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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
Bruce W. Baldwin
President

CC97-21

August 1, 1997

DOCKET FILE COPY ORIGINAL

William F. Caton
Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: Establishment of USAC, Schools and Libraries Corporation,
and Rural Health Care Corporation.

Dear Secretary Caton:

The National Exchange Carrier Association, Inc. (NECA) herein submits the attached draft articles of incorporation and by-laws for the Universal Service Administrative Company ("USAC") and the Schools and Libraries and the Rural Health Care Corporations (jointly, "the Corporations"), as required by the Commission in its recent Order in CC Docket No. 97-21. An executive summary of the proposed articles and by-laws is attached as well. Per the Order, NECA will await the Commission's approval or modification of the proposed documents in a Public Notice before filing the articles of incorporation with the State of Delaware.

The Order does not authorize NECA to undertake any further activities on behalf of USAC or the Corporations at this time.¹ There is a concern that this limitation may affect the ability of the forthcoming new organizations to implement the Commission's new universal service programs by the anticipated January 1, 1998 date.

For example, USAC is expected to distribute the Universal Service Worksheet in early August, after approval is obtained from the Office of Management and Budget. Completed forms are to be submitted to the administrator by September 1, 1997 for processing.² These activities will

¹ NECA's appointment as temporary administrator is effective coincident with its incorporation of the USAC subsidiary and the Corporations. *Order* at ¶ 71 The Order does not direct NECA to take any other actions, however, beyond filing incorporation papers upon approval by the Commission. While the Order contemplates that USAC and/or the Corporations may contract with NECA for additional services, this may occur only upon request by USAC or the Corporations, pursuant to arms-length contract. *Id.* at ¶¶ 71-74. Thus it is not clear how, absent further direction from the Commission, NECA could undertake any actions on behalf of USAC or the Corporations prior to the time their respective Boards of Directors are elected and the necessary contractual arrangements are in place. *See id.* at ¶ 95.

² Order at ¶ 43, Form 457 at line 19.

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require substantial work, including identification of carriers, development of database systems, forms distribution, and extensive data input and analysis activities. The USAC Board of Directors is not likely to hold its initial meeting, however, until late August or early September.³ If the Commission intends for NECA to undertake initial forms distribution and processing activities on behalf of USAC in advance, it should direct NECA to do so as soon as possible.

The unaffiliated Corporations are also required to complete a number of actions in order to implement the new universal service programs. Among other things, the Corporations must design and implement websites, establish capabilities for reviewing and posting service and facilities requests from qualified entities, and have procedures in place for issuing funding confirmations.⁴

Each of these activities will require substantial advance planning. In order to establish searchable websites and databases, for example, the Corporations must establish design criteria, including necessary database links, and either contract with qualified vendors or hire their own employees to implement the actual website and associated database systems. The Corporations must be prepared to review service requests from potentially thousands of schools, libraries and rural health care providers prior to issuing legally-binding funds confirmations. A significant amount of coordination and outreach work will be necessary to obtain input from schools, libraries, rural health care providers and carriers in designing administrative procedures, and to familiarize interested parties with those procedures once they are established.⁵

The Order acknowledges the complexity of these functions, and recognizes that USAC and the Corporations may not begin to perform them until certain preliminary tasks, such as incorporation of the new entities and appointment of their Boards of Directors, are completed.⁶ In fact, actual development and implementation work on behalf of the Corporations might not begin until late September or October, leaving only two or three months before January 1, 1998 to put the necessary systems in place. NECA estimates, however, that at least four months' time would be required before the competitive bidding system, and all necessary funds collection and distribution processes, are in place.

³ Before the Board takes office, the Order must be published in the Federal Register. Interested parties will then have 14 days in which to submit nominees to the FCC Chairman, and the Chairman must then select Board members. The Order then allows another 14 days to schedule and hold the initial Board meeting. *See id.* at ¶¶ 38-40.

⁴ *See* 47 C.F.R. §§ 54.504 - .516; 54.603, and 54.609.

⁵ It is our understanding that the Department of Education will soon be providing the Commission with draft application forms. These must be reviewed by the Commission and receive OMB approval before development work can be finalized.

⁶ *Order* at ¶95.

If the Commission wishes NECA to begin work on additional development for USAC and the unaffiliated corporations prior to the time these entities' boards assume responsibility for their respective programs, however, it must provide specific direction in this regard. It is also critically necessary for the Commission to provide a mechanism for the recovery of NECA start-up costs, including the costs of preparing the enclosed corporate documents and filing costs. Specifically, the Commission should direct NECA to keep separate account of its costs for implementing new universal service programs, including interest on funds advanced for start-up activities, and direct that those costs incurred in 1997 are to be recovered from the new universal service fund in 1998.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Baldry". The signature is written in a cursive, flowing style with a large initial "B".

