rules implementing new section 214 (e) of the 1996 Act should make clear that universal service support amounts would be available only to designated eligible carriers that actually serve entire service areas, not simply portions thereof or selected high-volume customers.

The 1996 Act allows “eligible” carriers to provide service in an area via a combination of their own facilities and resale of another carrier’s facilities. While eligible carriers could receive directly

¹⁷ For rural companies, the term “service area” means the company’s study area unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board, establish a different definition of service area for such company. 47 U.S.C. §214(e)(5).

any universal service support for which they qualify on the basis of their owned facilities, they should not receive support directly for the resold facilities of another carrier. Rather, the universal service support should go to the underlying carrier, since that entity is the one incurring the costs of building and maintaining the facility. The underlying carrier, in turn, would reflect that support in the price of the facility offered to the reseller.

Programs that permit multiple eligible carriers to receive support funding must recognize the fact that some study areas have high average costs, but contain areas (such as towns or cities) that are lower-cost. Payment of support amounts based on study area averages of incumbent carriers in these cases would tend to overcompensate eligible carriers that choose to concentrate marketing efforts in the lower-cost segments of the service area and would provide non-economic incentives for competition to develop only in low-cost areas. This would harm universal service in high-cost areas, and cause unnecessary increases in overall support levels.

As an aid to states in determining whether the public interest requires designation of new eligible carriers in the service area of a rural telephone company, it would be useful to understand how the incumbent LEC's costs vary within the study area. The cost studies that LECs perform today to meet regulatory requirements do not disaggregate costs below the study area level of detail. Using the results of current cost studies as a starting point, however, LECs could have the option to use engineering models to disaggregate their costs below the study area level. Use of such models would also enable regulators to determine resale prices for incumbent LEC facilities with greater accuracy.

The availability of disaggregated costs for incumbent LECs could aid regulators in determining support levels for any new eligible carriers that may be designated. Application of the

Commission's accounting and separations rules to new eligible carriers would allow regulators to base support payments on the actual costs of these entrants. The Commission's cost accounting rules have been used for many years by incumbent LECs, many of which are quite small.¹⁸ Application of these rules to new eligible carriers would not appear to impose any greater burdens than those imposed on small LECs.¹⁹ Actual cost data of new eligible carriers could then be compared with disaggregated incumbent LEC costs in order to develop limits on per-line support to new eligible carriers where their costs exceed those of the incumbent LEC. Such limits would be necessary in order to avoid competitive distortions and maintain reasonable fund levels. Clearly, payment of per-line support amounts to new eligible carriers that are greater than those paid to an incumbent LEC would not be in the public interest.

The Commission must also recognize that incumbent LECs historically have been required to recover substantial plant investments using artificially long depreciation schedules. The introduction of competition in high cost areas, as contemplated by the 1996 Act, will materially alter capital recovery programs required under former regulatory environments. Incumbent LECs have invested substantial amounts in plant, to provide sufficient capacity to be "ready to serve" their customers. The costs of this additional capacity are not diminished by competition taking some customers from the incumbent. While depreciation schedules are primarily determined at the state level, failure to take account of these effects in developing federal support programs could result in

¹⁸ Approximately 40 cost companies participating in NECA's traffic sensitive pool have less than 500 lines and the smallest cost company has 32 lines.

¹⁹ This approach would also resolve concerns, expressed in the NPRM, that some entities that might be designated "eligible telecommunications carrier[s]" are not subject to the Commission's jurisdictional separations rules. See NPRM at ¶ 30

stranded investment and ultimately jeopardize universal service. Programs that do not provide adequate transition mechanisms and other means of assuring cost recovery for incumbent LECs would not be in compliance with the 1996 Act's requirement that support amounts be "sufficient," and should be found to be confiscatory and thus unconstitutional.

