

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

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FEDERAL COMMUNICATIONS COMMISSION
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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. |) | |

**REPLY COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),¹ hereby submits its reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned docket.² A number of the opening round comments concur in PCIA's belief that the revisions proposed in the *Notice* to the composition of the Board of Directors of the National Exchange Carrier Association, Inc. ("NECA") are not sufficient to convert NECA

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*").

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into a neutral, third-party administrator, even on a temporary basis, of universal service support mechanisms.

I. SUMMARY

The opening comments concur in many of the concerns raised by PCIA regarding the proposals contained in the *Notice* for the restructuring of the Board of Directors of NECA to enable it to be eligible to serve as the temporary administrator of universal service support mechanisms. As PCIA pointed out, the recommended restructuring of the NECA board would do nothing to alter control of decision-making by ILECs and would not represent a meaningful opportunity for other segments of the telecommunications industry to participate in decision-making regarding the universal service support administration. Moreover, three director slots simply are inadequate to represent the diverse interests embodied by non-ILECs, particularly when ILECs would have ten different representatives on behalf of their three categories. The comments also suggest that there are additional legal and practical considerations militating against adoption of the proposal set forth in the *Notice*.

The modified proposal recently offered by NECA holds out the possibility of addressing many of the concerns raised in the opening comments, depending upon the Commission's resolution of issues and its action on the recommendations for the structure of the board of directors of the possible NECA subsidiary. While the Commission should proceed to adopt rule changes necessary to permit NECA or its subsidiary to be eligible for selection as the temporary administrator, the Commission should reject calls for immediate designation of NECA to that position, until the CC Docket No. 96-45 rulemaking establishes

the applicable policies and the Commission has fully and fairly considered all interested and eligible applicants for the temporary administrator position.

II. MERELY INCREASING THE NUMBER OF DIRECTORS OF NECA BY SIX IS INADEQUATE TO RENDER NECA A NEUTRAL, THIRD PARTY ADMINISTRATOR OF UNIVERSAL SERVICE SUPPORT MECHANISMS

In its opening comments in this docket, PCIA acknowledged that the proposals contained in the *Notice* for expanding the Board of Directors of NECA “to make the Board more representative of the telecommunications industry,”³ and thus render NECA eligible to serve as the temporary administrator of universal service support mechanisms,⁴ were a step in the right direction, but were not adequate in light of the tests set forth by the Joint Board⁵ and the Commission.⁶ A substantial number of the commenting parties agreed with PCIA that the mere addition of three directors to represent non-incumbent local exchange carriers to a board with 15 representatives selected by the members of NECA, which are exclusively incumbent

³ *Notice*, ¶ 2.

⁴ *Id.* In particular, the temporary administrator position involves handling of the schools, libraries, and rural health care provider discount programs currently under consideration by the Commission.

⁵ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 96J-3, 833 (Nov. 8, 1996) (Recommended Decision) (“*Recommended Decision*”) (recommending that, before NECA could be appointed as the temporary administrator of the schools, libraries, and rural health care providers fund, 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).

⁶ *Notice*, ¶ 11 (Commission tentatively concluded 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”).

local exchange carriers (“ILECs”), would leave control of decision-making in the hands of the ILECs. Indeed, the proposal would provide no meaningful participation for a wide range of diverse carriers contributing a substantial portion of the universal service funds.⁷

For example, AT&T Corp. (AT&T”) pointed out that the changes proposed in the Notice “would not eliminate the existing strong bias of NECA’s corporate governance structure in favor of incumbent local exchange carriers.”⁸ Indeed, AT&T observed, similarly to PCIA, that “[t]he 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.”⁹ MCI Telecommunications Corporation (“MCI”) highlighted the fact that, under the proposals contained in the Notice, “only 14% of the Board would represent the interests of non-ILEC universal service payors.”¹⁰ The National Cable Television Association, Inc. (“NCTA”) reiterated the control that would be retained by the existing ILEC-elected directors in pointing out that, “even if [the non-ILEC directors] were all of one mind on a

⁷ As indicated in PCIA’s opening comments, implementation of an advisory committee format likewise would deny non-ILECs a meaningful opportunity to participate in the administration of universal service support mechanisms, temporary or otherwise. Accordingly, the Commission should reject the suggestion made by Ameritech regarding the establishment of a “special advisory committee” to work with NECA on interim administration of universal service support mechanisms.