Attachments

cc: Regina Keeney, Chief, Common Carrier Bureau
Jackie Chorney, Special Assistant to the Chairman

cc: w/o attachments
Chairman Reed E. Hundt
Commissioner Rachelle Chong
Commissioner Susan Ness
Commissioner James Quello

**EXECUTIVE SUMMARY
OF
CERTIFICATES OF INCORPORATION AND BY-LAWS**

I. UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

A. **CERTIFICATE OF INCORPORATION.** Universal Service Administrative Company ("USAC" or the "Company") will be a not-for-profit subsidiary of the National Exchange Carrier Association, Inc. ("NECA") to be incorporated in the State of Delaware pursuant to the Federal Communications Commission's ("FCC") Report and Order and Second Order on Reconsideration, FCC 97-253, released July 18, 1997 and FCC Rules (47 C.F.R. §§ 69.603 and 69.613 through 69.622) ("Order and Rules"). As a not-for-profit corporation, its Certificate of Incorporation provides that USAC "does not contemplate pecuniary gain or profit and is organized for nonprofit purposes" and is prohibited from distributing income or profit to its directors or officers.

Further, the Certificate provides that USAC shall be responsible for administering the universal service support mechanism for high-cost areas and low-income consumers, including billing contributors, collecting contributions to the universal support mechanisms, and disbursing universal support service funds. The Certificate also contains certain additional information required by Section 102 of the General Corporation Law of Delaware, such as, its (i) name and mailing address; (ii) registered office; (iii) authorized capital stock; and (iv) purpose and nature its business. Further, as permitted under Delaware law, the Certificate exculpates each member of the Board of Directors from personal liability with respect to money damages for breach of fiduciary duty. Such exculpation is not available to the directors for breach of loyalty to the Company or for acts not in good faith or which involves intentional misconduct.

The names "Universal Service Administrative Company" and "USAC, Inc." have been reserved with the Delaware Secretary of State.

B. **BY-LAWS.** The primary purpose of the By-Laws is to set forth the procedures and mechanisms under which USAC will be governed. Consistent with this, the By-Laws are generally regarded as the proper place for rules and regulations which are deemed necessary for smooth functioning of the Company and, unlike the Certificate of Incorporation, are not required to be filed with the Delaware Secretary of State. The By-Laws include many of the directives found in the Order and Rules and provide for, among other things, the management of the Company through its Board of Directors, the specific composition of the Board and the manner in which Board members are selected, elected and removed. The By-Laws also contain a number of provisions designed to insure that USAC be independent from NECA and that USAC's Board be separate and distinct from the NECA Board, including requirements that USAC's Board members be recommended by certain industry and non-industry groups and selected by the Chairperson of the FCC. The By-Laws further provide for the creation of a High Cost and Low Income Committee with certain duties and powers as described in the Order and Rules. Both the

Certificate of Incorporation and By-Laws provide that the By-Laws may be amended by either the stockholders or the Board of Directors. Other items included in the By-Laws are the, (i) stockholders' right to vote on certain matters; (ii) stockholders' ability to vote by proxy; and (iii) stockholders' and directors' meetings. While the Commission Rules have been closely referenced throughout the By-Laws, they have not been quoted verbatim so that rule changes will not always necessitate changes to the By-Laws. Rather the By-Laws make clear that the Rules, current and as amended, always take precedence.

II. SCHOOLS AND LIBRARIES CORPORATION

A. CERTIFICATE OF INCORPORATION. Schools And Libraries Corporation ("Schools and Libraries" or the "Company") will be a not-for-profit non-member corporation to be incorporated in the State of Delaware pursuant to the FCC Order and Rules. As a not-for-profit corporation, its Certificate of Incorporation provides that Schools and Libraries "does not contemplate pecuniary gain or profit and is organized for nonprofit purposes" and is prohibited from distributing income or profit to its directors or officers.

The Certificate further provides that the Company shall not have members or the authority to issue stock and that it shall be responsible for administering support mechanisms for eligible schools and libraries. The Company's Certificate also contains certain additional information required by Section 102 of the General Corporation Law of Delaware, such as, its (i) name and mailing address; (ii) registered office; (iii) no capital stock; and (iv) purpose and nature its business. Further, as permitted under Delaware law, the Certificate exculpates each member of the Board of Directors from personal liability with respect to money damages for breach of fiduciary duty. Such exculpation is not available to the directors for breach of loyalty to the Company or for acts not in good faith or which involves intentional misconduct.

The name "Schools and Libraries Corporation" has been reserved with the Delaware Secretary of State.

B. BY-LAWS. The primary purpose of the By-Laws is to set forth the procedures and mechanisms under which Schools and Libraries will be governed. Consistent with this, the By-Laws are generally regarded as the proper place for rules and regulations which are deemed necessary for smooth functioning of the Company and, unlike the Certificate of Incorporation, are not required to be filed with the Delaware Secretary of State. The By-Laws include many of the directives found in the Order and Rules and provide for, among other things, the management of the Company through its Board of Directors, the specific composition of the Board and the manner in which Board members are selected, elected and removed. Specifically, the By-Laws provide that Schools and Libraries be unaffiliated with both the NECA and USAC, that the Board shall have seven (7) members, that five (5) members shall also serve on the USAC Board and that members shall be nominated by industry and non-industry representatives selected and approved by the Chairperson of the FCC. Both the Certificate of Incorporation and By-Laws provide that

the By-Laws may be amended by the Board of Directors. While the Commission Rules have been closely referenced throughout the By-Laws, they have not been quoted verbatim so that rule changes will not always necessitate changes to the By-Laws. Rather the By-Laws make clear that the Rules, current and as amended, always take precedence.

