

JAN 15 11 00 AM '97 ORIGINAL

Federal Communications Commission

FCC 97-11

FCC MAIL SECTION

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

JAN 15 11 00 AM '97

In the Matter of: )  
)  
Changes to the Board of )  
Directors of the National Exchange )  
Carrier Association, Inc. )

DISPATCHED

CC Docket No. 97-21

**NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY**

**Adopted: January 10, 1997**

**Released: January 10, 1997**

**NPRM Comment Date: January 27, 1997**

**NPRM Reply Date: February 3, 1997**

**NOI Comment Date: March 3, 1997**

**NOI Reply Date: April 3, 1997**

By the Commission:

**I. INTRODUCTION**

1. On October 18, 1996, the National Exchange Carrier Association, Inc. (NECA) requested that the Commission modify the size and composition of its Board of Directors to reflect the interests of competitive local exchange carriers (competitive LECs), interexchange carriers, wireless carriers, and non-carriers such as schools, libraries, rural health care providers, and states.<sup>1</sup> On November 8, 1996, the Federal-State Joint Board (Joint Board) on Universal Service, pursuant to section 254 of the Communications Act of 1934 (Communications Act), as amended by the Telecommunications Act of 1996 (1996 Act),<sup>2</sup> released a Recommended Decision regarding numerous universal service issues.<sup>3</sup> The Joint

<sup>1</sup> Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, October 18, 1996 (NECA October 18, 1996 Letter).

<sup>2</sup> 47 U.S.C. § 254. See also 1996 Act, Pub. L. No. 104-104, 110 Stat. 56 (1996). Hereinafter, all citations to the Communications Act will be to the United States Code unless otherwise noted.

<sup>3</sup> Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 96J-3 (rel. Nov. 8, 1996), (Recommended Decision). On November 18, 1996, the Commission's Common Carrier Bureau issued a public notice seeking comment on the Joint Board's recommendations and on the Commission's legal authority to implement those recommendations. FCC Common Carrier Bureau Public Notice

Board recommended that the Commission appoint NECA as the temporary administrator of the new universal service support mechanisms.<sup>4</sup> The Joint Board also recommended that, prior to appointing NECA as temporary administrator, the "Commission permit NECA to add significant, meaningful representation" for non-incumbent LEC interests to the NECA Board of Directors.<sup>5</sup>

2. In this Notice of Proposed Rulemaking (*NPRM*), we address NECA's request and the Joint Board's recommendations and seek comment on how the Commission should amend its rules so that NECA can reform its Board of Directors in a manner that will enable it to become eligible to serve as the temporary administrator of the universal service support mechanisms. We tentatively conclude that, in order to be eligible to serve as the temporary administrator, NECA's Board of Directors must become more representative of the telecommunications industry as a whole. Accordingly, this *NPRM* proposes to act upon the Joint Board's recommendations by amending section 69.602 of the Commission's rules<sup>6</sup> so that NECA may modify the size and composition of its Board of Directors to make the Board more representative of the telecommunications industry. We also seek comment on whether other Part 69 rule sections should be modified in conjunction with the proposed rule changes to section 69.602. In the Notice of Inquiry (*NOI*) below, we seek comment on what additional rule changes the Commission should make to enable NECA to become a neutral, third party, and thus, eligible to participate in the selection process of the permanent universal service administrator. Finally, the *NOI* seeks comment as to what, if any, additional reforms the Commission should adopt with respect to the administration of the current access tariff and pool revenue distribution programs and whether, in connection with any such proposed reforms, interested parties, in addition to NECA, should be entitled to participate in a selection process to serve as the administrator of those programs.

## II. BACKGROUND

3. NECA is an organization established at the Commission's discretion, whose

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Seeking Comment on Universal Service Recommended Decision, DA 96-1891 (Nov. 18, 1996) (hereinafter *Public Notice*).

<sup>4</sup> *Recommended Decision* at para. 833.