⁸ AT&T Comments at 2.

⁹ *Id.* at 4.

¹⁰ MCI Comments at 3.

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."¹¹

Not surprisingly, the changes to the NECA Board of Directors proposed by the *Notice* received support only from some of the local exchange carriers submitting opening comments. Southwestern Bell Telephone Company ("SWBT") makes the remarkable assertion that:

Along with the independent perspective of the existing five outside directors, the addition of six new outside directors representing non-incumbent LEC participants and support beneficiaries to a fifteen member Board constitutes significant, meaningful representation of non-incumbent LEC interests. As a result, with respect to its temporary administrator functions, eleven out of twenty-one (52%) of the directors will represent perspectives that are independent of the incumbent LECs.¹²

SWBT simply ignores the fact that, although the "five outside directors" may not be affiliated with ILECs,¹³ they are still elected by the NECA membership -- *by ILECs*. These five directors thus must be counted with the other ten directors of NECA that represent ILEC interests; they certainly do not serve to expand representation on the NECA Board of Directors of non-ILEC interests, such as interexchange carriers ("IXCs"), competitive local exchange carriers ("CLECs"), and wireless carriers.

In addition to the fact that, under the *Notice's* proposals, ILECs would continue to control the NECA Board of Directors, a number of commenters agreed with PCIA that three or six slots on a 21-member Board are inadequate to represent the interests of non-ILEC

¹¹ NCTA Comments at 6.

¹² SWBT Comments at 2.

¹³ 47 C.F.R. § 69.602(d).

entities.¹⁴ AT&T identified several categories of non-ILEC interests in addition to those specified in the *Notice*, including competitive access providers, operator service providers, and payphone service providers.¹⁵ As AT&T emphatically stated, “[t]here is no justification for restricting non-incumbents, whose business and regulatory interests cover an even wider range [than NECA’s ILEC membership], to a lesser number of directors on NECA’s board.”¹⁶

In order to achieve a more effective representation of the telecommunications industry, as well as potential recipients of universal service support funds for schools, libraries, and rural health care providers, a number of parties offer alternative proposals for restructuring the NECA Board of Directors or to serve as guiding principles for a NECA subsidiary or other temporary administrator of the universal service support mechanisms. These proposals generally entail reducing the proportion of ILEC representatives and increasing the proportion of non-ILEC carrier representatives as well as representatives of potential recipients and states.¹⁷ The record makes clear that such action is necessary if NECA or an affiliated entity is to serve as the temporary administrator of universal service support mechanisms.

The opening comments reflect concern, noted by PCIA as well, about the fact that the *Notice* proposes no changes to the membership of NECA. WorldCom, for example,

¹⁴ *E.g.*, American Library Association (“ALA”) Comments at 5; AT&T Comments at 5; MCI Comments at 3; NCTA Comments at 6; Sprint Corporation (“Sprint”) Comments at 2; WorldCom, Inc. (“WorldCom”) Comments at 6.

¹⁵ AT&T Comments at 5.

¹⁶ *Id.* at 5-6.

