

Comments of WorldCom, Inc.
CC Docket No. 97-21
March 3, 1997

On October 18, 1996, NECA submitted a letter to the Commission proposing interim changes in NECA's governing structure designed to "broaden support for NECA's appointment as interim administrator of the Universal Service Fund."² NECA proposed as an interim measure to add six members to its current Board of Directors, three of whom would represent non-ILECs such as interexchange carriers ("IXCs") and competitive LECs, and three of whom would represent beneficiaries of the fund, such as schools, libraries, and the states.³

In its November 8th Recommended Decision, the Joint Board recommended that NECA be appointed as temporary administrator only after NECA has added "significant, meaningful representation for non-incumbent LEC carrier interests to the NECA Board of Directors."⁴ The Joint Board opposed appointing NECA as permanent administrator of the universal service support mechanisms, noting serious questions about NECA's "ability to appear as a neutral administrator among contributing carriers."⁵ The Joint Board recommended instead that the permanent administrator must: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in unrelated proceedings; (3) not be associated with any particular

² Letter from Bruce W. Baldwin, President, NECA, to Reed Hundt, Chairman, FCC, dated October 18, 1996, at 1 ("NECA October 18 Letter").

³ NECA October 18 Letter at 2.

⁴ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 96J-3, released November 8, 1996, at para. 833 ("Recommended Decision").

⁵ Recommended Decision at para. 832.

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industry segment; and (4) not have a direct financial interest in the FCC's support mechanisms.⁶ The Joint Board found that NECA, as presently constituted, does not meet this criteria. WorldCom filed comments with the Commission late last year strongly supporting the Joint Board's recommended criteria and its conclusion on this point.⁷

On January 10, the FCC issued its Notice of Proposed Rulemaking and Notice of Inquiry in this proceeding.⁸ On that same day, NECA submitted a follow-up letter to the FCC with a new proposal to establish a "universal service administrative company", or USAC, to administer the universal service program.⁹ NECA proposes to divest itself of its USAC affiliate once it has been selected as permanent administrator of the new USF.¹⁰

The Notice of Inquiry asks for comments on how the FCC's rules might be amended "to remove any regulatory barriers that otherwise may prevent NECA from making itself a neutral, third party" pursuant to the Joint Board's four criteria.¹¹ The Commission emphasizes that "changes in the membership and governance of NECA would be essential to

⁶ Recommended Decision at para. 830.

⁷ Comments of LDDS WorldCom, CC Docket No. 96-45, filed December 19, 1996, at 42.

⁸ WorldCom incorporates by reference its January 27, 1997 comments in response to the Notice of Proposed Rulemaking in this proceeding.

⁹ Letter from Bruce W. Baldwin, President, NECA, to Reed Hundt, Chairman, FCC, dated January 10, 1997, at 1 ("NECA January 10 Letter").

¹⁰ NECA January 10 Letter at 2.

¹¹ Notice of Inquiry at para. 14.

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cross the threshold of eligibility for selection, but would impart to NECA no preferred status in the selection decision."¹²

II. NECA'S SEPARATE AFFILIATE PROPOSAL IS WHOLLY INADEQUATE TO ADDRESS THE JOINT BOARD'S WELL-FOUNDED CONCERNS

The proposal contained in NECA's January 10 letter is a non-starter. In short, a subsidiary wholly owned, controlled, and staffed by NECA is no solution to the severe bias problem recognized so clearly by the Joint Board. According to the January 10 letter, upon initiation the new USAC affiliate would be completely owned by NECA, would include NECA representation on its Board of Directors, would use NECA personnel, support services, and resources, and would share other support services, such as human resources and information systems, "for some time."¹³ Upon selection as permanent administrator, the USAC affiliate apparently would be divested, by some as-yet unspecified means and within an as-yet unspecified time frame. Nonetheless, the affiliate would continue to share support services with NECA, and would receive a transfer of NECA personnel, support services, and resources after "divestiture." The new affiliate also would have no members, which raises the question of to whom the new affiliate would answer. All in all, the January 10 letter paints the picture of a supposedly

¹² Id. (emphasis in original).

¹³ NECA January 10 Letter at 1.

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separate entity, but with continuing close ties to an otherwise unreformed and biased NECA.¹⁴

WorldCom urges the Commission to reject the separate affiliate "solution" proffered by NECA. Instead, the Commission should focus on the real issue: the need for significant restructuring of NECA itself -- if NECA is to be considered at all.

III. DRAMATIC RULE CHANGES ARE NECESSARY TO REMOVE NECA'S STRUCTURAL BIAS IN FAVOR OF INCUMBENT LEC INTERESTS

WorldCom submits that in order for NECA to even be considered as a neutral third party administrator of the new universal service programs, the Commission must take immediate steps to render that organization hospitable to the interests of parties other than the incumbent LECs. Even these steps, which will help remove the inherent structural bias, may not be enough to eliminate the pervasive institutional and attitudinal biases, and thereby magically transform NECA overnight into a neutral third party.¹⁵ Such a transformation will

¹⁴ WorldCom also notes that, for procedural reasons, NECA's January 10 should not form the foundation of any Commission rule changes in this area. WorldCom is troubled that NECA chose to file its separate affiliate proposal on the very same day that the Commission issued its notices. Whether by coincidence or design, the end result is that many parties, including WorldCom, filed comments in response to the earlier Notice of Proposed Rulemaking while completely unaware of the existence of the January 10 letter. At minimum, the letter should have been re-noticed by the Commission for use with regard to the Notice of Proposed Rulemaking.