<sup>5</sup> *Id.*

<sup>6</sup> 47 C.F.R. § 69.602. Generally, section 69.602 defines the composition of NECA's Board of Directors.

structure and principal functions are now specified by Commission rules.<sup>7</sup> In 1983, the Commission established NECA as an association of incumbent LECs to administer the interstate access tariff and revenue distribution processes.<sup>8</sup> NECA currently administers the common line (CL) and traffic sensitive (TS) access tariff pools. These pools allow incumbent LECs participating in each pool to provide interstate access services at uniform rates for the associated access rate elements.<sup>9</sup> NECA also administers the existing universal service high cost fund,<sup>10</sup> the Lifeline Assistance program,<sup>11</sup> the long term support (LTS) program<sup>12</sup> and the interstate Telecommunications Relay Services (TRS) fund.<sup>13</sup> The universal service fund, the Lifeline Assistance program, and the LTS program were designed to reduce local rates and increase subscribership to the public switched network.<sup>14</sup> The TRS fund is the cost recovery mechanism that reimburses eligible TRS providers for interstate TRS minutes of use.<sup>15</sup> NECA currently has an exclusive membership comprised of incumbent LECs.

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<sup>7</sup> 47 C.F.R. §§ 69.601-69.612.

<sup>8</sup> *MTS and WATS Market Structure*, Third Report and Order, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983). See also 47 C.F.R. § 69.601.

<sup>9</sup> See 47 C.F.R. §§ 69.601-69.612. 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. 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 after 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. Some pool participants, however, may choose to settle with NECA based on an average schedule developed by NECA.

<sup>10</sup> See 47 C.F.R. §§ 69.116, 69.603. See also 47 C.F.R. §§ 36.601-36.641.

<sup>11</sup> See 47 C.F.R. §§ 69.117, 69.603. See also 47 C.F.R. §§ 36.701-36.741.

<sup>12</sup> See 47 C.F.R. §§ 69.2(y), 69.612. The LTS program requires LECs that do not participate in the CL pool to contribute part of their revenue to that pool. The contributions allow NECA to maintain a nationwide average CL rate equivalent to the rate that would result if all LECs participated in the CL pool.

<sup>13</sup> 47 C.F.R. § 64.604(c)(4)(iii). See also *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Memorandum Opinion and Order, CC Docket No. 90-571, 10 FCC Rcd 7223 (1995).

<sup>14</sup> *MTS and Wats Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 2953 (1987).

<sup>15</sup> TRS facilities have specialized equipment and a staff of communications assistants who relay conversations between people who use text telephones and people who use traditional telephones.

4. On March 3, 1995, the Commission adopted changes to the composition of NECA's Board of Directors at least in part to bring "independent views to NECA's deliberations."<sup>16</sup> The *Safeguards Order* was issued in response to the recommendations of an audit conducted by the Common Carrier Bureau on certain data that the Bell Operating Companies had reported to NECA's CL pool during late 1988 and 1989.<sup>17</sup> The *Safeguards Order*, which became effective on January 1, 1996, reduced the total number of directors on NECA's Board from 17 to 15.<sup>18</sup> Prior to the *Safeguards Order*, the NECA Board consisted of three directors from the Bell Operating Companies (BOCs) (subset I), three directors from other LECs having operating revenues in excess of \$40 million (subset II), nine directors representing LECs having annual operating revenues of less than \$40 million (subset III), and two additional directors from outside the LEC industry who were appointed pursuant to waivers granted by the Commission.<sup>19</sup>

5. Pursuant to the *Safeguards Order*, NECA's 15-member Board of Directors currently consists of five directors from outside of the LEC industry (outside directors), two directors representing subset I, two directors representing subset II, and six directors

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<sup>16</sup> *Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, and Consideration of NECA's Incentive Compensation Plan, Report and Order and Order to Show Cause*, CC Docket No. 93-6, 10 FCC Rcd 6243 (1995) (*Safeguards Order*), at para. 4.

<sup>17</sup> *Safeguards Order* at para. 2. 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 the Commission's accounting, separations, and access charge rules. The Commission subsequently required NECA to hire an independent auditor to recommend safeguards to prevent manipulation of NECA's processes. *Id.* at para. 2.