It is critically important that universal service support levels under any new system be based on the most accurate and complete cost of service information available. For some larger companies, this might be obtained using proxy models in lieu of cost study data. For smaller companies, cost study data are the only proven, reliable basis for determining sufficient levels of universal service support, and are therefore necessary to achieve the goals of the 1996 Act.

Allowing support levels to be set on the basis of competitive bids or models that fail to reflect rural cost characteristics accurately could result in insufficient support payments or a "race for the bottom" as competitive carriers seek to capture funding dollars without regard to maintaining or improving service quality or providing technological advancements.²⁰

Finally, the Commission requests comment on which, if any, of the proposals advanced in CC Docket No. 80-286 are consistent with the requirements and intent of the 1996 Act, and also requests comment on whether the interim "cap" imposed on the Universal Service Fund in that proceeding should be continued pending resolution of this proceeding.²¹

The record in CC Docket No. 80-286 showed unequivocally that the changes proposed in that proceeding (such as elimination of DEM weighting, mandatory consolidation of affiliated study areas,

²⁰ In addition to the service area requirements contained in the Act applicable to new eligible carriers, there is a need to consider long-term effects of, for example, new eligible carriers making low bids and then discontinuing service in the future

²¹ NPRM at ¶¶ 39-40

removal of administrative expenses from support amounts, increases in eligibility thresholds, etc.) would be harmful to universal service.²² The great weight of the evidence presented in that proceeding justified continuation of current programs at levels sufficient to keep telephone service affordable in high cost areas.²³ The case for this result is even more compelling now, as the Joint Board and Commission strive to fulfill the requirements of the 1996 Act. A major “change of course” is necessary from the drastic reductions in universal service support formerly proposed. The Commission should not implement such changes or reductions.²⁴

²² See, e.g., NECA 1995 NPRM Comments at 6-13, 37-38, 56, 58-60, 65-66 and 1995 NPRM Reply at 5, 8, 11, 25-28; Alaska Telephone Association 1995 NPRM Comments at 2-6, 12; Colorado Public Utilities Commission 1995 NPRM Reply at 3, 16; Alabama Public Service Commission 1995 NPRM Reply at 2; Fort Mojave Telephone 1995 NPRM Comments at 4-5; NTCA 1995 NPRM Reply at 15-16; Pacific Telecom, Inc. 1995 NPRM Comments at 8-9, 19-20; United States Small Business Administration 1995 NPRM Comments at 6. NECA did, however, suggest that some revisions, such as the recovery of DEM weighting amounts on a bulk-billed basis, limitation of administrative expenses within statistical norms, replacement of current “stepped” formulas with linear sliding scale formulas, and an adjustment to rules governing data reporting to reflect mergers and acquisitions on a more timely basis, would be warranted. See NECA 1995 NPRM Comments at 24, 44-47, and 60-62 and 1995 NPRM Reply at 20-22, 27, 32, 37-38.

²³ Changes proposed in the 1995 NPRM, if implemented, would severely jeopardize past and future universal service accomplishments by causing massive and unpredictable shifts in cost allocations to the intrastate jurisdiction. See NECA 1995 NPRM Comments at 6-10. NECA provided the results of its analyses of the impacts of various changes to the current DEM weighting and USF programs proposed in the 1995 NPRM in the Appendix to its 1995 Comments. See Appendix B1-B6, C1-16 and D1-4. For example, elimination of DEM weighting would shift over \$300 million per year to the state jurisdiction. See NECA 1995 NPRM Comments, Appendix A, NECA Discussion Paper, Exhibit 1. Implementation of “baseline” changes proposed under Option-One in the 1995 NPRM (i.e., combining study areas within a state, eliminating administrative costs from the USF algorithm, and changing average loop counts) would shift \$291 million more per year to intrastate rates. See NECA 1995 NPRM Comments, Appendix C5.

²⁴ See S. Conf. Report No. 104-230, 104th Cong., 2d Sess. 131 (1996). Language stating that CC Docket 80-286 is not “an appropriate foundation on which to base the proceeding required under new section 254(a)” strongly suggests that new directions are required.

