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

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

CC Docket No. 97-21

COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),¹ hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned docket.² The Commission seeks comment on proposals to make changes to the composition of the Board of Directors of the National Exchange Carrier Association, Inc. ("NECA") "to make the Board more representative of the telecommunications industry."³

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private Systems Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² In the Matter of Changes to the Board of Directors of the National Exchange Carrier Association, Inc., FCC 97-21 (Jan. 10, 1997) (Notice of Proposed Rulemaking and Notice of Inquiry) ("Notice").

³ *Id.*, ¶ 2.

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The purpose of such changes is to permit NECA to be eligible to serve as the temporary administrator of the universal service support mechanisms.⁴

I. SUMMARY

PCIA agrees with the tentative conclusion of the Commission that the composition of the NECA Board of Directors must be altered in order for NECA to be eligible to serve as a temporary administrator of universal service support mechanisms. Adoption of the proposals contained in the *Notice*, however, would not be adequate to achieve the recommendation of the Joint Board that NECA be altered to include significant, meaningful representation of non-incumbent local exchange carrier ("LEC") interests. Rather, including only three representatives from industry segments as diverse as interexchange, wireless, and competitive LEC, and with significant economic interests in the effective administration of universal service support programs, would amount only to a token representation on the NECA Board of Directors, which would continue to be controlled by incumbent LEC representatives. Moreover, the *Notice* contemplates only changes to the Board of Directors membership, without altering the membership of NECA itself. This could create problems in administration of the universal service support mechanisms.

The Commission needs to do more with respect to the Board of Directors of NECA if NECA is to be able to be an impartial administrator of universal service support mechanisms, even on a temporary basis. Even NECA has acknowledged this fact in a recent letter to the Commission in the universal service docket. PCIA applauds NECA for its recognition of the

⁴ *Id.*

concerns surrounding the proposal reflected in the *Notice*, and believes that the revised proposal offered by NECA in its recent correspondence may be a useful starting place to be further explored by the Commission and interested parties. In any event the Commission must ensure that all industry participants affected by the universal service support mechanisms are fully and fairly represented in considerations involving administration of those mechanisms.

II. THE PROPOSALS FOR ALTERING THE COMPOSITION OF THE NECA BOARD OF DIRECTORS REPRESENT A STEP IN THE RIGHT DIRECTION BUT ARE NOT SUFFICIENT

As the *Notice* explains, the NECA Board of Directors currently is comprised of two directors representing the Bell Operating Companies (“BOCs”), two directors representing other local exchange carriers having operating revenues in excess of \$40 million, six directors representing LECs having operating revenues of less than \$40 million, and five directors from outside of the LEC industry but chosen by the membership of NECA.⁵ In addition, “NECA currently has an exclusive membership comprised of incumbent LECs.”⁶

The Federal-State Joint Board on Universal Service (“Joint Board”) has 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

⁵ *Id.*, ¶¶ 4-5; 47 C.F.R. §§ 69.602 (c) (“five directors shall represent all three subsets”), 69.602(d), 69,602(f) (“[t]he association membership shall select the directors for the following calendar year who will represent all three subsets through an annual election in which each member of the association shall be entitled to one vote for each director position”).

⁶ *Notice*, ¶ 3.

telecommunications services to these entities as quickly as possible.”⁷ The Joint Board recommended, however, that before NECA could be appointed as the temporary administrator, the Commission should authorize the necessary rule changes to permit NECA to add “significant, meaningful representation” of non-incumbent LEC interests to the NECA Board of Directors.⁸ In that regard, NECA requested the Commission to “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.”⁹ This request in turn formed the basis for the proposals contained in the *Notice*.

PCIA endorses the Commission’s tentative conclusion 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.”¹⁰ Adoption of the changes proposed in the *Notice*, however, will not go far enough to achieve the goal of significant, meaningful representation of non-incumbent LEC interests as recommended by the Joint Board or render NECA a neutral, third-party administrator.

⁷ *Id.*, ¶ 10, citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 96J-3, ¶ 833 (Nov. 8, 1996) (Recommended Decision) (“*Joint Board Recommendation*”).

⁸ *Notice*, ¶ 10, citing *Joint Board Recommendation*, ¶ 833.

⁹ *Notice*, ¶ 7, citing Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC (Oct. 18, 1996).

¹⁰ *Notice*, ¶ 11.

As the *Notice* points out, incumbent LEC interests would continue to account for more than 71 percent of the Board of Directors under the NECA proposal.¹¹ At least ten directors would represent incumbent LECs, while only three directors of the 21-member board would represent non-incumbent LEC contributors to the universal service support mechanisms as representatives of interexchange carriers, wireless carriers, competitive LECs, and other funding participants.¹² The incumbent LEC representatives thus could exercise full control over the administration of the universal service support mechanisms during the period in which NECA might serve as a temporary administrator.¹³

PCIA acknowledges that there is no reason to believe that the incumbent LEC directors, including the five designated outside directors, will necessarily share the same viewpoint on all matters, or that any such shared viewpoint will always conflict with the views of the non-incumbent LEC carrier representatives. Nonetheless, the proposed expanded structure of the NECA Board of Directors would provide only minimal, token representation to industry segments whose interests (economic and otherwise) in the temporary administration of universal service support mechanisms are at least as great as the interests of the local exchange carrier segment. While representation of additional industry segments is critical,

¹¹ *Id.*, ¶ 13.

¹² The remaining three slots would be designated for representatives of schools, libraries, rural health care providers, and states.

