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

JAN 27 1997

Federal Communications Commission
Office of Secretary

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In the Matter of)
)
Changes to the Board of) CC Docket No. 97-21
Directors of the National)
Exchange Carrier Association, Inc.)

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") submits these comments on the Commission's Notice in the above-captioned proceeding, proposing changes in the composition of the board of directors of the National Exchange Carriers Association, Inc. ("NECA").¹

As the Notice correctly points out (¶¶ 8-9, 11), the current structure of NECA's board precludes its designation as the administrator of the new universal service fund ("NUSF) now being established by the Commission in CC Docket No. 96-45, because that structure lacks the neutrality and impartiality that is indispensable to the proper execution of the administrator's duties. However, the cosmetic revisions

¹ Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket No. 97-1, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 97-11, released January 10, 1997 ("Notice").

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to its board membership previously suggested by NECA that are described in the Notice would not eliminate the existing strong bias of NECA's corporate governance structure in favor of incumbent local exchange carriers ("ILECs"). Far-reaching changes in the corporate structure of NECA and the composition of its board are necessary before that organization can be considered qualified as an NUSF administrator on either an "interim" or permanent basis.²

Since NECA's creation in 1983, the Commission has required or permitted several changes in the number and composition of its directors. Initially, these changes focused on altering the relative weighting of the board between representatives of large and small LECs.³

² As the Commission also recognizes, numerous other changes in NECA's internal procedures and practices (such as refraining from advocacy in non-administration related proceedings) are necessary to assure that NECA has the necessary impartiality to qualify as an NUSF administrator. The NOI's separate comment cycle therefore seeks input on "additional rules changes the Commission should make to enable NECA to become a neutral third party, and thus, eligible to participate in the selection of the permanent universal service administrator." *Id.*, ¶ 2.

³ Until 1991, NECA's board was comprised solely of directors from "subset I" (BOCs), "subset II" (carriers with over \$40 million in operating revenues), and "subset III" (all other) LECs. Section 69.602 of the Commission's rules, as originally adopted, allotted the directors among these subsets to reflect the Commission's initial assessment of the LECs' anticipated interests due to expected reductions in the common line pool, but the Commission

As the result of those modifications, NECA's board now includes two directors each from subset I and II companies, and six directors from subset III carriers. Additionally, because staff audits raised serious questions about some board members' role in improperly manipulating the NECA common line pool results, the Commission granted a series of waiver requests to add two board members (later increased by rule to five) from outside the telephone industry to "increase public confidence in NECA's overall management."⁴ All of these outside directors, however, are elected by the NECA member ILECs.

Against this background, the proposal in NECA's October 18 letter to add three directors representing non-ILEC carriers⁵ is obviously insufficient to "ensure

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later reduced the subset I and II directors and increased the subset III representation to reflect changed pool conditions. MTS and WATS Market Structure (NECA Board of Directors), 3 FCC Rcd 4603 (1988) (granting NECA waiver request), 4 FCC Rcd 4449 (1989) (amending Commission rules).

⁴ See National Exchange Carrier Association, Inc., 6 FCC Rcd 5403 (1991), 7 FCC Rcd 2050 (1992), 7 FCC Rcd 4401 (1992); Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, 8 FCC Rcd 4425 (1993), 9 FCC Rcd 2042 (1994), 10 FCC Rcd 6243 (1995).

⁵ See Letter from Bruce Baldwin, President, NECA, to Reed Hundt, Chairman, FCC, dated October 18, 1996 ("October 18 letter"). NECA also proposed there to

(footnote continued on following page)

significant, meaningful representation of non-incumbent LEC interests" in NECA's corporate governance, which the Notice (¶¶ 11, 13) correctly recognizes is essential for any continuing NECA role in universal service support administration. The three token non-ILEC directors would be simply a locked-in minority that would readily be outvoted by the fifteen directors representing and elected by ILEC interests, without any realistic ability to influence or affect NECA's corporate decisionmaking or policymaking.⁶

Such a toothless role for non-incumbent LEC interests in a putative NUSF administrator clearly cannot be allowed. While the Commission in CC Docket 96-45 is currently finalizing the formula for assessing NUSF support, it is apparent that under any eventual

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add three directors representing non-carrier beneficiaries of the NUSF, such as schools, libraries, and rural healthcare providers. AT&T does not oppose including representatives of such interests in the corporate governance of an otherwise neutral and unbiased NUSF administrator. However, for the reasons shown in these Comments, the other cosmetic changes in board membership proposed by NECA fall well short of achieving such neutrality.