III. RURAL HEALTH CARE CORPORATION

A. CERTIFICATE OF INCORPORATION. Rural Health Care Corporation ("Rural Health Care" or the "Company") will be a not-for-profit non-member corporation to be incorporated in the State of Delaware pursuant to the FCC's Order and Rules. As a not-for-profit corporation, its Certificate of Incorporation provides that Rural Health Care "does not contemplate pecuniary gain or profit and is organized for nonprofit purposes" and is prohibited from distributing income or profit to its directors or officers.

The Certificate further provides that the Company shall not have members or the authority to issue stock and that it shall be responsible for administering support mechanisms for rural health care providers. The Certificate also contains certain additional information required by Section 102 of the General Corporation Law of Delaware, such as, its (i) name and mailing address; (ii) registered office; (iii) no capital stock; and (iv) purpose and nature its business. Further, as permitted under Delaware law, the Certificate exculpates each member of the Board of Directors from personal liability with respect to money damages for breach of fiduciary duty. Such exculpation is not available to the directors for breach of loyalty to the Company or for acts not in good faith or which involves intentional misconduct.

The name "Rural Health Care Corporation" has been reserved with the Delaware Secretary of State.

B. BY-LAWS. The primary purpose of the By-Laws is to set forth the procedures and mechanisms under which Rural Health Care will be governed. Consistent with this, the By-Laws are generally regarded as the proper place for rules and regulations which are deemed necessary for smooth functioning of the Company and, unlike the Certificate of Incorporation, are not required to be filed with the Delaware Secretary of State. The By-Laws include many of the directives found in the Order and Rules and provide for, among other things, the management of the Company through its Board of Directors, the specific composition of the Board and the manner in which Board members are selected, elected and removed. Specifically, the By-Laws provide that Rural Health Care be unaffiliated with NECA and USAC, that the Board shall have five (5) members, that two (2) members shall also serve on the USAC Board and that members shall be nominated by industry and non-industry representatives selected and approved by the Chairperson of the FCC. Both the Certificate of Incorporation and By-Laws provide that the By-Laws may be amended by the Board of Directors. While the Commission Rules have been closely referenced throughout the By-Laws, they have not been quoted verbatim so that rule changes will

not always necessitate changes to the By-Laws. Rather the By-Laws make clear that the Rules, current and as amended, always take precedence.

IV. RELATED INCORPORATION ISSUES

A. TRADEMARKS CONSIDERATION

In connection with the creation of Universal Service Administrative Company, Rural Health Care Corporation and Schools and Libraries Corporation as corporate entities and use of such corporate names in connection with their business, NECA has reviewed issues concerning trademark protection for such names. NECA has initiated trademark searches for the four corporate names (including USAC, Inc.) to identify potentially conflicting marks (if any) and to minimize the possibility that a claim will later be made that the respective Corporations' do not have a right to use those names. Trademark Registration will allow the Corporations' to better protect these names against use by others. In that regard, NECA has sought the advise of counsel and has been advised that it would be prudent to file these names for trademark protection with the United States Patent and Trademark Office ("USPTO").

In general, trademark law is intended to protect words, names, symbols, devices, sounds, etc. or any combination thereof which a person or entity uses in commerce. Although, there are several ways that trademark rights can be created and protected, the Corporations' would probably seek to protect such rights through the registration of one or more trademarks with the USPTO under the provisions of the Lanham Act. Federal registration is prima facie evidence of national ownership and exclusive right to use a mark (subject to the possible common law rights of third parties). The owner of a federally registered trademark is protected against the later use of similar marks if any confusion might result. Issues may, however, arise concerning the use of common descriptive words in some of the Corporations' names.

There are several advantages which federal registration has over common law trademark rights. First, federal registration constitutes constructive nationwide notice of the registrant's ownership of the trademark. This allows the registrant to overcome any claims by later users who claim they adopted a mark in good faith. Second, federal registration allows the registrant to go directly to federal courts in order to enforce its rights. The protection of the Corporations' names would also be critical to preserving the use of those names in Website applications.

NECA will not seek trademark protection until the FCC has issued its Public Notice concerning the approval of the Corporations' Delaware Corporate documents and has ordered that such trademark protections should be sought prior to the commencement of the Corporations' operations. If the Commission provides it with authorization to undertake the trademark registrations, NECA, on behalf of the Corporations, will apply with the USPTO under the "intent to use" classification. These registrations can then be assigned to the Corporations once they are operational.