¹³ This concern is valid even if one assumes that the five outside directors designated by the incumbent LEC directors do not automatically vote with the incumbent LEC directors. Because the incumbent LEC directors control ten position, they would need to convince only one other director to vote with them in order to obtain a majority vote on any particular issue.

such participation must be structured to serve as a meaningful opportunity to participate in and influence the decision-making.

Moreover, determining the representational role of only three non-incumbent LEC carrier positions raises problematic concerns. If each position is not allocated to particular industry segments, but instead are somehow selected by non-incumbent LEC interests as a group, there is a risk that the voting structure could result in significant industry segments lacking even a token role on the NECA Board of Directors. On the other hand, allocating one director each to interexchange carriers, wireless carriers, and competitive LECs assumes that all entities that fall within each of such categories have identical perspectives. The wireless industry, for example, consists of carriers -- large, small, and medium -- providing very diverse services and with diverse insight gained from their operations. Indeed, the fact that the current NECA board includes representatives from three different categories of LECs underscores the need to ensure that multiple directors are designated from any particular industry segment in order to ensure effective representation and impartial decision-making that takes into account all relevant factors.

It is significant that the *Notice* proposes no changes to the membership of NECA. PCIA recognizes that NECA "is an organization established at the Commission's discretion, whose structure and principal functions are specified by Commission rules."¹⁴ At the same time, however, as representatives of NECA's members, individual directors may be confronted with concerns about owing fiduciary duties to the NECA members -- who are

¹⁴ *Safeguards To Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes*, 10 FCC Rcd 6243, 6246 (1995).

exclusively incumbent LECs. This situation could create conflicts and threats of litigation for the directors deemed to represent non-incumbent LEC carriers or other participants in the universal service support mechanisms. This in turn would undermine the effectiveness and credibility of decisions made by the restructured Board of Directors.

The *Notice* raises the possibility of creating an advisory committee for NECA in connection with the administration of universal service support mechanisms.¹⁵ Relying on an advisory committee to ensure that NECA includes “significant, meaningful representation” of non-incumbent LEC interests simply is inadequate. An advisory committee likely would have no binding effect on the decision-making of NECA with regard to temporary administration of universal service support mechanisms.¹⁶ It is essential that representatives of non-incumbent LEC carriers have full voting power with respect to administration of universal service support mechanisms.

The fact that the assignment for which NECA has proposed revising the Board of Directors is temporary does not minimize the significance of having a board that is fully and fairly representative of all industry segments. During the period of time that NECA may serve as a temporary administrator of the universal service support mechanisms, substantive

¹⁵ *Notice*, ¶ 13 (asking whether there are any legal limitations that would “preclude NECA from creating an advisory committee . . . whose responsibilities are confined solely to matters relating to the administration of the universal service support mechanisms”).

¹⁶ PCIA does not oppose the proposal that directors selected from outside the incumbent LEC industry be limited in 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.” *See Notice*, ¶ 13.

decisions likely will be made that may form the basis for policies to be implemented and enforced by the permanent administrator of the mechanisms. In addition, actions taken during the interim period could have dramatic financial and competitive effects for specific industry segments or individual carriers within such segments, particularly if the Commission adopts a schools and libraries discount fund of the magnitude proposed by the Joint Board, increased by any additional funds for rural health care providers as the Commission may determine.

PCIA understands that NECA has recently proposed an alternative structure to permit the organization to serve as temporary administrator of the universal service support mechanisms. Specifically, in a January 10, 1997, letter, NECA has recognized some of the concerns with its original proposed changes and suggested that, instead of the proposal contained in the *Notice*:

immediately upon being appointed as temporary administrator and being authorized to commit resources, [NECA] would establish a wholly-owned subsidiary, a universal service administrative company (USAC), to administer the program. The USAC would have a balanced, representative board that would be based on Commission recommendations and would include some representation from the NECA Board. The USAC would have full control over administration of these programs.¹⁷

PCIA is pleased that NECA has responded to concerns about the original proposal, and believes that the revised NECA proposal, particularly if the board of directors of the subsidiary universal service administrative company is carefully structured, could resolve many of the concerns it has with the proposal reflected in the *Notice*. The Commission should

¹⁷ Letter from Bruce W. Baldwin, NECA to Reed E. Hundt, Chairman, FCC, CC Dkt. No. 96-45 (Jan. 10, 1997).

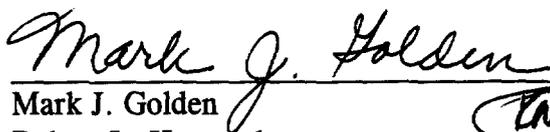
afford interested parties an opportunity to explore and develop the concept most recently offered by NECA, since it appears to offer the prospect of creating a NECA entity that in fact could act as an impartial administrator of the fund.

III. CONCLUSION

The *Notice* has properly concluded that changes to the composition of the NECA Board of Directors are necessary for NECA to be eligible to serve as a temporary administrator of universal service support mechanisms consistent with the recommendations of the Joint Board and the record developed in CC Docket No. 96-45. The proposals originally made by NECA and reflected in the *Notice*, however, will not provide an adequate level of representation to all industry segments with significant interests in such activities. To ensure that NECA can administer the universal service support mechanisms on a temporary basis on an even-handed, competitively neutral basis, further steps must be taken to ensure that NECA does not even present the appearance of being subject to control by incumbent LECs.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION**



Mark J. Golden

Robert L. Hoggarth

Personal Communications Industry Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314
(703) 739-0300



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