



**MCI Telecommunications Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
202 887 2180  
FAX 202 887 2204

ORIGINAL

DOCKET FILE COPY ORIGINAL

**Lawrence Fenster**  
Senior Economist  
Federal Law and Public Policy

RECEIVED

MAR 3 1997

Federal Communications Commission  
Office of Secretary

DOCKET FILE COPY ORIGINAL

March 3, 1997

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

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

Dear Mr. Caton:

Enclosed herewith for filing are the original and 11 copies of MCI Telecommunications Corporation's Comments, and an electronic copy in Wordperfect 5.0, in the above-captioned docket.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Petition furnished for such purpose and remit same to the bearer.

Sincerely yours,

Lawrence Fenster

No. of Copies rec'd  
List ABCDE

0/11

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

**RECEIVED**

**MAR 3 1997**

Federal Communications Commission  
Office of Secretary

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

**COMMENTS OF MCI COMMUNICATIONS CORPORATION**

Lawrence Fenster  
MCI Telecommunications Corp.  
1801 Pennsylvania Ave., NW  
Washington, DC 20006

March 3, 1997

## Table of Contents

Summary .....	i
I. Introduction .....	1
II. NECA is Fundamentally a Tariff Filing Association for Incumbent Local Exchange Carriers .....	2
III. The Passage of the 1996 Act and NECA's Own Actions Undermine the Rationale of Having it Administer Explicit Subsidy Programs .....	3
IV. Regulatory Reforms Will Not Help NECA Become Neutral .....	5
V. Conclusion .....	8

## Summary

The formation of NECA was premised on the absence of local exchange competition. NECA was established as an agent authorized to: a) file common tariffs based on the average embedded costs of incumbent local exchange companies, and b) administer a system of subsidies implicitly contained in access rates. Although NECA eventually administered explicit subsidy programs, these programs have been incidental to NECA's mission.

The passage of the 1996 Act has invalidated the conditions that once justified having a tariff filing association, such as NECA, administer explicit subsidy programs. Conditions now require complete separation of tariff filing functions from management of explicit subsidies. MCI demonstrates that no organizational reform can eliminate the conflicts of interest and anticompetitive incentives that would exist were a single organizational entity to be responsible for filing common tariffs based on average embedded costs, and administering explicit subsidies based on the difference between benchmark revenues and the forward looking long run incremental costs of individual carriers.

NECA may, of course, submit a bid to become the permanent administrator of the explicit universal support system. But, the Commission should not (as it proposes) unilaterally reform its rules. Doing so would inappropriately signal implicit support for NECA, or for specific organizational arrangements, and so bias the competitive bidding process. Rather, NECA should propose the specific rule changes it would require to accomplish its desired reorganization.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Changes to the Board of Directors of the National Exchange Carrier Association, Inc.</b>	)	<b>CC Docket No. 97-21</b>
	)	
<b>Notice of Inquiry</b>	)	

**MCI COMMENTS**

I. Introduction

MCI Telecommunications Corporation ("MCI") respectfully submits its comments in response to the Notice of Inquiry ("Notice") in the above-captioned docket<sup>1</sup>. In this Notice, the Commission is seeking comments from interested parties on how "...to amend its rules to remove any regulatory barriers that otherwise may prevent NECA from making itself a neutral, third party...so that NECA may compete on an equal footing with all other qualified entities for selection as the permanent administrator."<sup>2</sup> Specifically, the Commission asks what rule changes it "...should make to subpart G of its Part 69 rules so that NECA can alter its membership composition, Board of Directors, organizational structure, or functions in whatever ways it perceives

---

<sup>1</sup> In the Matter of: Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Notice of Inquiry, CC Docket No. 97-21, FCC No. 97-21, released January 10, 1997.