B. DETERMINATION OF QUALIFYING NEW ENTITIES TO DO BUSINESS IN VARIOUS STATES.

NECA has also researched the issue of whether or not the Corporations must register in various states because they would qualify as "doing business" in those states. While it is not certain where these Corporations will set up headquarters and conduct operations, there are general categories of activities that would require a corporation to obtain a certificate of authority in one or more jurisdictions. These operative factors for registering to do business in a state would be: 1) maintaining an office; 2) owning or operating tangible property or equipment; and 3) maintaining employees. Another factor to consider is, what, if any, enforcement activities would be necessary to ensure compliance with the FCC rules and where these actions might take place. Unless the contractor is acting as agent for the Corporation, independent contractor work conducted under an arm's length contract would not constitute doing business in a state. Counsel has also advised us that because the Corporations are not-for-profit, there is not a need for registration with taxing authorities of individual states. These issues would, of course, have to be thoroughly researched.

At this time NECA is advising the Commission of the possibility that USAC and the Corporations may need to register in various states where they intend to do business. NECA will not undertake this registration process until the FCC has issued its Public Notice concerning the approval of the Corporations' Delaware Corporate documents and has ordered that such registration should take place prior to the commencement of the Corporations' operations.

CERTIFICATE OF INCORPORATION

OF

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

1. The name of the Corporation is **UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**, also to be known as **USAC, Inc.**

2. The Registered Office of the Corporation in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The Registered Agent in charge thereof is **CORPORATION TRUST COMPANY**.

3. The purpose is as defined in the Federal Communication Commission's rules at 47 C.F.R. § 69.616, as it exists today and as it may be amended. As described in the aforementioned Commission rule, the Corporation is responsible for administering the telecommunications universal service support mechanisms for high-cost areas and low-income consumers, including billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal support service funds. The Corporation shall also be required to perform any other duties of the Administrator that relate to the billing, collection and disbursement of funds that are specified elsewhere in the Commission's rules. The Corporation may also engage, so long as it is consistent with FCC Orders and Rules, in any other lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

The Corporation does not contemplate pecuniary gain or profit and is organized for nonprofit purposes.

4. The total number of shares of stock which the Corporation shall have authority to issue is One Hundred (100) and all such shares shall be common stock with a par value of \$0.01 per share. The Corporation shall not have members.

5. The name and mailing address of the sole incorporator is David F. Hoyle, Secretary of National Exchange Carrier Association, Inc., 100 South Jefferson Road, Whippany, NJ 07981.

6. After the original or other By-Laws of the Corporation have been adopted, amended, or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law of the State of Delaware, after the Corporation has received any payment for any of its common stock, the power to adopt, amend, or repeal the By-Laws of the Corporation may be exercised either by the stockholders or the Board of Directors of the Corporation.

7. No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breaches of fiduciary duty as a director, provided that this

provision shall not eliminate or limit the liability of director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the General Corporation Law of Delaware; or (iv) for any transaction from which the director derived an improper personal benefit. No repeal or amendment of this Article SEVEN shall adversely affect any rights or any person pursuant to this Article SEVEN with respect to acts or omissions occurring prior to such repeal or amendment.

8. The Corporation reserves the right to increase or decrease its authorized capital stock, or any class or series thereof, and to reclassify the same, and to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, under which the Corporation is organized or in any amendment thereto, in the manner now or hereafter prescribed by law and all rights conferred upon stockholders in said Certificate of Incorporation or any amendment thereto are granted subject to the aforementioned reservation.

I, THE UNDERSIGNED, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this _____ day of August, 1997.

David F. Hoyle, Sole Incorporator

BY-LAWS
OF
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
(a Delaware corporation)

ARTICLE I
STOCKHOLDERS

1. **CERTIFICATES REPRESENTING STOCK.** Certificates representing stock in the Corporation shall be signed by, or in the name of, the Corporation by the Chairperson or Vice-Chairperson of the Board of Directors, if any, or by the Chief Executive Officer or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on any such certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

Whenever the Corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, the certificates representing shares of any such class or series, shall set forth thereon the statements prescribed by the Delaware General Corporation Law. Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

The Corporation may issue a new certificate of stock in place of any certificate theretofore issued by it, alleged to have been lost, stolen, or destroyed, and the Board of Directors may require the owner of the lost, stolen, or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate or the issuance of any such new certificate.

2. **STOCK TRANSFERS.** Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the Corporation shall be made only on the stock ledger of the Corporation by the registered holder thereof, or by his or her attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation or with a transfer agent or a registrar, if any, and on surrender of the certificate or certificates for such shares of stock properly endorsed and the payment of all taxes due thereon.