There is also no basis for continuing to cap universal service funding. The current interim cap was imposed in 1993 based on USF data collected prior to that time. Concerns about allegedly erratic and excessive growth in the fund, which led the Commission to impose the cap at that time, have been shown by subsequent data to be unfounded.

Substantial evidence was provided in CC Docket No. 80-286 that universal service achievements have come at a reasonable price. NECA showed in its 1995 NPRM Comments that the costs of the interstate Universal Service Fund are well within original expectations, and impose only minimal costs on interexchange carriers.²⁵ NECA's Comments also pointed out that USF costs in 1995 represented only 2.2 percent of the industry's total unseparated revenue requirement assigned to the loop, and that, compared to the industry's total investment in loop-related outside plant and switching equipment (i.e., the telecommunications "infrastructure") USF costs have steadily declined since the fund's inception.²⁶ Finally, since 1984, USF recipient companies have installed over 12.2 million subscriber loops.²⁷ Increases in the numbers of subscribers connected to the network combined with technology upgrades benefit all users and carriers who provide services to these users. USF amounts for 1996 in fact are below levels permitted by the cap, and there is substantial evidence

²⁵ When the USF was established in 1983, the Joint Board contemplated a "cost" of the contribution to be one-half cent per minute. See Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Second Recommended Decision and Order, 48 Fed. Reg. 46556, 46588 (October 13, 1983) (Separate Statement of Commissioner Marvin R. Weatherly). 1996 contribution levels on a per-minute basis are only about \$.0031 per minute, or about 38% below original estimates.

²⁶ NECA 1995 NPRM Comments at 16. USF revenue requirements also continue to decrease in relation to minutes of use. Id. at 19-20

²⁷ NECA 1994 NOI Comments at 11-12 (loop counts for recipients based on analysis of data for calendar year 1984 and 1993, using a consistent set of study areas, after reflecting known mergers and acquisitions).

that USF growth over time has been stable and within reasonable, expected parameters.²⁸ The Joint Board and Commission should, therefore, allow the current interim cap to expire.

Changes in universal service support mechanisms made in this proceeding, in response to the 1996 Act, may substantially increase the amount of funding required. Because of the uncertainties associated with new mechanisms, the Joint Board and Commission should under no circumstances place caps or upper limits on universal service funding mechanisms. The 1996 Act mandates that support mechanisms be “sufficient” to preserve and advance universal service. Caps on programs that are needed to fulfill this goal are inconsistent with this requirement and could arbitrarily reduce needed support to some. The Commission also should refrain from imposing ad hoc caps on individual study area USF distributions.²⁹

NECA strongly urges the Joint Board and Commission to establish reasonable effective dates and transition mechanisms to permit carriers, particularly smaller carriers, to adapt to changes in cost recovery.³⁰ Significant changes in high-cost allocation rules must be accompanied by transition periods that are proportional to the magnitude of cost shifts. A major change in the USF rules, for example, should be phased in over an extended period of time. The Commission acknowledged in

²⁸ See Universal Service Fund 1995 Submission of 1994 Study Results by the National Exchange Carrier Association, Inc. (filed September 29, 1995).

²⁹ See, e.g., GTE Southwest Incorporated, Brazos Telecommunications, Inc. and Brazos Telephone Cooperative, Inc., Memorandum Opinion and Order, AAD 94-112, DA 95-1744 (rel. August 8, 1995); Nevada Bell and Oregon-Idaho Utilities, Inc., Memorandum Opinion and Order, 9 FCC Rcd 5236 (1994).

³⁰ See NECA 1995 NPRM Comments at 26-28 (explaining the need for transition periods and consideration of effective dates that recognize the “lag” period built into current rules).

the 1994 NOI that transition periods may be warranted,³¹ and received numerous comments substantiating the need to move cautiously, as in the past with the eight-year SPF phase down.³² Companies that have made significant investments in serving high-cost areas in reliance on the current cost recovery rules, especially, need time to adapt.