<sup>2</sup> Notice at para. 14.

necessary to address these concerns."<sup>3</sup>

II. NECA is Fundamentally a Tariff Filing Association for Incumbent Local Exchange Carriers

NECA was originally established by the Commission in early 1984 as an association of incumbent LECs authorized to file common tariffs on behalf of participating carriers and administer the contributions to, and distributions from, the revenue pool in order to share the risk of providing interstate access services. The Commission rationalized the formation of NECA on the grounds that AT&T, the entity that had filed tariffs for the industry prior to its divestiture, could not continue doing so without appearing to conflict with the spirit, and possibly the letter, of the consent decree.<sup>4</sup>

In addition to developing procedures for filing common tariff elements that reasonably reflected the average industry embedded cost of those elements, NECA was authorized to establish and administer the universal service fund (USF) and long term support fund (LTS). Just as it made sense to permit profit pooling in the absence of potential local competition, it made sense for NECA to administer universal service programs based on implicit subsidies contained in access charges. Later, in response to increasing local rates unrelated to the subscriber line charge, the Commission

---

<sup>3</sup> *Id.*, at para. 15.

<sup>4</sup> MTS and WATS Market Structure, Third Report and Order, CC Docket 78-72, Phase 1, 93 FCC 2d 241(1983) at para. 341.

implemented its Lifeline Assistance and LinkUp America Programs.<sup>5</sup> The fact that the Commission expanded NECA's role to administer the collection and distribution of funds for the Commission's Lifeline Assistance and LinkUp America Programs nearly two years after NECA was authorized to file common tariffs, confirms the view that management of explicit subsidy programs is not integral to NECA's mission.

III. The Passage of the 1996 Act and NECA's Own Actions Undermine the Rationale of Having it Administer Explicit Subsidy Programs

In its Notice, the Commission asked how it "...might amend its rules to remove any regulatory barriers that otherwise may prevent NECA from making itself a neutral, third party, and satisfying the four criteria identified by the Joint Board, so that NECA may compete on an equal footing with all other qualified entities for selection as the permanent administrator."<sup>6</sup> The passage of the 1996 Act, and NECA's own actions, have invalidated the justification of having a tariff filing association, such as NECA, administer explicit subsidy programs.

Even though NECA drew justification of its role of (implicit) subsidy administrator from its role as incumbent LEC tariff filing agent, little harm was done by adding the administration of incidental explicit subsidy programs such as Lifeline Assistance, LinkUp America, and TRS, to NECA's duties. However, explicit universal subsidy

---

<sup>5</sup> In the Matter of MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 78-72; CC Docket No. 80-286, 59 Rad. Reg. 2d (P & F) 634, Adopted December 10, 1985.

<sup>6</sup> *Id.*, at para. 14.

programs will no longer remain incidental to implicit subsidies as implicit subsidy programs are eliminated.

NECA does not have any experience administering subsidy distribution to schools, libraries, hospitals, and health clinics. Consequently, the experience NECA gained administering limited explicit subsidy programs will be of minimal value in the current environment. NECA's experience administering implicit subsidy programs is not an asset for the administration of explicit subsidy programs. The collection of explicit subsidies does not require knowledge about the difference between individual company embedded costs and average costs. Neither do explicit subsidies do result in the formation of averaged, or common rates. There is simply no compelling rationale for an organization charged with filling averaged tariff rates to administer explicit subsidy programs.

NECA has consistently demonstrated its unworthiness to be granted additional responsibilities. Only one year ago, the Commission issued a *Report and Order to Show Cause* that described just how unsatisfactory NECA has been performing its most fundamental responsibilities.<sup>7</sup> In the *Order to Show Cause*, the Commission criticized NECA because several of its directors appeared to have participated in an attempt to influence improperly the common line pool earnings for 1988 by inducing certain large local exchange carriers ("LECs") to report data to NECA that were inconsistent with

---

<sup>7</sup> Safeguards To Improve Administration of the Interstate Access Tariff and Revenue Distribution Processes, CC Docket No. 93-6, RM 7736, and Consideration of NECA's Incentive Compensation Plan, AAD 95-34, *Report and Order and Order to Show Cause*, 10 FCC Rcd 6243 (1995) (*Order to Show Cause*).