¹⁵ Given the Commission's crushing workload as a result of the 1996 Act, WorldCom is concerned that the Commission appears to be dedicating so much time and effort, in two separate pleading cycles, trying to transform an otherwise wholly unacceptable entity into a viable candidate for administrator. This commitment of valuable resources seems incongruous with the Commission's own statement that a radically transformed NECA would have "no preferred status in the selection decision." See Notice of Inquiry at para. 14.

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be wholly impossible, however, without at the very least taking these first few steps.

WorldCom further believes that these recommended steps must be codified in the form of actual Commission rules. By using the vehicle of FCC rules, rather than mere policy pronouncements or NECA promises, the required reforms would be rendered public, clear, enforceable, and irreversible. Moreover, the Commission will be able to maintain, if not expand, its present necessary oversight of NECA's operations, especially given the unique regulatory genesis and current significant role of NECA in a wide range of telecommunications-related affairs.

WorldCom proposes several specific rule changes:

First, the FCC must revise Rule 69.602 to require NECA to completely balance its Board of Directors with non-ILEC interests. A key component of this process is to reduce ILEC representation on the Board in absolute terms, not merely add a few non-ILEC representatives. WorldCom suggests that a Board totaling between 15 and 18 members is optimal. Of this total Board, a maximum of three members should represent the ILECs, with each one of the three current ILEC "subsets" assigned a Board seat.¹⁶ The remaining Board slots should be divvied up among IXC, CLECs, CMRS providers, other affected parties, and public representatives (e.g., the FCC and NARUC). At no time should the total of ILEC slots surpass the total of IXC and CLEC slots. In this way, NECA will have no choice but to allow all industry segments to be fully and fairly represented on the Board, so that the ILECs no

¹⁶ See 47 C.F.R. § 69.602(a).

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longer have a controlling position in the organization.

Second, Rule 69.601(b) must be revised to open up full voting membership in NECA to all interested parties, including IXCs and CLECs. NECA cannot hope to become a truly neutral entity unless and until its membership accurately reflects the breadth and depth of the telecommunications industry. In order to prevent the ILECs from simply voting their overwhelming numbers, the Commission should create separate membership categories, with each category possessing voting power commensurate with its Board representation.

Third, WorldCom does not at this time suggest any changes to the composition of NECA's professional staff. However, Rule 69.602 should be revised to grant the reformed Board express authority over the hiring of professional staff and other personnel.

Finally, Rule 69.601 should be amended to require that NECA comply fully with the neutrality principles articulated by the Joint Board. NECA's selection as permanent administrator of the universal service program should be conditioned on continuing compliance with these principles. Annual certifications, under oath, should attest that this compliance is actually taking place.

Without these types of fundamental structural changes -- codified and enforced by FCC rules -- NECA's current structure does not begin to satisfy the Joint Board's four-part criteria for a permanent administrator that includes "significant, meaningful representation" of non-ILEC interests.¹⁷

¹⁷ Recommended Decision at para. 833.

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Some parties may object that NECA should not be required to undergo such fundamental changes to its governance and membership in order to qualify to administer universal service. WorldCom disagrees. NECA has expressly initiated this process by seeking the FCC's official imprimatur on NECA's nomination as universal service administrator. More importantly, however, in the newly-competitive environment engendered by the 1996 Act, the changes suggested above will be just as necessary to govern NECA's role in administering other regulatory programs, such as TRS and access tariff pools. WorldCom believes that NECA should no longer be granted guaranteed status as the exclusive administrator of any funding program. Whether through a competitive bidding process or some other competitively-neutral means, other interested parties must be allowed to contest NECA's position as administrator of these programs.¹⁸

The important point is that, in the absence of far-reaching structural changes overseen by the FCC, NECA can never hope to qualify as administrator of universal service programs. WorldCom urges the Commission to adopt rules that require NECA to abandon its historic roots in the ILEC industry and take the necessary steps toward true neutrality.

¹⁸ One possible short-term solution is for the FCC to adopt all the rule changes outlined above, but then allow NECA to move its non-universal service administrative functions into one or more structurally separate affiliates. These affiliates could be allowed to mirror NECA's current organizational structure and staff in the short term, until the Commission has had an opportunity to revisit the matter in more depth. This alternative has the virtue of allowing the Commission to move forward to reform NECA for purposes of qualifying for universal service administration, while at the same time granting a significant degree of continuity to NECA's ongoing projects in other areas.

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IV. CONCLUSION

The Commission should make the rule changes proposed above by WorldCom.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Cecelia Y. Johnson, hereby certify that I have this 3rd day of March, 1997, sent a copy of the foregoing "Comments of WorldCom" by hand delivery to the following:

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