II. MECHANISMS SIMILAR TO THOSE USED FOR LIFELINE ASSISTANCE PROGRAMS CAN BE DEVELOPED TO SUPPORT ADDITIONAL DISCOUNTED SERVICES PROVIDED IN COMPLIANCE WITH THE 1996 ACT.

Policy decisions to cover additional service charges and/or discounts provided in compliance with the 1996 Act can be accomplished by using existing Lifeline Assistance rules as a model. For example, if a decision is made to include discounts on non-conventional residential services, as suggested in the NPRM,³³ rules similar to those governing the calculation of Lifeline Assistance revenue requirements can be implemented that would require carriers to document and submit allowable discount amounts for services provided to qualified subscribers to the fund administrator for reimbursement. A similar approach could be followed with respect to discounted service provided to educational institutions, libraries and rural health care providers. The proposed use of

³¹ 1994 NOI at ¶ 81.

³² NECA 1994 NOI Comments at 50, 1994 NOI Comments of Citizens Utilities Co. at 3 and 9 (suggested five to eight-year transition period), NYNEX at 37 (three to five year transition period needed to avoid rate shock), JSI at 5 and n. 6, Tallon, Cheeseman & Associates (TCA) at 2-3 (recommended minimum of eight-year transition period), Minnesota Telephone Association at 5, Washington Independent Telephone Association (WITA) at 6, The Western Alliance at 21 (seven-year transition period for smaller companies), Missouri Public Service Commission at 7 (changes should be phased in over significant period of time, e.g., seven years), Alaska Public Utilities Commission at 15 (supports five to ten-year transition period), OPASTCO at 18, and 1994 NOI Reply of General Service Administration at 11 (five-year transition period).

³³ NPRM at ¶ 57.

discount mechanisms to these entities appears to parallel existing mechanisms for low income subscribers, in that qualified individuals or entities (as defined in the 1996 Act and Commission rules) would receive service at a rate that is less than that charged to other subscribers. Carriers providing discounted services to qualified educational institutions and libraries would receive compensation either in the form of offsets to be applied against universal service contribution requirements or direct reimbursement from the universal service support fund. Carriers providing discounted services to rural health care providers would appear to qualify for reimbursement if not offsets.³⁴

The complexity of comparing the various “normal” and “discount” rates charged by various carriers for particular types of services may make verification of such claims difficult, particularly for carriers not subject to tariffing requirements. To initiate such a program, the Commission probably will need to rely on carrier-provided certifications to support reimbursement claims. The Commission’s rules should specify, however, that carriers claiming reimbursement for discounted services must maintain adequate documentation of rates and costs and that all claims will be subject to audit by the administrator and/or the Commission. Over time, it may be possible for the

³⁴ As the NPRM recognizes, the difference in language between new section 254(h)(1)(A) and new section 254(h)(1)(B) raises questions regarding whether different reimbursement methods are required for discounted services provided to rural health care providers and services provided to educational institutions and libraries. There does not appear to be any reason to permit offsets for only one type of discounted service. From an administrative standpoint, however, NECA believes that it would be preferable to provide direct reimbursements to all qualified carriers rather than permit offsets in any case. If offsets are permitted, carriers should be required to report revenue amounts in full, with offsets stated as explicit amounts to be credited against contribution requirements. This approach would present fewer verification problems than an approach that allows carriers to net discounts against revenues directly, and would maintain the accuracy of carrier revenue data. To the extent the “contribution” and “distribution” cash flows from/to eligible carriers are executed concurrently, this approach will not impose any burden on carriers.

administrator to develop statistical methods to evaluate the reasonableness of claims submitted by carriers.