Commission accounting, separations, and access charge rules.<sup>8</sup>

#### IV. Regulatory Reforms Will Not Help NECA Become Neutral

In its Recommended Decision on Universal Service, the Joint Board listed four conditions the new administrator of explicit subsidy funds should meet:

“The 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 (4) not have a direct financial interest in the support mechanisms established by the Commission.”<sup>9</sup>

MCI concurs that the choice of the new fund administrator should be based on applicants' ability to satisfy these criteria. However, as long as NECA continues to file common tariffs reflecting average industry embedded costs, no reform or reorganization will enable it to satisfy the Joint Board's four conditions, because as an agent of the ILECs, NECA has an inherent conflict which prevents it from being a neutral administrator of the universal service fund to which the ILECs will contribute and from which they will receive funds.

Moreover, if NECA performs both roles, it will have the ability and the incentive to ensure that the ILECs' combined revenues from access tariffs and universal service subsidies do not decline from current levels. In addition, the administrator of the new universal service fund will be required to equitably evaluate subsidy claims, and NECA

---

<sup>8</sup> *Id.*, at para. 2.

<sup>9</sup> Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 96J-3, released November 8, 1996, (Recommended Decision on Universal Service) at para.

cannot be perceived as an unbiased evaluator, because as tariff agent for member LECs, it will have also play a role in the submission of subsidy claims to the fund administrator.

NECA recently recognized that expanding its Board of Directors will not permit it to satisfy the Joint Board's four conditions. It now proposes establishing a universal service administrative company (USAC) that would be a wholly-owned subsidiary of NECA, that would include representation from the NECA Board. NECA would dedicate personnel to the USAC on a chargeback basis. This USAC would then participate in the bidding process to select a permanent administrator. If selected, the USAC would be divested from NECA. NECA would remain on the USAC's Board of Directors, along with additional directors, based on recommendations or appointments by the Commission.<sup>10</sup>

This proposal would not satisfy the Joint Board's four conditions. By proposing to have members of NECA's board remain on the divested USAC, NECA would import the conflicts of interest identified above into the new entity, making it incapable of satisfying the Joint Board's first condition -- neutrality and impartiality. In addition, retaining NECA members on the USAC board would violate the Joint Board's third condition, for it would be associated with an industry segment.

Equally objectionable is NECA's attempt to establish a new entity with the assistance of organizational efficiencies made possible by NECA's continued role as tariff agent for incumbent LECs. Although NECA claims the USAC will compensate

---

<sup>10</sup> Letter from Bruce W. Baldwin to Reed Hundt, dated January 10, 1997.

NECA for resources loaned or dedicated to USAC, NECA does not propose having the USAC pay the full market value for NECA resources. Instead, "NECA anticipates sharing support services, such as human resources and information systems on a contractual basis between NECA and USAC for some period of time in order to take advantage of existing organization efficiencies."<sup>11</sup> Without additional auditing and cost allocation safeguards, NECA would be able to overcharge its captive ratepayers and subsidize the USAC, thus violating the Joint Board's third and fourth conditions.

The Commission should permit NECA to participate in the competitive bidding process for the new universal service support administrator. MCI's discussion demonstrates that the Commission's existing NECA regulations are not responsible for NECA's inability to satisfy the Joint Board's four conditions. Expanding its Board of Directors or establishing a USAC have such serious limitations, MCI believes they disqualify any NECA-related entity from being chosen as the permanent universal service support administrator.

Nevertheless, NECA may submit a bid to become the permanent administrator of the explicit universal support system. But, the Commission should not unilaterally reform its rules to make NECA an "acceptable" administrator. Doing so would inappropriately signal implicit support for NECA, or for specific organizational arrangements, and so bias the competitive bidding process. Rather, in its bid, NECA should propose the specific rule changes it believes would accomplish its desired reorganization as part of its bid to be the fund administrator, which would then be

---

<sup>11</sup> *Ibid*

examined in evaluating NECA's overall proposal.