<sup>18</sup> *Safeguards Order* at paras. 4, 15. See also 47 C.F.R. § 69.602(a)-(c).

<sup>19</sup> *MTS and WATS Market Structure, NECA Board of Directors, Report and Order, Phase I*, CC Docket No. 78-72, 4 FCC Rcd 4449 (1989). Outside directors were included on NECA's Board for the first time in 1992 after the Commission's Common Carrier Bureau issued an order granting a petition for waiver of the Commission's rules to expand NECA's Board to include two or more members from outside the LEC industry. *Expansion of the NECA Board to Include Two Directors from Outside the Telephone Industry*, 6 FCC Rcd 5403 (Com. Car. Bur. 1991). NECA members selected the additional directors from a list of nominees provided by the NECA Board. The nominees would not include current or former officers or employees of NECA or of NECA member companies, relations of such officers or employees, and persons having a business relationship or other interest that would interfere with the exercise of independent judgment as director. *Expansion of the NECA Board to Include Two Directors from Outside the Telephone Industry*, 6 FCC Rcd 5403 (Com. Car. Bur. 1991). The Bureau subsequently extended this waiver several times. See *Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes*, 7 FCC Rcd 4401 (Com. Car. Bur. 1992); *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*, 9 FCC Rcd 2042 (Com. Car. Bur. 1994).

representing subset III carriers.<sup>20</sup> The Commission made the positions of outside directors permanent after finding that the presence of the two outside directors since January 1, 1992 improved NECA's administrative processes by bringing independent perspectives to NECA's deliberations and reducing any tendency there may have been for NECA not to comply with Commission requirements.<sup>21</sup> The *Safeguards Order* also increased the number of outside directors from two to five because two outside director positions were too few to ensure that the outside directors were able to contribute independent views on all issues, including some of the highly technical issues NECA faces. These five outside directors are currently chosen by the directors from subsets I, II, and III.<sup>22</sup> The Commission concluded that, while no single Board composition is perfect, five outside directors, along with a proportional reduction in the number of directors from each of the LEC subsets, would create a balanced board in which each category of directors would exert roughly equivalent influence in board deliberations.<sup>23</sup>

6. On March 8, 1996, the Commission initiated a rulemaking to reform our system of universal service support.<sup>24</sup> In the *254 NPRM*, the Commission sought comment on the best approach to administer the new universal service support mechanisms under section 254.<sup>25</sup> We noted that the selected administrator must operate in an efficient, fair and competitively-neutral manner.<sup>26</sup> The *254 NPRM* set forth tentative criteria for selecting the administrator, including large-scale information processing and database capabilities, as well as an ability to calculate accurately the proper amount of each carrier's contribution and to apply eligibility criteria consistently.<sup>27</sup> In response, a majority of commenters supported the

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<sup>20</sup> 47 C.F.R. § 69.602(a)-(c). See also *Safeguards Order* at paras. 4, 12-15. In adopting these changes, the Commission concluded that "[i]n 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." *Safeguards Order* at para. 15.

<sup>21</sup> See *Safeguards Order* at para. 13.

<sup>22</sup> *Id.* at para. 14.

<sup>23</sup> *Id.* at paras. 14, 15.

<sup>24</sup> *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing a Joint Board, CC Docket No. 96-45, FCC 96-93 (rel. Mar. 8, 1996) (*254 NPRM*).

<sup>25</sup> *254 NPRM* at paras. 127-130.

<sup>26</sup> *Id.* at para. 128.

