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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

**COMMENTS OF THE NATIONAL
CABLE TELEVISION ASSOCIATION, INC.**

The National Cable Television Association, Inc. ("NCTA") files these comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.¹ In the Notice, the Commission seeks comment on a narrow issue -- how it can amend its rules so that the National Exchange Carrier Association, Inc. ("NECA") can reform its Board of Directors, as recommended by the Federal-State Joint Board,² in order to make it eligible to serve as temporary administrator of the universal support mechanisms mandated by Section 254 of the Telecommunication Act of 1996 ("1996 Act").³ In an accompanying Notice of Inquiry ("NOI"), with a different comment deadline, the Commission seeks comment on additional rule changes it should make "to

¹ Changes to the Board of Directors of the National Exchange Carriers Association, Inc., Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 97-21, FCC 97-11, released January 10, 1997.
² Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 96J-3, released November 8, 1996 ("Recommended Decision").
³ Pub. L. No. 104-104, 110 Stat. 56 (1996).

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enable NECA to become a neutral third party, and thus, eligible to participate in the selection process of the permanent universal service fund administrator.”⁴

I. INTRODUCTION AND SUMMARY

For the reasons stated below, the Commission should amend its rules to make NECA eligible to be temporary administrator of the support mechanisms for schools, libraries and health care providers. In this regard, at a minimum, it should require that the governing board of the temporary administrator consist of a majority of directors who are neither from incumbent local exchange carriers (“ILECs”) nor are selected by ILECs. The board must be fairly representative of those (1) contributing to the universal service funds; (2) providing services designated for support (including Internet access); and (3) receiving supported services.

In our comments to the Joint Board, we said that a truly independent entity should manage the collection and disbursement of subsidies mandated by Section 254 of the Act. The independent administrator should be responsible for collection of carrier contributions; disbursement of funds; review and adjustment of the funding requirement; and resolution of disputes regarding the fund. We did not express a preference for a particular administrator, observing that the independent entity could be a pre-existing regulatory body or an entirely independent third party designated by regulators and preferably chosen through a request for proposals to ensure capabilities and efficiency.

⁴ Notice at ¶2. The changes to NECA’s governing Board discussed in these comments should also be considered as responsive to the NOI since they would be necessary (though not sufficient) to render NECA “a neutral third party.”

We urged that the same administrator be designated to handle both the support mechanisms for schools, libraries and health care providers, as well as those for rural, insular and high cost areas. In any event, we stressed that it is essential that the administrator perform its duties in a competitively neutral manner, free of the control or influence of the incumbent local exchange carriers so that universal service obligations are not imposed in a manner that frustrates the development of competition.⁵

The Joint Board essentially concurred in this approach. It recommended that the Commission establish a universal service advisory board “to designate a neutral third-party administrator,”⁶ and that the administrator be selected through a competitive bidding process.⁷ It also said that “[t]he 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 (3) not have a direct financial interest in the support mechanisms established by the Commission.”⁸ In addition, the Joint Board said the administrator must also have the ability to process large amounts of data and to bill large numbers of carriers.

⁵ Comments of the National Cable Television Association, Inc., CC Docket No. 96-45, filed April 12, 1996, at 25.

⁶ Recommended Decision at ¶829.

⁷ Id. at ¶830.

⁸ Id.

The Joint Board recommended that the administrator be selected through competitive bidding no more than six months after the proposed advisory board is appointed which it urged be done promptly. While rejecting requests that NECA be automatically appointed administrator, the Joint Board -- “in the interest of providing telecommunications services to schools, libraries and health care providers as quickly as possible”⁹ -- recommended that NECA be appointed the “temporary administrator” of support mechanisms for schools, libraries and health care providers once the Commission changes its rules “to permit NECA to add significant meaningful representation for non-incumbent LEC carrier interests to the NECA Board of Directors.”¹⁰

The Notice of Proposed Rulemaking in this proceeding addresses the short-term question of what FCC rule changes are necessary to enable NECA to be appointed the temporary administrator of the support mechanisms for schools, libraries and health care providers. As the Joint Board recognized in refusing to recommend NECA as permanent administrator of the support mechanisms, “the appearance of impartiality for the new administrator is essential”¹¹ and would be absent if NECA -- as currently constituted -- were appointed because of its “current membership of incumbent local exchange carriers, its Board of Directors composed primarily of representatives of incumbent local exchange

⁹ Id. at ¶833.

¹⁰ Id.