V. Conclusion

For the above-mentioned reasons, MCI encourages the Commission to adopt the proposals suggested by MCI herein.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION

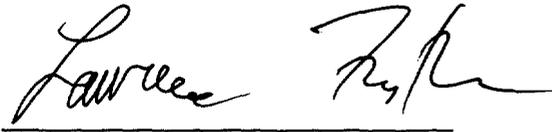
A handwritten signature in cursive script, appearing to read "Lawrence Fenster", written in black ink.

Lawrence Fenster  
MCI Telecommunications Corporation  
1801 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 887-2180

March 3, 1997

**STATEMENT OF VERIFICATION**

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on March 3, 1997.

A handwritten signature in cursive script, appearing to read "Lawrence Fenster", written over a horizontal line.

Lawrence Fenster  
1801 Pennsylvania Ave., N.W.  
Washington, D.C. 20006  
(202) 887-2180

## CERTIFICATE OF SERVICE

I, Johanna Schiappa, do hereby certify that a copy of the foregoing **Comments** has been sent by United States first class mail, postage prepaid, hand delivery, to the following parties on this 3rd day of March, 1997.

Reed E. Hundt\*\*  
Chairman  
Federal Communications Commission  
Room 814  
1919 M Street, NW  
Washington, DC 20554

Rachelle E. Chong\*\*  
Commissioner  
Federal Communications Commission  
Room 844  
1919 M Street, NW  
Washington, DC 20554

James H. Quello\*\*  
Commissioner  
Federal Communications Commissioner  
Room 802  
1919 M Street, NW  
Washington, DC 20554

Susan P. Ness\*\*  
Commissioner  
Federal Communications Commission  
Room 832  
1919 M Street, NW  
Washington, DC 20554

Richard A. Askoff  
National Exchange Carrier Association  
100 South Jefferson Road  
Whippany, New Jersey 07981

Tejal Mehta\*\*  
Federal Communications Commission  
2100 M Street, N.W.  
Room 8625  
Washington, DC 20554  
(Six courtesy copies)

International Transcription Service\*\*  
Federal Communications Commission  
1919 M Street, N.W.  
Room 246  
Washington, DC 20554

Mary McDermott  
United States Telephone Association  
1401 H Street, N.W., Suite 600  
Washington, DC 20005-2136

Jonathan W. Royston  
Southwestern Bell Telephone Company  
One Bell Center, Suite 3526  
St. Louis, MO 63101

Norina T. Moy  
Sprint Corporation  
1850 M Street, N.W., Suite 1110  
Washington, DC 20036

Robert B. McKenna  
US West, Inc.  
1020 19th Street, N.W.  
Washington, DC 20036

Richard S. Whitt  
WorldCom, Inc.  
1120 Connecticut Avenue, N.W.  
Suite 400  
Washington, DC 20036

Mark J. Golden  
Personal Communications Industry  
Association  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314

Michael J. Karson  
Ameritech  
Room 4H88  
2000 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

Sarah R. Thomas  
Pacific Telesis Group  
140 New Montgomery Street  
San Francisco, CA 94105

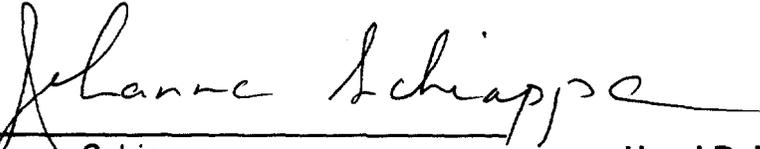
Carol C. Henderson  
American Library Association  
1301 Pennsylvania Ave., N.W.  
Suite 403  
Washington, DC 20004

Peter H. Jacoby  
AT&T Corp  
295 North Maple Avenue  
Room 3245H1  
Basking Ridge, NJ 07920

Joseph DiBella  
NYNEX Telephone Companies  
1300 I Street, N.W.  
Suite 400 West  
Washington, DC 20005

Lawrence W. Katz  
Bell Atlantic Telephone Companies  
1320 North Court House Road  
8th Floor  
Arlington, VA 22201

Neal M. Goldberg  
National Cable Television Association,  
Inc.  
1724 Massachusetts Ave., N.W.  
Washington, DC 20036

  
Johanna Schiappa

**Hand Delivery\*\***