3. MEANING OF CERTAIN TERMS. As used herein in respect of the right to notice of a meeting of stockholders or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term "share" or "shares" or "share of stock" or "shares of stock" or "stockholder" or "stockholders" refers to an outstanding share or shares of stock and to a holder or holders of record of outstanding shares of stock when the Corporation is authorized to issue only one class of shares of stock, and said reference is also intended to include any outstanding share or shares of stock and any holder or holders of record of outstanding shares of stock of any class upon which or upon whom the certificate of incorporation confers such rights where there are two or more classes or series of shares of stock or upon which or upon whom the Delaware General Corporation Law confers such rights notwithstanding that the certificate of incorporation may provide for more than one class or series of shares of stock, one or more of which are limited or denied such rights thereunder; provided, however, that no such rights shall vest in the event of an increase or a decrease in the authorized number of shares of stock of any class or series which is otherwise denied voting rights under the provisions of the certificate of incorporation, except as any provision of law may otherwise require.

PROXY REPRESENTATION. Every stockholder may authorize another person or persons to act for him by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

VOTING. Each share of stock shall entitle the holders thereof to one vote. Subject to Federal Communications Commission Order¹ and Rules² with regard to the appointment of directors, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Any other action shall be authorized by a majority of the votes cast except where the Delaware General Corporation Law prescribes a different percentage of votes and/or a different exercise of voting power. and except as may be otherwise prescribed by the provisions of the certificate of

¹ Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration, CC Docket No. 97-21 and CC Docket No. 96-145, FCC 97-253, released July 18, 1997 (Order).

² 47 C.F.R. §§ 69.603 and 69.613 through 69.622 (Rules).

incorporation and these By-Laws. In the election of directors, and for any other action, voting need not be by ballot.

4. **STOCKHOLDER ACTION WITHOUT MEETINGS**. Any action required by the Delaware General Corporation Law to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Action taken pursuant to this paragraph shall be subject to the provisions of Section 228 of the Delaware General Corporation Law.

ARTICLE II

DIRECTORS

1. **FUNCTIONS AND DEFINITION**. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation. Pursuant to 47 C.F.R. § 69.614(h), no member of the Board of Directors shall receive compensation but each such member shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the USAC Board. In accordance with 47 C.F.R. § 69.617, the Board shall make the necessary selection of service provider representatives for the Schools and Libraries Corporation Board and the Rural Health Care Corporation Board. The use of the phrase "whole board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

2. **QUALIFICATIONS AND NUMBER**. The qualifications and number of directors shall be determined in accordance with the Federal Communications Commission rule - 47 C.F.R. § 69.614. The number of directors may be increased or decreased by the stockholders at the direction of the Federal Communications Commission. The initial Board of Directors shall consist of seventeen persons in the following composition: (i) Three directors shall represent incumbent local exchange carriers (ILECS), with one director representing the Bell Operating Companies and GTE, one director representing other ILECs with annual operating revenues in excess of \$40 million, and one director representing ILECs with annual operating revenues of \$40 million or less; (ii) Two directors shall represent interexchange carriers, with one director representing interexchange carriers with more than \$3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of \$3 billion or less; (iii) One director shall represent commercial mobile radio service (CMRS) providers; (iv) One director

shall represent competitive local exchange carriers (CLEC); (v) One director shall represent cable operators; (vi) One director shall represent information service providers; (vii) Three directors shall represent schools that are eligible to receive discounts pursuant to 47 C.F.R. § 54.501; (viii) One director shall represent libraries that are eligible to receive discounts pursuant to 47 C.F.R. § 54.501; (ix) One director shall represent rural health care providers that are eligible to receive supported services pursuant to 47 C.F.R. § 54.601; (x) One director shall represent low-income consumers; (xi) One director shall represent state telecommunications regulators; and (xii) One director shall represent state consumer advocates. A director shall cease to be a director of the Corporation and shall be subject to removal by the stockholders if such director (a) changes his or her affiliation (as defined in this section 2) with the entity that made him or her eligible for membership on the Board and (b) upon such change is not affiliated with the entity or constituency that nominated him or her.

3. **ELECTION AND TERM.** The first Board of Directors, unless the members thereof shall have been named in the certificate of incorporation, shall be elected by the incorporator in accordance with the selections made by the Federal Communication Commission Chairperson pursuant to 47 C.F. R. § 69.614(d) and shall hold office for a term of two years until the first biennial election and until their successors are elected and qualified or until their earlier resignation or removal. Thereafter, directors who are elected in the biennial election, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next biennial election and until their successors are elected and qualified or until their earlier resignation or removal. Any director may resign at any time upon written notice to the Corporation. Unless a director is removed or resigns, he or she will serve a term of two years pursuant to 47 C.F.R. § 69.614(e).

4. **NOMINATION AND ELECTION OF BOARD MEMBERS.** Nomination and selection of the Board shall be conducted and biennial elections of the Board shall be held pursuant to 47 C.F.R. § 69.614(d). Once the FCC Chairperson has selected the members of the new Board, the stockholders will elect the Board members selected by the FCC chairperson. In accordance with 47 C.F.R. § 69.614(e), if a Board member vacates his or her seat prior to the completion of his or her term, the Board will notify the FCC Common Carrier Bureau Chief of such vacancy, and a successor will be chosen in accordance with the nomination and selection process in 47 C.F.R. §69.614(d). The member selected by the FCC Chairperson to fill the vacated Board seat will be elected by the Board members.

