

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

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Federal Communications Commission
Office of Secretary

In the Matter of:

Changes to the Board of
Directors of the National Exchange
Carrier Association, Inc.

DOCKET FILE COPY ORIGINAL

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) CC Docket No. 97-21
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REPLY

The National Exchange Carrier Association, Inc. (NECA) files herein its Reply to comments filed in response to the Commission's Notice of Inquiry in the above-captioned proceeding.¹

SUMMARY

On January 10, 1997, NECA filed a letter with the Commission proposing to create a new universal service administration company (USAC) to serve as temporary administrator of the Commission's new universal service programs for schools and libraries.² Consistent with the goals of the Commission's Notice of Inquiry in this proceeding, NECA's January 10 Proposal will also put in place a mechanism that will allow NECA, via its USAC subsidiary, to participate in the selection process for choosing a permanent administrator of new universal service

¹ Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 97-21, FCC 97-11 (released Jan. 10, 1997) (NPRM/NOI).

² Letter of Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, January 10, 1997 (January 10 Proposal). Copies of NECA's January 10, 1997 Proposal were served on all parties participating in CC Docket 96-45, and a copy was filed ex parte in this proceeding on January 17, 1997.

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programs. The USAC entity will be formed utilizing existing NECA resources and expertise, and will have a balanced board of directors comprising representatives from the telecommunications industry as well as schools, libraries and rural health care providers. Further, NECA proposes to divest the USAC entity when and if it is selected as permanent administrator. This approach fully satisfies the Joint Board's recommended criteria for a "neutral, third-party" administrator. Accordingly, there should be no need for further rulemaking proceedings in this docket. Additional changes to NECA could be considered following resolution of current proceedings on universal service, access reform for rate-of-return LECs, and jurisdictional separations reform.

DISCUSSION

Participants in the NOI phase of this proceeding generally agree that NECA, via its proposed USAC subsidiary, should be allowed to participate in the selection process for a permanent universal service administrator.³ Southwestern Bell states, for example, that the Commission "should make any and all necessary changes" to allow NECA, or the USAC, to compete for selection as permanent administrator⁴ and that the USAC "should have no difficulty

³ See generally the comments of Bell Atlantic and Nynex, BellSouth, Pacific Telesis and Southwestern Bell. See also Personal Communications Industry Association (PCIA) NPRM Comments at 8-9, stating that it was "pleased that NECA has responded to concerns about the original proposal" and that "the Commission should afford interested parties an opportunity to explore and develop [the USAC] concept . . . since it appears to offer the prospect of creating a NECA entity that in fact could act as an impartial administrator of the fund"; National Cable Television Association (NCTA) NPRM Comments at 7-8, stating that "the [USAC] approach NECA offers appears to be a legitimate basis" for making NECA eligible to serve as administrator.

⁴ SWBT at 2.

satisfying the Joint Board's four criteria . . ."⁵ It adds that:

As the beneficiary of NECA's fourteen years of experience in performing pooling functions, handling access tariff filings and administering multiple support funds, USAC should certainly be allowed to compete to become the long-term USF administrator. NECA has gained expertise in these areas that is currently unmatched by any other firm. NECA is rich with vast amounts of industry data and a knowledgeable staff from all segments of the telecommunication's industry. Through the use of NECA personnel and support services under arm's-length contracts administered in compliance with NECA's Cost Allocation Manual, USAC would be able to take advantage of NECA's superior experience and resources.⁶

Pacific Telesis states that because "NECA plans significant changes to its organizational structure . . . to meet the Commission's criteria for an appropriate administrator, and has the experience and large-scale information processing and database capabilities that the Commission seeks, we urge the Commission to allow NECA via the USAC entity, to participate in the selection process for appointment as permanent administrator."⁷ Pacific further states that, "[b]ecause the new universal [service] program will be vital to customers in high cost areas, and to schools, libraries and health care providers, NECA's ability to 'hit the ground running' will be key to successful and rapid implementation of the Commission's ultimate recommendations."⁸

BellSouth observes that the comments in response to the earlier Notice of Proposed Rulemaking portion of this docket generally agreed that NECA's January 10 Proposal provides a

⁵ Id. at 4. Bell Atlantic and Nynex add that "[c]learly, these proposals would qualify USAC to act as a neutral fund administrator, and they would ensure that NECA's expertise would be made available to the new universal service fund." Bell Atlantic and Nynex at 4.

⁶ SWBT at 4 [footnote omitted].

⁷ Pacific Telesis at 2.

⁸ Id.

sound basis for the USAC to compete for the position of permanent fund administrator.⁹ It adds that “[e]ven AT&T . . . agreed in its [NPRM] reply comments that the January 10 letter forms a basis for ‘qualifying [NECA] as an interim or permanent NUSF administrator.’”¹⁰ BellSouth also agrees with NECA that “[b]ecause the bidding entity would be completely separated from NECA if selected as the permanent fund administrator, no changes are required to NECA’s governance, or the Commission’s Part 69 rules, to implement this proposal.”¹¹

Some commenters argue that NECA, not the Commission, should decide how to restructure itself to compete in any selection process for choosing the new universal service administrator.¹² They state that this would avoid the appearance of “implicit support for NECA, or for specific organizational arrangements . . . which would bias the competitive bidding process.”¹³

In the NPRM phase of this proceeding, the Commission is considering ways to assure “significant, meaningful representation” for non-incumbent LEC interests, for purposes of temporary administration of its new universal service programs for schools and libraries.¹⁴ A

⁹ BellSouth at 1-2 and note 3.