<sup>27</sup> *Id.*

appointment of a non-governmental, neutral third-party administrator.<sup>28</sup> These parties contend that, for the administrator to function as a neutral arbitrator among all potential service providers that would contribute to universal service support mechanisms, the administrator should not be affiliated with a particular telecommunications carrier or group of carriers, and that it should have no direct interest in support mechanisms established by the Commission.<sup>29</sup> NECA, along with several LEC commenters to the *254 NPRM*, promoted its selection as the administrator based on its experience with the Commission's current high cost support programs, the TRS fund, the CL and TS pools, and its familiarity with the telecommunications industry.<sup>30</sup> Commenters opposed to the appointment of NECA as administrator questioned whether an organization composed primarily of small incumbent LECs could administer in a neutral manner a program in which all telecommunications carriers have direct, and potentially conflicting, interests.<sup>31</sup>

7. On October 18, 1996, NECA proposed that the Commission permit it, as an "interim" measure, to add six directors to its existing Board of Directors to permit representation on the Board of the interests of competitive LECs, interexchange carriers, and wireless carriers, as well as certain non-carriers, including schools, libraries, rural health care providers, and states.<sup>32</sup> NECA indicated that the proposed reconfiguration of its Board to include non-incumbent LEC interests would broaden support for NECA's appointment as interim administrator of the new universal service support mechanisms.<sup>33</sup> Moreover, NECA asserted that the proposed modification of its Board would offer the necessary assurance of

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<sup>28</sup> See, e.g., Association for Local Telecommunications Services *254 NPRM* comments at 19; AT&T *254 NPRM* comments at 22; Airtouch Communications *254 NPRM* comments at 11; Ameritech *254 NPRM* comments at 24; Cincinnati Bell *254 NPRM* comments at 15; Frontier Corporation *254 NPRM* comments at 10; Illinois Consumer Commission (Illinois CC) *254 NPRM* comments at 10-11; LDDS Worldcom (LDDS) *254 NPRM* comments at 19-20; Maine Public Utilities Commission *254 NPRM* comments at 22-23; Missouri Public Service Commission *254 NPRM* comments at 21-22; National Cable Television Association (NCTA) *254 NPRM* comments at 25; Sprint *254 NPRM* comments at 23-24; Competition Policy Institute *254 NPRM* reply comments at 16; MFS Communications Company (MFS) *254 NPRM* reply comments at 9.

<sup>29</sup> See Illinois CC *254 NPRM* comments at 10-11; NCTA *254 NPRM* comments at 25.

<sup>30</sup> NECA October 18, 1996 Letter.

<sup>31</sup> See LDDS *254 NPRM* reply comments at 19-20; MCI *254 NPRM* reply comments at 16-17; MFS *254 NPRM* reply comments at 8; WinStar Communications, Inc. *254 NPRM* reply comments at 6; Letter from Mary L. Brown, MCI, to Reed Hundt, Chairman, FCC, October 25, 1996.

<sup>32</sup> NECA October 18, 1996 Letter.

<sup>33</sup> *Id.*

competitively-neutral administration for all constituent groups.<sup>34</sup> As we understand NECA's proposal, 15 of the 21 directors would continue to be direct representatives of incumbent LECs or outside directors chosen by incumbent LECs.

8. In the *Recommended Decision*, released on November 8, 1996, the Joint Board recommended that the Commission appoint a universal service advisory board under the Federal Advisory Committees Act<sup>35</sup> that would designate a neutral, third-party administrator, through competitive bidding.<sup>36</sup> The Joint Board recommended four specific criteria that any candidate that becomes the universal service administrator must meet in order to be selected as permanent administrator. The chosen administrator including its Board of Directors must: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission.<sup>37</sup> In addition, the Joint Board recommended that a potential permanent administrator must also have the ability to process large amounts of data and to bill large numbers of carriers.<sup>38</sup> Finally, the Joint Board recommended that "the Commission and the advisory board require the administrator to implement the support mechanisms no later than six months after its appointment."<sup>39</sup>

9. The Joint Board declined to recommend the appointment of NECA as the permanent administrator of the universal service support mechanisms, noting that parties in the record questioned NECA's ability to appear as a neutral arbitrator among contributing carriers because of the composition of NECA's current membership and its Board of Directors', as well as its advocacy positions in several Commission proceedings.<sup>40</sup> The Joint Board did recommend, however, that the Commission remove any regulatory barriers to NECA's rendering itself a neutral, third party and eliminating what the Joint Board described

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<sup>34</sup> *Id.*

<sup>35</sup> 5 U.S.C. App. (1988).