III. THE COMMISSION SHOULD REPLACE THE CURRENT TARIFF-BASED UNIVERSAL SERVICE COLLECTION MECHANISMS WITH A REVENUE-BASED CONTRIBUTION SYSTEM.

The NPRM seeks comment on methods to fulfill the 1996 Act's requirement that "[a]ll providers of telecommunications service should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service."³⁵ Specific questions are raised regarding identification of telecommunications providers and possible exemptions for carriers or classes of carriers on equitable grounds.

The Commission also seeks comment on how contributions should be assessed. The NPRM suggests that funding responsibility could be allocated on the basis of gross revenues, revenues net of payments to other carriers, or on the basis of per-minute or per-line units. Another viable option that should be considered is the use of interstate retail revenues for allocating payment responsibility among carriers.

NECA supports replacement of the current presubscribed lines-based allocation method with a system based on interstate revenues. Currently, USF and LA charges are assessed upon all interexchange carriers that have at least .05% of the total common lines presubscribed to interexchange carriers in all study areas.³⁶ As noted above, however, the 1996 Act requires that

³⁵ NPRM at ¶ 118, quoting 47 U.S.C. § 254(b)(4).

³⁶ 47 C.F.R. § 69.5. Approximately 40 interexchange carriers are currently assessed USF and LA charges.

contributions to the new universal service support mechanism are to be made on an equitable and nondiscriminatory basis by all interstate telecommunication carriers.³⁷

Since 1993, NECA has successfully administered the interstate TRS fund using an interstate revenue-based contribution methodology applicable to all interstate common carriers. Nearly 3,000 interstate carriers contributed to the TRS fund in 1995. The TRS funding mechanism is relatively simple to administer, and provides a fair basis for allocating support funding responsibility. Based on this experience, NECA believes that it could administer a universal service support system based on interstate revenues as defined by the Commission in compliance with the 1996 Act.³⁸ Similar to TRS, the administrator could be directed to file data with the Commission establishing fund revenue requirements. After opportunity for comment, the Commission could approve proposed fund levels and prescribe payment formulas and procedures. Like TRS, these procedures could include a flat minimum amount for providers with revenues below a certain threshold. This would alleviate concerns about the administrative problems of calculating and collecting de minimis support payment amounts.³⁹

³⁷ 47 U.S.C. § 254(d).

³⁸ As NECA explained in its 1995 NPRM Comments, allocation methodologies that rely on minutes of use or lines may not be as equitable or competitively-neutral as revenue-based methodologies. The Commission reached a similar conclusion in its 1996 Regulatory Fees Order. See Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act, Report and Order, 10 FCC Rcd 13512, ¶ 134 (1995). NECA does not recommend adoption of non-revenue alternatives.

³⁹ Should the Commission adopt a revenue-based contribution mechanism, it should include provisions in its rules that explicitly require all subject carriers and other providers to pay required amounts. This approach has worked well in the TRS environment, and may be crucial to assuring that fund amounts are collected in accordance with Commission intent.

IV. THE COMMISSION SHOULD APPOINT NECA AS ADMINISTRATOR OF THE NEW UNIVERSAL SERVICE FUND.

Finally, the Commission seeks comment with respect to who should administer the fund. Under one proposed approach, the new support fund would be administered by a non-governmental fund administrator with the capability to do so in the “most efficient, fair and competitively neutral manner.”⁴⁰ According to the Commission, the administrator should have the ability to apply eligibility criteria consistently, to ensure that all eligible carriers are properly compensated by support mechanisms, and that no ineligible carriers receive compensation, and to assure that all entities required to contribute to fund do so and contribute in the proper amounts.⁴¹

The Commission should continue to rely on a non-governmental entity, specifically NECA, to administer its universal service support programs. NECA is currently responsible for administering the federal Universal Service Fund, the Commission’s Lifeline Assistance programs, and the interstate TRS fund.⁴² NECA is also authorized to administer state universal service funds, and currently does so on behalf of the State of Vermont. The expertise NECA has gained in fulfilling these responsibilities is unlikely to be duplicated by another entity at this time.⁴³ NECA has in place (or can quickly obtain) the necessary resources to collect and validate universal service funding data relevant both to recipients and contributors. NECA currently collects complex monthly pooling data

⁴⁰ NPRM at ¶ 128

⁴¹ Id. The Commission also notes in the NPRM that the administration of these funds will require large scale information processing and data base capabilities.