⁶ Indeed, even if the entire group of directors from outside the telephone industry (who are elected by NECA's ILEC members) were to side with the directors representing non-incumbent carriers on a particular issue, those board members could still be outvoted by the ten directors representing the ILEC interests.

methodology selected for that purpose, non-ILEC carriers will account for a substantial proportion of the total support contributions. There can be no justification for denying these major contributors a meaningful role as a class in governing any entity designated by the Commission to administer those funds. It would be all the more inappropriate for the Commission to perpetuate NECA's *de facto* control by ILECs while deeming that entity somehow qualified as a neutral NUSF administrator.

Limiting the non-incumbents' representation to three directors is inequitable for the additional reason that this allotment is plainly insufficient to reflect the wide diversity of interests among the non-ILEC service providers. These entities include, among others, facilities-based interexchange carriers ("IXCs"); resellers of interexchange services; competitive access providers ("CAPs"); competitive local exchange carriers ("CLECs"); wireless providers of cellular and/or personal communications service ("PCS") offerings; operator services providers ("OSPs") and payphone service providers ("PSPs"); and possibly information service providers. By contrast, the Commission's rules allow NECA's ILEC membership -- whose overall interests as incumbent carriers are far more closely aligned -- a total of ten directors apportioned among their three subsets (BOCs, larger independent ILECs and small ILECs). There is no justification for restricting non-incumbents,

whose business and regulatory interests cover an even wider range, to a lesser number of directors on NECA's board.⁷

Similarly, there is no apparent basis for continuing to restrict voting eligibility for directors from outside the telephone industry to NECA's ILEC members. In order for the outside directors to perform their oversight and monitoring functions independently, as the Commission intended when it authorized their addition to NECA's board, these personnel must be representative of the full spectrum of contributors to universal service support. As shown above, non-ILEC telecommunications providers will play a substantial role in funding the NUSF, and these entities should not be disenfranchised from the selection of outside board

⁷ The concern raised in the Notice (¶ 13) regarding identifying non-ILEC entities eligible to nominate and vote for directors is readily resolved. Under the Commission's Telecommunications Relay Service ("TRS") funding program, all providers of interstate telecommunications service are required to file reports annually with the TRS Fund administrator, classifying their operations and providing data on their annual operating revenues. For 1995, a total of 3,058 companies provided such reports. See Carrier Locator: Interstate Service Providers (December 1996), Industry Analysis Division, Common Carrier Bureau. This information should be sufficient to allow identification of eligible entities, and to rank them within categories by service revenues, if necessary, to distinguish between large and small carriers.

members so long as NECA plays any role in NUSF administration.

In sum, it is apparent that the revisions to its corporate governance proposed in NECA's October 18 letter are far too limited to allow for any ongoing role for NECA -- even on an "interim" basis -- in the administration of NUSF. Instead, the Commission can conclude that NECA has the necessary impartiality to serve as an administrator only if NECA implements fundamental changes in its corporate structure and governance to assure that it is representative of all telecommunications providers who support universal service.⁸

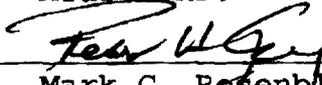
⁸ NECA itself appears to have acknowledged the insufficiency of its October 18 proposal. On January 10, 1997, NECA submitted to the Commission a proposal under which any universal service administrative functions would be assigned on an interim basis to a subsidiary not controlled by its ILEC members. NECA also undertook to divest that subsidiary entirely in the event it is later selected as the permanent NUSF administrator. See Letter dated January 10, 1997 from Bruce Baldwin, President, NECA, to Reed Hundt, Chairman, FCC.

WHEREFORE, for the reasons stated above, the Commission should find the changes proposed in NECA's October 18 letter insufficient to make NECA a neutral and impartial NUSF administrator. To achieve that result, the Commission should instead implement changes to the NECA board structure in accordance with these Comments.

Respectfully submitted,

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January 27, 1997

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 27th day of January, 1997, a copy of the foregoing "AT&T Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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