5. **REAPPOINTMENT OF INCUMBENT BOARD MEMBERS.** There shall be no limitation on additional terms for Board members. At the end of each two-year term, an incumbent may be re-elected pursuant to the process outlined in section 4 above and pursuant to 47 C.F.R. § 69.614(d).

6. **MEETINGS.**

TIME. Meetings shall be held at such time as the Board shall fix, except that the

initial Board of Directors shall convene its first meeting within 14 calendar days of their selection by the FCC Chairperson pursuant to 47 C.F.R. § 69.614(f). Special meetings of the Board may be called by the Chairperson of the Board at any time. Upon the written request of three directors, a special meeting of the Board of Directors must be called by the Chairperson of the Board or Secretary, to be held not more than fifteen (15) days after receipt of such request.

PLACE. Pursuant to 47 C.F.R. § 69.614(g), all meetings of the Board shall be open to the public and held in Washington, D.C.

CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairperson of the Board, if any, the Vice-Chairperson of the Board, if any, the Chief Executive Officer, or of a majority of the directors in office.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat. Notice need not be given to any director or to any member of a committee of directors who submits a written waiver of notice signed by him before or after the time stated therein. Attendance of any such person at a meeting shall constitute a waiver of notice of such meeting, except when he or she attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice.

QUORUM AND ACTION. A majority of the whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third of the whole Board. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the Delaware General Corporation Law, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the General Corporation Law and these By-Laws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board or action of disinterested directors.

Any member or members of the Board of Directors or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

CHAIRPERSON OF THE MEETING. The Chairperson of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairperson of the Board, if any and if present and acting, or the Chief Executive Officer, if present and acting, or any other director chosen by the Board, shall preside.

7. **REMOVAL OF DIRECTORS.** As provided by the Delaware General Corporation Law, any director or the entire Board of Directors may be removed, with or without cause. Removal may only occur upon the affirmative vote of a majority of the stockholders or the majority of board members that are not facing removal, and upon the prior written approval of the Chairperson of the Federal Communications Commission. Upon the removal of one or more directors, the FCC Common Carrier Bureau Chief will initiate a nomination and selection process in accordance with 47 C.F.R. § 69.614(d) to replace the director(s) removed. Upon selection of the new director(s) by the FCC Chairperson, the Board will elect such director(s), who shall serve the remaining term of the removed director(s).

8. **COMMITTEES.**

HIGH COST AND LOW INCOME COMMITTEE.

AUTHORITY. By order of the Federal Communication Commission and 47 C.F.R. § 69.615, the Board shall appoint a High Cost and Low Income Committee which shall have the power and authority to bind the Corporation on issues relating to the administration of the high cost and low-income support mechanisms. These powers include, but are not limited to, i) making decisions related to how USAC projects demand for the high cost and low-income programs, ii) creating forms, if needed, for the programs, iii) determining the processing procedures for such forms, iv) submitting quarterly projected demand for support for the high cost and low-income programs, as well as the underlying data used to calculate the projections, to the Commission for review at least 60 days before the start of each quarter; and the setting of high cost and low-income support that USAC will disburse to eligible telecommunications carriers. This Committee shall also have the authority to recommend to the Board of Directors of the Corporation and/or the Commission the performance of audits of telecommunications carriers and the data they submit to receive universal service support. This Committee does not have the power to make binding decisions in issues related to USAC's billing, collection and disbursement functions.

COMPOSITION AND VOTING. Pursuant to 47 C.F.R. § 69.615, the Committee will consist of 10 USAC Board members, including seven service provider representatives (i.e. three ILEC directors, two interexchange carrier directors, one CMRS director and one CLEC director), the low income, state consumer advocate and state telecommunications regulator representatives. In the event a majority of the members of this Committee is unable to reach a decision, the Chairperson of the Committee is authorized to cast an additional vote to resolve the deadlock.

MEETINGS. The High Cost and Low Income Committee meetings shall be open to the public and shall be held in Washington, D.C.

OTHER COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each such committee and member thereof shall serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation with the exception of any authority the delegation of which is prohibited by Section 141 of the Delaware General Corporation Law, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

SUBCOMMITTEES. Each committee, through a resolution, may establish subcommittees and determine the composition thereof. A subcommittee shall have, only, such authority as is delegated to it by the committee.

REPORTS. All committees and subcommittees shall keep books of separate minutes. All committees shall report all their actions at every regular meeting of the Board of Directors, or as often as may be directed by the Board. All subcommittees shall report all their actions to the committee which appointed them, at every regular meeting of that committee, or as often as may be directed by that committee.