¹⁰ *Id.* at 2, note 3, quoting AT&T Reply Comments at 8-9.

¹¹ BellSouth at 2.

¹² MCI believes that NECA should propose specific rule changes to accomplish its desired reorganization as part of its bid to be the fund administrator. MCI at 7. See also Ameritech at 3-4. WorldCom, in contrast, suggests specific rules the Commission should implement in order to “balance” NECA’s board of directors and to open membership to others, including IXCs and CLECs.

¹³ MCI at 7.

¹⁴ NPRM/NOI at ¶13.

Commission order in that proceeding specifying a reasonable size and composition for the USAC entity's initial board is necessary to assure that the new company can be established on a timely basis for temporary administration purposes. Such an order would not, however, grant the USAC entity any special status in the selection process for permanent administrator.

One party, WorldCom, argues that the Commission should not consider NECA's January 10 Proposal but should instead immediately restructure NECA itself. According to WorldCom, creating USAC as a subsidiary of NECA would be "no solution to the severe bias problem recognized so clearly by the joint board."¹⁵

WorldCom's concerns are unfounded. Under NECA's January 10 Proposal, the USAC entity would operate as a NECA subsidiary only for a temporary period. This temporary relationship is necessary to assure that the USAC entity has access to the personnel and administrative resources needed to implement the Commission's new universal service mechanisms on a timely basis. During this temporary period, however, the USAC entity would be controlled by a separate, balanced board structured in whatever fashion the Commission deems necessary to assure "significant, meaningful representation" for non-ILEC interests. The board would have full authority and responsibility for directing the day-to-day affairs of the corporation, including supervision of its operating personnel. Under these circumstances, there is no realistic possibility that the USAC could be somehow "biased" in its administration of new universal service programs. Moreover, since NECA proposes to divest the USAC entity when and if it is selected as permanent administrator, there is even less reason for concern about

¹⁵ WorldCom at 4.

ongoing relationships between NECA and USAC.¹⁶

NECA's January 10 Proposal provides a simple and effective way to enable NECA's expertise to be applied to the successful establishment of new universal service programs, without compromising NECA's fiduciary responsibilities as tariff filing agent for exchange carriers. Changes to the Commission's rules regarding NECA and the interstate access tariff and pooling administrative processes could be considered, but at a later date following completion of Commission proceedings relating to universal service, access reform for rate-of-return LECs, and jurisdictional separations reform.¹⁷

Finally, some commenters argue that other interested parties should be allowed to compete for selection as tariff/pooling administrator. As BellSouth points out, however, "NECA was created by the Commission to perform these functions subject to oversight by regulators and the member companies."¹⁸ Another, unregulated "interested party" would not be subject to the close oversight given NECA by the Commission. Moreover, this approach does not seem to recognize that NECA was established to serve as tariff filing agent for its member companies,

¹⁶ NECA agrees with Pacific Telesis that "[i]mplicit in the Joint Board's [criteria] is a recognition that NECA is not inherently unsuited to be administrator. . . . Parties who claim NECA is categorically ineligible to assume the administrator role misconstrue the Joint Board recommendation. NECA can compete to serve as permanent administrator so long as it changes its structure. We believe the changes it proposes meet the Joint Board's concerns." Pacific Telesis at 2.

¹⁷ WorldCom expresses particular concern over NECA's proposal to include representation from its current board of directors on the USAC board. NECA believes that it would make sense for incumbent LEC representatives on the USAC subsidiary's board to be selected from the current NECA board. This will help assure operational continuity and coordination of necessary NECA resources.

¹⁸ BellSouth at 3.

who currently have the ability to elect the NECA board of directors. If these member companies are unhappy with the services NECA provides, they may simply elect different Board members. These companies also have the ability to file their own tariffs under various options.¹⁹ It is not clear how a competitive bidding process would improve on this approach, nor who would be responsible for administering such a bidding process.²⁰

CONCLUSION

NECA's January 10, 1997 proposal to create a new universal service administration company to serve as temporary administrator of new universal service programs for schools and libraries puts in place a mechanism that will enable NECA, via the USAC entity, to participate in the selection process for permanent administrator of new universal service programs. Utilizing NECA resources and expertise, the USAC entity will help assure successful implementation of these programs. The proposed balanced board of directors will fully satisfy the Joint Board's recommended criteria for a "neutral, third-party" candidate. Consequently, there is no need for the Commission to initiate further rulemaking proceedings following the conclusion of the NPRM phase of this proceeding. Changes to the Commission's rules regarding NECA and the interstate access tariff and pooling administrative processes could be considered, but at a later

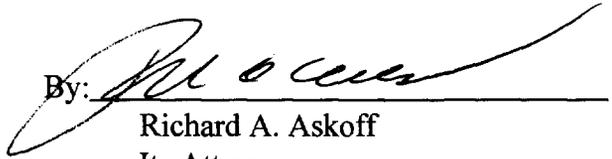
¹⁹ See e.g., 47 C.F.R. 61.39.

²⁰ Commission orders establishing NECA make clear that the organization is required to function as an independent agent for tariff participants. See In the Matter of MTS and WATS Market Structure, Third Report and Order, 93 F.C.C. 2d (1983) at 333-336. Under a competitive bidding approach, however, the administrator would presumably be acting as agent for whatever entity awards the contract for administrative services.

date following completion of Commission proceedings relating to universal service, access reform for rate-of-return LECs, and jurisdictional separations reform.

Respectfully submitted,

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April 3, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments were served this 3rd day of April, 1997, by mailing copies thereof by United States Mail, first class postage paid, or hand delivery, to the persons listed below.

By 
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