<sup>36</sup> *Recommended Decision* at para. 830.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at para. 831.

<sup>40</sup> *Id.* at para. 832.

as NECA's current appearance of bias toward incumbent LECs.<sup>41</sup> The Joint Board further recommended that NECA be eligible to compete in the advisory board's selection process for selecting a permanent administrator if changes to its membership and governance, in fact, render NECA a neutral, third party.<sup>42</sup>

10. The Joint Board also recommended that NECA serve as the temporary administrator of universal service support mechanisms for eligible schools, libraries and health care providers in order to bring support for telecommunications services to these entities as quickly as possible.<sup>43</sup> Finally, the Joint Board recommended that, prior to appointing NECA the temporary administrator, the Commission should "permit NECA to add significant, meaningful representation" of non-incumbent LEC interests to the NECA Board of Directors.<sup>44</sup>

### III. PROPOSALS FOR CHANGING NECA'S BOARD OF DIRECTORS

11. In this *NPRM*, we tentatively conclude that, in order for NECA to be appointed as the temporary administrator, the composition of NECA's Board of Directors must be altered to make the Board more representative of all segments of the telecommunications industry. We seek comment on this tentative conclusion. In the *Safeguards Order*, the Commission approved the addition of the five permanent outside directors to NECA's Board because the Commission anticipated that the outside directors would contribute to a more

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at para. 833. The Joint Board stated that a "transition period for low income consumers and rural, insular and high cost areas is necessary because we are changing eligibility requirements and how support is calculated, consistent with sections 254(c)-(e). These issues, however, do not apply to schools, libraries and health care providers because they do not participate in pre-existing programs. Consequently, consistent with section 254, we believe that support for schools, libraries and health care providers can be deployed sooner than support programs for low income consumers and rural, insular and high cost areas, because these programs are not presently defined. Thus, in the interest of providing telecommunications services to schools, libraries and health care providers as quickly as possible, we recommend that NECA be appointed the temporary administrator of support mechanisms for schools, libraries and health care providers." *Recommended Decision* at para. 833.

The question of whether NECA will act as an interim administrator pending the appointment of a permanent administrator will be determined by the Commission based on the record developed in CC Docket No. 96-45 and the responses to the Common Carrier Bureau's November 18, 1996 Public Notice. *Public Notice* at para. 5.

<sup>44</sup> *Recommended Decision* at para. 833.

balanced Board and bring a more independent viewpoint to NECA's deliberations.<sup>45</sup> We tentatively conclude, however, that given the broader class of carriers and other entities that are likely to be affected under the Commission's universal service rules, either as contributors to universal service funds, providers of universal service, or recipients of discounted services (hereinafter collectively referred to as "participants"), there must be further changes to NECA's Board to ensure that the interests of these additional parties are represented. We seek comment on how the Commission should change its rules so that NECA's Board can ensure significant, meaningful representation of non-incumbent LEC interests and still operate in an efficient, fair, and competitively-neutral manner. We invite parties to submit alternative proposals for reforming NECA's Board along with any corresponding rule changes.

12. NECA has proposed that it add to its existing Board of Directors six directors from groups that would have a substantial stake in the new universal service support mechanisms. Under NECA's proposal, three directors would represent carrier participants such as interexchange carriers, wireless carriers, and competitive LECs, and three would represent non-carriers, such as schools, libraries, rural health care providers, and states. Under NECA's proposal, the new Board members would participate in NECA's administration of the current universal service, Lifeline Assistance, and LTS programs, as well as Board oversight of auditing, finance, and general corporate matters. Access tariffs and pool revenue distribution, however, would continue to be the responsibility of the access charge committees, consisting of current members of NECA's Board.