9. **WRITTEN ACTION.** Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all member of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

ARTICLE III

OFFICERS

The officers of the Corporation shall consist of a Chief Executive Officer, a Secretary, a Treasurer, and, if deemed necessary, expedient, or desirable by the Board of Directors, a Chairperson of the Board, a Vice-Chairperson of the Board, an Executive Vice-President, one or more other Vice-Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers,

and such other officers with such titles as the resolution of the Board of Directors choosing them shall designate. Except as may otherwise be provided in the resolution of the Board of Directors choosing him or her, no officer other than the Chairperson or Vice-Chairperson of the Board, if any, need be a director. Any number of offices may be held by the same person, as the directors may determine.

Unless otherwise provided in the resolution choosing him or her, each officer shall be chosen for a one calendar year term and until his or her successor shall have been chosen and qualified. Elections of officers shall be the first order of business in the first Board of Directors meeting at the beginning of the calendar year.

All officers of the Corporation shall have such authority and perform such duties in the management and operation of the Corporation as shall be prescribed in the resolutions of the Board of Directors designating and choosing such officers and prescribing their authority and duties, and shall have such additional authority and duties as are incident to their office except to the extent that such resolutions may be inconsistent therewith. The Secretary or an Assistant Secretary of the Corporation shall record all of the proceedings of all meetings and actions in writing of stockholders, directors, and committees of directors, and shall exercise such additional authority and perform such additional duties as the Board shall assign to him. Any officer may be removed, with or without cause, by the Board of Directors. Any vacancy in any office may be filled by the Board of Directors.

ARTICLE IV

CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors shall prescribe.

ARTICLE V

FISCAL YEAR

The fiscal year of the Corporation shall begin on the first day of January in each year and end on the last day of December in each year.

ARTICLE VI**CONTROL OVER BY-LAWS**

Subject to the provisions of the certificate of incorporation and the provisions of the Delaware General Corporation Law, the power to amend, alter or repeal these By-Laws and to adopt new By-Laws may be exercised by the stockholders or the Board of Directors.

ARTICLE VII**GENERAL PROVISIONS**

1. **CONTRACTS.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances and shall be in compliance with the FCC Order and Rules.
2. **INDEMNIFICATION.** The Corporation shall (a) indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is, or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit, and (b) indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than action by or in the right of the Corporation), by reason of the fact that he or she is or was director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with any such action, suit or proceeding, in each case to the fullest extent permissible under Section 145 (a) through (e) of the Delaware General Corporation Law or the indemnification provisions of any successor statute. The foregoing right of indemnification shall in no way be exclusive of any other rights of indemnification to which any such person may be entitled under any By-law, agreement, vote of members, or disinterested directors or otherwise, and shall inure to the benefit of the heirs, executors and administrators of such a person.
3. **INSURANCE.** The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation

against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, to the full extent allowable under Section 145(g) of the Delaware General Corporation Law.

4. **ADDITIONAL FCC REQUIREMENTS.** The Corporation is subject to certain FCC audit, budget, record keeping, information sharing and nondisclosure requirements which are specifically described in the Federal Communications Commission Order and Rules.

ARTICLE IX

DISSOLUTION

Subject to compliance with the FCC Order and Rules and approval by the FCC Chairperson, if it should be deemed advisable in the judgment of the Board of Directors of the Corporation that the Corporation should be dissolved, the Board by a majority of the whole Board, at any meeting called for that purpose, shall adopt a resolution to dissolve the Corporation, shall cause notice of the adoption of said resolution and notice of a meeting of the stockholders to take action upon said resolution, to be mailed to each stockholder entitled to vote thereon pursuant to the provisions of the Delaware General Corporation Law.

Upon approval of said dissolution by a majority of the stockholders entitled to vote thereon, a certificate of dissolution shall be filed with the Secretary of State pursuant to and in accordance with the provisions of the Delaware General Corporation Law, and shall become effective in accordance with such law. Upon such certificate becoming effective in accordance with the Delaware General Corporation Law, the Corporation shall be dissolved.

CERTIFICATE OF INCORPORATION

OF

SCHOOLS AND LIBRARIES CORPORATION

1. The name of the Corporation is **SCHOOLS AND LIBRARIES CORPORATION**.
2. The Registered Office of the Corporation in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The Registered Agent in charge thereof is **CORPORATION TRUST COMPANY**.
3. The purpose is as defined in the Federal Communication Commission's rules at 47 C.F.R. § 69.619, as it exists today and as it may be amended. As described in the aforementioned Commission rule, the Corporation will perform all functions relating to administering the telecommunications universal service support mechanisms for eligible schools and libraries, except those directly related to billing and collecting contributions and disbursing support. The Corporation may also engage, so long as it is consistent with FCC Orders and Rules, in any other lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

The Corporation does not contemplate pecuniary gain or profit and is organized for nonprofit purposes.
4. The Corporation shall not have authority to issue any capital stock and it shall not have members.
5. The name and mailing address of the sole incorporator is David F. Hoyle, Secretary of National Exchange Carrier Association, Inc., 100 South Jefferson Road, Whippany, NJ 07981.
6. After the original or other By-Laws of the Corporation have been adopted, amended, or repealed, as the case may be, in accordance with the provisions of Section 109 of the General Corporation Law of the State of Delaware, the power to adopt, amend, or repeal the By-Laws of the Corporation may be exercised by either the stockholders or the Board of Directors of the Corporation.
7. No director of the Corporation shall be personally liable to the Corporation for monetary damages for breaches of fiduciary duty as a director, provided that this provision shall not eliminate or limit the liability of director (i) for any breach of the director's duty of loyalty to the Corporation; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the General Corporation Law of Delaware; or (iv) for any transaction from which the director derived an improper personal benefit. No repeal or amendment of this Article Seven shall adversely affect any rights of

any person pursuant to this Article Seven with respect to acts or omissions occurring prior to such repeal or amendment.