¹¹ Id. at ¶832.

carriers, and its advocacy positions in several Commission proceedings [which] may appear to non-LEC carriers as evidence of NECA's bias toward ILECs."¹²

II. THE GOVERNING BOARD OF THE ADMINISTRATOR OF THE UNIVERSAL SERVICE SUPPORT MECHANISMS MUST INCLUDE REPRESENTATIVES OF THOSE PROVIDING AND RECEIVING SUPPORTED SERVICES AND THOSE CONTRIBUTING TO UNIVERSAL SERVICE FUNDS AND MUST HAVE A MAJORITY OF NON-ILEC MEMBERS

NCTA agrees with the Joint Board that NECA, as currently constituted, should not be eligible to serve as either temporary or permanent administrator. Because NCTA also agrees that support for schools, libraries and health care providers should begin flowing as soon as possible, we support the Joint Board recommendation that NECA can be appointed temporary administrator -- to administer support mechanisms for schools, libraries and health care providers -- only after it adds "significant meaningful representation for non-incumbent LEC carrier interests to the NECA Board of Directors."¹³

The NECA proposal reflected in the Notice does not achieve this purpose. Under that proposal, NECA would add a new "subset" of six directors to its existing 15-person Board of Directors (five of whom are from non-LECs, but are chosen by the other 10 ILEC directors). As described in the Notice, of the six new directors -- who would only participate in NECA decisions on the administration of universal service support

¹² Id.

¹³ Id. at ¶833.

mechanisms, -- three “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.”¹⁴

The proposed six new directors cannot be said to add “significant meaningful representation” for non-ILEC directors on the NECA Board since, even if they were all of one mind on a particular issue, the remaining 10 ILEC directors plus the five ILEC-selected “non- ILEC” directors would continue to hold more than a two-thirds majority on the Board. If directors are to be added to the NECA Board to make it eligible to be temporary administrator, the NECA Board should be restructured so that less than a majority of the directors come from ILECs, (including “non-ILEC” directors selected by ILEC directors). In addition, the non-ILEC directors should be drawn from a cross-section of those who provide supported services (e.g. CLECs, Internet access providers) and those who will receive such services (e.g. schools, libraries, health care providers).

We are aware that NECA has recently proposed an alternative approach to render it eligible to be temporary administrator.¹⁵ Picking up on a suggestion in the Notice (at ¶13), NECA proposes that:

immediately upon being appointed as temporary administrator and being authorized to commit resources, it would establish a wholly-owned subsidiary, a universal service administrative company (USAC), to administer the program. The USAC would have a balanced, representative

¹⁴ Notice at ¶12. NECA proposes that the entire new Board would participate in its administration of the current universal service, Lifeline Assistance and LTS programs, as well as Board oversight of auditing, finance and general corporate matters. Id.

¹⁵ See Letter to Reed E. Hundt, Chairman, FCC, from Bruce W. Baldwin, NECA, CC Docket No. 96-45, January 10, 1997.

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. Necessary NECA personnel would be dedicated to the USAC and support services would be obtained from NECA on a chargeback basis pursuant to NECA's Commission-approved cost allocation manual.¹⁶

The NECA proposal addresses both short and long term administration of support mechanisms. NECA proposes that the USAC would participate in "any bidding process" to select a permanent administrator and, if selected, it would be divested from its affiliation with NECA, a new company would be established pursuant to Commission rule and "for some period of time" support services would be shared between NECA and USAC. USAC would then have responsibility for administering federal universal service support programs, including the High Cost, Low Income, Schools, and Libraries, Rural Health Care Providers and Telecommunications Relay Service programs; NECA would "continue to file and defend the access charge tariffs and administer the pooling revenue distribution process...."¹⁷

The issues NECA's new proposal raise regarding its eligibility to be permanent administrator are more appropriately addressed in response to the NOI in this proceeding. Nevertheless, the approach NECA offers appears to be a legitimate basis to make it eligible to be the temporary administrator if the governing board of the USAC has at least a majority of non-ILEC members from all affected industries (interexchange, wireless,

¹⁶ Id.

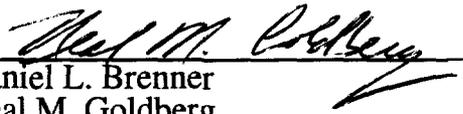
¹⁷ Id. at 2.

cable and other Internet access providers, etc.) and communities (educational, health, etc.). If NECA agrees to that structure to administer the schools, libraries and health care support mechanisms, however, it must recognize (as its letter appears to do) that it is not assured of becoming the permanent administrator, only that it would be eligible to bid in the competitive bidding process recommended by the Joint Board.

III. CONCLUSION

For the reasons stated above, the Commission should take steps to make NECA eligible to be temporary administrator of the universal service support mechanisms for schools, libraries and health care providers. At a minimum, these steps must require that the governing board of the temporary administrator consist of a majority of non-ILEC members (who are selected by non-ILECs) and that the board include representatives of those providing and receiving supported services as well as those contributing to universal service funds.

Respectfully submitted,


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