13. We find that for NECA to act on this proposal would require an amendment of section 69.602 of the Commission's rules to create a fourth category or subset of six new directors, with three of those directors representing non-incumbent LEC participants, such as interexchange carriers, wireless carriers, and competitive LECs, and three directors representing support beneficiaries of universal service policies or other non-carriers, potentially including schools, libraries, rural health care providers, and states. The proposed addition of six new members would increase the size of NECA's Board from 15 to 21 members. NECA's proposal would also appear to require an amendment of section 69.603 to limit the scope of these six directors' authority to administration of the new universal service support mechanisms and general Board oversight of auditing and finance matters, while permitting directors from the three other subsets to continue to manage access tariffs and pool revenue distribution. In support of its proposal, NECA argues that the addition of six directors to its Board represents a reasonable step for an interim period until a permanent administrator is chosen because it would allow broader representation on universal service

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<sup>45</sup> See *Safeguards Order* at paras. 4, 15.

matters, while preserving the existing Board to direct NECA's other administrative functions.<sup>46</sup> We seek comment on whether NECA's proposal would satisfy the Joint Board's recommended criteria for a temporary administrator, and particularly on whether the option would assure "significant, meaningful representation" of non-incumbent LEC interests. Specifically, we seek comment on whether the proposed expansion of the Board to 21 members is consistent with assuring significant, meaningful representation of non-incumbent LEC interests given that ten Board members would continue to represent incumbent LEC interests, the five outside directors would continue to be selected by the ten incumbent LEC directors, and incumbent LEC interests, therefore, would account for more than 71% of the Board's total composition. Commenters should also address whether any legal limitations preclude NECA from creating an advisory committee or, alternatively, a new subset of directors, whose responsibilities are confined solely to matters relating to the administration of the universal service support mechanisms. We also seek comment identifying specific categories of carrier and non-carrier interests to be represented and whether our rules should set forth the number of directors representing them, and if so, how many directors should be designated for each category under NECA's proposal. We also ask for comment on who should nominate and who should be able to vote for these directors. Commenters arguing that NECA's proposal does not meet the Joint Board's recommended criteria should set forth a specific alternative that they contend satisfies such criteria. Finally, we ask commenting parties to identify other structural changes to NECA's Board of Directors or alternatives to NECA's proposal that will help ensure that NECA has added to its Board significant, meaningful representation for non-incumbent LEC interests.

#### IV. NOTICE OF INQUIRY

14. In the *Recommended Decision*, the Joint Board recommended that the permanent administrator of the new universal service support mechanisms, including its Board of Directors: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission.<sup>47</sup> While declining to recommend that NECA be appointed as permanent administrator, the Joint Board stated that, "[i]f changes to its membership and governance render NECA a neutral, third-party, NECA should be eligible to compete in the advisory board's selection process" for choosing a permanent administrator.<sup>48</sup> In this *NOI*, we seek comment as to how the Commission might amend its rules to remove any regulatory barriers that otherwise may prevent NECA from making itself a neutral, third

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<sup>46</sup> NECA October 18, 1996 Letter.

<sup>47</sup> *Recommended Decision* at para. 830.

<sup>48</sup> *Id.* at para. 832.

party and satisfying the four criteria identified by the Joint Board, so that NECA may compete on an equal footing with all other qualified entities for selection as the permanent administrator. We emphasize that changes in the membership and governance of NECA would be essential to cross the threshold of *eligibility* for selection, but would impart to NECA no preferred status in the selection decision.