¹⁷ *See, e.g.*, ALA Comments at 5; MCI Comments at 3; NCTA Comments at 6; Sprint Comments at 2.

recommends that “full voting membership in NECA must be opened up to all interested parties”¹⁸ in order for NECA to be eligible to serve as a temporary administrator of universal service support mechanisms consistent with the standards enunciated by the Joint Board and the Commission. The Rural Telephone Coalition and the United States Telephone Association (the “LEC Associations”) expand on a concern raised by PCIA concerning the fiduciary obligations of the non-ILEC directors to the ILEC membership that would not be altered by the proposals contained in the *Notice*. These commenters point out that, “[a]s a corporate entity, NECA is subject to the same corporate law provisions applicable to any corporation similarly organized, including the fiduciary duty of its Board of Directors to its members, and the fiduciary duty of NECA as the agent of its principals.”¹⁹ As a result, “[t]he suggestion to create a new subset of directors, while adding representation from other elements of the industry, would create substantial legal and operational difficulties.”²⁰ Other parties note the need for clarification and direct guidance from the Commission as to the precise role to be played by the non-ILEC directors.²¹ These comments all suggest that there are serious legal and practical questions with the proposals set forth in the *Notice*.

¹⁸ WorldCom Comments at 6.

¹⁹ LEC Associations Comments at 2-3.

²⁰ *Id.* at 5.

²¹ *E.g.*, ALA Comments at 4-5; SWBT Comments at 3.

The modified proposal submitted by NECA on January 10, 1997,²² and further explained in its opening comments in this docket may be a means for addressing a number of the concerns raised in the initial round of comments. Under the revised NECA proposal, a subsidiary of NECA would be the entity proposed for appointment as the temporary administrator of the universal service support mechanisms. NECA has indicated that it “does not take any specific positions on the size or composition of the USAC subsidiary board, except to recommend that the Commission clearly establish, by rule or order, a reasonable size for the board and clear criteria and methods for selecting representatives from a cross-section of the telecommunications industry.”²³ Should the Commission decide to pursue the new option offered by NECA, the opening round comments concerning the appropriate composition of the board of directors provide guidance as to the composition of the board of directors of the NECA subsidiary. In addition, the Commission should ensure that no corporate governance and fiduciary obligation issues would remain present with the appointment of a subsidiary of NECA, with a diverse board of directors, to serve as a temporary administrator of universal service support mechanism.

PCIA is concerned with the requests of NECA and the LEC Associations for prompt -- almost immediate -- appointment of the NECA USAC subsidiary as the temporary administrator.²⁴ While PCIA recognizes the time sensitivities involved, it would be

²² Letter to Reed E. Hundt, Chairman, FCC, from Bruce W. Baldwin, President, NECA, CC Dkt. No. 96-45 (Jan. 10, 1997).

²³ NECA Comments at 7.

²⁴ NECA Comments at 8-10; LEC Associations Comments at 6.

inappropriate to hastily take action without full consideration of all entities that might be eligible to and interested in serving as the temporary administrator. In addition, the Commission has not yet concluded its action with respect to the schools, libraries, and rural health care providers universal service support mechanisms, making it difficult for any entity to establish the necessary administrative mechanisms that will ultimately be necessary to support the plan ultimately adopted by the Commission. Accordingly, while it is appropriate for the Commission to take action in this proceeding to adopt rule and policy changes necessary to permit NECA or an affiliate to serve as the temporary administrator, such action should not be taken until the Commission concludes its action on the *Joint Board*

Recommendation.

III. CONCLUSION

The record in this proceeding makes clear that the changes proposed by the *Notice* are not sufficient to render NECA a neutral, third-party temporary administrator of universal service support mechanisms. The substitute proposal offered by NECA holds promise for addressing many of the concerns raised by the opening comments. Considerations raised in the opening comments regarding the structure of the board of directors should be taken into account by the Commission in the event it concludes that NECA may establish a separate subsidiary that would be eligible to serve as the temporary administrator. In no event, however, should the Commission rush to appoint NECA as the temporary administrator until

the Commission completes its action in the CC Docket No. 96-45 rulemaking and fairly considers all eligible parties interested in serving as the temporary administrator.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION**

A handwritten signature in cursive script that reads "Mark J. Golden". The signature is written in black ink and is positioned above a horizontal line. To the right of the signature, there is a small, circular stamp or mark that appears to contain the initials "RHH".

Mark J. Golden

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