⁴² See 47 C.F.R. §§ 69.603 and 64.604.

⁴³ See 1994 NOI Reply at 36-37, NECA Comments filed in the Administration of the North American Numbering Plan, Phases One and Two. Notice of Proposed Rulemaking, 9 FCC Rcd 206 (1994) at 14-16.

and annual cost study data from over 1,200 exchange carrier study areas. These data are processed by a sophisticated settlements system that routinely handles over 170,000 data transactions per month. As required by Commission rules, NECA obtains certifications of all data submitted by exchange carriers.⁴⁴ NECA also has extensive verification programs for these data that permit various historical comparisons, “reasonableness” checks, and statistical analyses.⁴⁵

Relying on experienced personnel, NECA is able to perform on-site reviews of carrier data as needed. All of NECA’s processes are subject to rigorous internal audits. These audits are designed to assure that all required reviews are completed, conducted in accordance with NECA’s review procedures, and that corrective action is taken where necessary. NECA’s internal audits also test to ensure that reviews are made for conformance of data with the Commission’s accounting, separations and cost allocation rules. NECA also engages external, independent auditors to conduct an annual Third Party Review conforming with the guidelines set forth in the AICPA Statement of Auditing Standards (SAS 70): Report on the Processing of Transactions by Service Organizations.

New universal service support mechanisms requiring contributions from all interstate telecommunications carriers and distributions to multiple “eligible” carriers will impose substantial new data collection and verification requirements on the administrator, which NECA is uniquely capable of meeting. As noted above, NECA currently processes contributions from nearly 3,000 interstate telecommunications providers that support the interstate TRS fund. NECA believes that

⁴⁴ Certifications are obtained from TRS contributors and providers as well.

⁴⁵ NECA cost study verification procedures are described in detail in NECA’s Comments filed on April 14, 1993 in the Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, Notice of Proposed Rulemaking, 8 FCC Rcd 1503 (1993) (NECA Safeguards Proceeding). See also 1994 NOI Reply at 36-37.

its current TRS data base could be used to provide a foundation for a new universal service contribution mechanism, if the Commission so directs.

The Commission also seeks comments estimating the cost of administration of proposed support mechanisms.⁴⁶ At this time it is not known what specific services will be supported, what degree of review the administrator will be required to perform on data provided, and what other costs the programs will entail. As these questions are resolved, NECA will be in a better position to provide detailed cost estimates.⁴⁷

The Commission should bear in mind that NECA is a non-profit organization, established pursuant to the Commission's rules, specifically for the purposes of administering interstate access charge tariffs, associated revenue pools, and the Commission's universal service programs. NECA is thus uniquely able to respond to Commission direction and needs, and remains directly responsible to the Commission for rules compliance. Moreover, NECA has compiled an excellent track record of efficiency and continual improvement in its operations, with constant dollar reductions in administrative expenses shown in each year of its operations.

NECA recognizes that the universal service support programs mandated by the 1996 Act will have a broad constituency, including a wide range of contributors and receivers. NECA's experience in administering the TRS program is particularly relevant in this regard. As TRS administrator, NECA is responsible for collecting funds from all interstate service providers, and is responsible for distributing those funds not only to exchange carriers but also to interexchange carriers, state relay

⁴⁶ NPRM at ¶ 131

⁴⁷ Commission rules regarding program administration should continue to incorporate provisions regarding recovery of administrative expenses.