15. In declining to recommend NECA for the position of permanent administrator, the Joint Board emphasized that the permanent administrator's ability to maintain an "appearance of impartiality" is essential and questioned NECA's ability to do this in light of its current membership, governance, and conduct.<sup>49</sup> The Joint Board specifically cited commenters' concerns that NECA's ability to appear to be a neutral arbitrator among contributing carriers, its current membership of incumbent LECs, and the on-going advocacy positions it has assumed in several Commission proceedings created an appearance to non-LECs of NECA's bias favoring incumbent LECs. In light of these specific concerns, we seek comment on what rule changes the Commission should make to subpart G of its Part 69 rules so that NECA can alter its membership composition, Board of Directors, organizational structure, or functions in whatever ways it perceives necessary to address these concerns. Obviously, the criteria recommended by the Joint Board could not be satisfied by an organization whose membership is comprised entirely of incumbent LECs or whose board of directors includes ten representatives of incumbent LECs and only three representatives of all other industry sectors. We also seek comment on whether, and if so how, the Commission should streamline its rules to enable NECA to change the composition of its Board without unnecessary regulatory oversight. Alternatively, the Commission could repeal the rules currently contained in Part 69 constraining NECA's structure and functions so that NECA could make whatever organizational changes it deems necessary without Commission endorsement or sanction. If the Commission's oversight function of NECA's structure and functions were diminished in this fashion, we seek additional comment with respect to whether the interests of NECA's current membership, as well as other carriers, could be adversely affected by how NECA might administer tariffs and access charges.<sup>50</sup>

16. In the *Recommended Decision*, the Joint Board also recommended that the qualified applicant have the capacity to process large amounts of data and bill large numbers

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<sup>49</sup> *Id.*

<sup>50</sup> See, e.g., *National Exchange Carrier Association, Inc., Memorandum Opinion and Order, Request for Authorization to Include Non-Member Company Data in Tariff FCC No. 4*, AAD 95-136, DA 96-98 (Com. Car. Bur. 1996) (involving allegations of discriminatory treatment of competitive LECs and interexchange carriers in connection with receiving access to Tariff 4 database).

of carriers.<sup>51</sup> Accordingly, we seek comment on whether existing Commission rules prevent NECA from satisfying these criteria, and if so, how such rules should be amended.

17. Finally, we seek comment as to what, if any, additional reforms the Commission should adopt with respect to the administration of the current access tariff and pool revenue distribution programs and whether, in connection with any such proposed reforms, interested parties, in addition to NECA, should be entitled to participate in a selection process to serve as the administrator of one or more of those programs.<sup>52</sup> As noted above, NECA currently administers the CL and TS access tariff pools, the existing universal service fund, the Lifeline Assistance program, the LTS program, and the TRS fund.<sup>53</sup> Consistent with the de-regulatory and pro-competitive spirit of the 1996 Act, we seek comment regarding whether additional amendments to the Commission's Part 69 rules are needed with respect to the administration of these programs and whether the administration of one or more of the programs should be subject to a competitive bidding process. In light of the Commission's recent reappointment of NECA to an additional four-year term as administrator of the TRS fund and given that NECA's reappointment to that fund was unopposed, we do not seek comment at this time on NECA's role as TRS administrator.<sup>54</sup> Accordingly, we seek comment on whether administration of the CL and TS access tariff pools, the Lifeline Assistance program, and the LTS program should remain the exclusive province of NECA or whether other interested parties should be entitled to participate in a selection process to serve as the administrator of those programs. We request from those commenters advocating other parties' participation in the selection process suggestions on how such participation could be effectuated and what changes to our rules would be necessary to effectuate these changes.

## V. PROCEDURAL MATTERS

### A. *Ex Parte*

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<sup>51</sup> *Recommended Decision* at para. 830.

<sup>52</sup> See Letter from Cheryl A. Tritt, Counsel to Lockheed Martin IMS, to William B. Caton, Secretary, FCC, November 1, 1996 (Lockheed November 1 *Ex Parte*) (expressing interest in serving as neutral third-party administrator for new universal service support mechanism).

<sup>53</sup> See paragraph 3 *supra*.

<sup>54</sup> *Appointment of the Telecommunications Relay Services (TRS) Fund Administrator and Composition of the TRS Advisory Committee*, Memorandum Opinion and Order, CC Docket No. 78-72, 10 FCC Rcd 7223 (Com. Car. Bur. 1995) (*TRS Order*). In the *TRS Order*, the Commission's Common Carrier Bureau appointed NECA to a four-year term beginning July 26, 1995 and ending July 25, 1999. The Bureau stated that it would review NECA's performance again at the end of that period. *TRS Order*, 10 FCC Rcd at 7224.

18. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.<sup>55</sup>

B. Regulatory Flexibility

19. Section 603 of the Regulatory Flexibility Act (RFA), as amended, requires an Initial Regulatory Flexibility Analysis in notice and comment rulemaking proceedings, unless the head of the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>56</sup> The *NPRM* portion of this proceeding applies only to NECA and concerns the proposal to amend the Commission's rules to modify the size, composition and composition of NECA's current Board of Directors to make the Board more representative of the telecommunications industry as a whole.

20. For the purposes of this *NPRM*, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>57</sup> Under the Small Business Act, a "small business concern" includes a small organization, which is defined as a non-profit enterprise that is not independently owned and operated and is not dominant in its field.<sup>58</sup> NECA is a non-profit, quasi-governmental association that was created to administer the Commission's interstate access tariff and revenue distribution processes.<sup>59</sup> Therefore, NECA is not a small organization within the meaning of the RFA. Furthermore, this *NPRM* does not apply to other "small business concerns" since it proposes to modify the composition of NECA's Board of Directors. For this reason, we tentatively conclude that these proposals would not have a significant economic impact on a substantial number of small entities.

21. We therefore certify, pursuant to Section 605(b) of the RFA, that these proposals would not have a significant economic impact on a substantial number of small entities. We seek comment on this tentative conclusion. The Commission shall publish this

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<sup>55</sup> See generally 47 C.F.R. §§ 1.1202, 1.203, 1.120(a).

<sup>56</sup> 5 U.S.C. § 605(b).

<sup>57</sup> 5 U.S.C. § 601(3).

<sup>58</sup> 15 U.S.C. § 632(a).

<sup>59</sup> See 47 C.F.R. §§ 69.601, 69.603. NECA subsequently assumed responsibility for administering the existing universal service fund (47 C.F.R. §§ 69.116, 69.603), the Lifeline Assistance program (47 C.F.R. §§ 69.117, 69.603), the LTS program (47 C.F.R. §§ 69.2(y), 69.612), and TRS fund (47 C.F.R. § 64.604(c)(4)(iii)).

certification in the Federal Register, and shall provide a copy of this *NPRM*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>60</sup>

C. Comment Dates

22. We invite comment on the proposals and tentative conclusions set forth above. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,<sup>61</sup> interested parties may file *NPRM* comments on or before January 27, 1997 and *NPRM* reply comments on or before February 3, 1997. Interested parties may file *NOI* comments on or before March 3, 1997 and *NOI* reply comments on or before April 3, 1997. To file formally in this proceeding, you must file an original and six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Five courtesy copies should also be sent to Tejal Mehta at 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Parties should also file one copy of any document filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. ITS's telephone number is 202-857-3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading.<sup>62</sup>

23. Parties are also asked to submit comments on diskette. Diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Tejal Mehta at 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a "read only" mode. The diskette should be accompanied by a cover letter. For further information concerning this proceeding, contact Sheryl Todd, Accounting and Audits Division, Common Carrier Bureau at 202-530-6001.

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<sup>60</sup> 5 U.S.C. § 605(b).

<sup>61</sup> 47 C.F.R. §§ 1.415, 1.419.

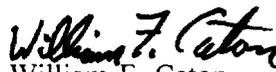
<sup>62</sup> Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's rules. See 47 C.F.R. § 1.49. We, however, require a summary be included with all comments and reply comments, regardless of length.

**VI. ORDERING CLAUSES**

24. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 201-205, 218-220, 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-05, 218-20, 254 and 403, NOTICE IS HEREBY GIVEN of proposed amendments to Part 69 of the Commission's Rules, 47 C.F.R. Part 69, as described in this NOTICE OF PROPOSED RULEMAKING.

25. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 201-205, 218-220, 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-05, 218-20, 254 and 403, NOTICE IS HEREBY GIVEN of proposals described in this NOTICE OF INQUIRY.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton  
Acting Secretary