I, THE UNDERSIGNED, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this _____ day of August, 1997.

David F. Hoyle, Sole Incorporator

BY-LAWS
OF
SCHOOLS AND LIBRARY CORPORATION
(a Delaware corporation)

ARTICLE I
DIRECTORS

1. **FUNCTIONS AND DEFINITION.** The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation.¹ Pursuant to 47 C.F.R. § 69.617(f), no member of the Board of Directors shall receive compensation but each such member shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the Board. The use of the phrase "whole board" herein refers to the total number of directors which the Corporation would have if there were no vacancies.

2. **QUALIFICATIONS AND NUMBER.** The qualifications and number of directors shall be determined in accordance with the Federal Communications Commission rule - 47 C.F. R. § 69.617(b). The number of directors may be increased or decreased by the Board at the direction of the Federal Communications Commission. The initial Board of Directors shall consist of seven persons in the following composition: (i) the three directors representing eligible schools on the Universal Service Administrative Company's (USAC) Board of Directors; (ii) the director representing eligible libraries on USAC's Board of Directors; (iii) one director representing one of the categories of telecommunications service providers on USAC's Board of Directors and who will be selected by USAC's Board; (iv) one independent director who does not represent schools, libraries, or service providers who shall be selected by the Federal Communication Commission's Chairperson at the same time he or she selects the USAC Board; and (v) the Chief Executive Officer of the Corporation. A director shall cease to be a director of the Corporation and shall be subject to removal by the Board at the direction of the Federal Communications Commission Chairperson if such director (a) changes his or her affiliation (as defined in this section 2) with the entity that made him or her eligible for membership on the Board and (b) upon such change is not affiliated with the entity or constituency that nominated him or her.

¹ As will be seen throughout this document, certain functions of the Corporation must be conducted in accordance with the Federal Communications Order (Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration, CC Docket No. 97-21 and CC Docket No. 96-145, FCC 97-253, released July 18, 1997 (Order) and the Federal Communications Commission's Rules (47 C.F.R. §§ 69.603 and 69.613 through 69.622 (Rules).

3. **ELECTION AND TERM.** The first Board of Directors, unless the members thereof shall have been named in the certificate of incorporation, shall be elected by the incorporator subject to selections made by the Federal Communication Commission Chairperson and USAC Board pursuant to 47 C.F. R. § 69.617(b) and shall hold office for a term of two years until the first biennial election and until their successors are elected and qualified or until their earlier resignation or removal. Thereafter, directors who are elected in the biennial election, and directors who are elected in the interim to fill vacancies and newly created directorships, shall hold office until the next biennial election and until their successors are elected and qualified or until their earlier resignation or removal. Any director may resign at any time upon written notice to the Corporation. Unless a director is removed or resigns, he or she will serve a term of two years pursuant to 47 C.F.R. § 69.617(d).

4. **NOMINATION AND ELECTION OF BOARD MEMBERS.** Nomination and selection of the Board shall be conducted and biennial elections of the Board shall be held pursuant to 47 C.F.R. § 69.617(b). Once the FCC Chairperson and USAC Board selects the members of the new Board, the existing Board will elect the Board members selected by the FCC Chairperson and the USAC Board. In accordance with 47 C.F.R. § 69.617(d), if a Board member vacates his or her seat prior to the completion of his or her term, the Board will notify the FCC Common Carrier Bureau Chief of such vacancy, and a successor will be chosen in accordance with the nomination and selection process in 47 C.F.R. § 69.617(b). The member selected by the FCC Chairperson and, if necessary, the USAC Board to fill the vacated Board seat will be elected by the Board members.

5. **REAPPOINTMENT OF INCUMBENT BOARD MEMBERS.** There shall be no limitation on additional terms for Board members. At the end of each two-year term, an incumbent may be re-elected pursuant to the process outlined in section 4 above and pursuant to 47 C.F.R. § 69.617(d).

6. **MEETINGS.**

TIME. Meetings shall be held at such time as the Board shall fix. Special meetings of the Board may be called by the Chairperson of the Board at any time. Upon the written request of three directors, a special meeting of the Board of Directors must be called by the Chairperson of the Board or Secretary, to be held not more than fifteen (15) days after receipt of such request.

PLACE. Pursuant to 47 C.F.R. § 69.617(e), all meetings of the Board shall be open to the public and held in Washington, D.C.

CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the direction of the Chairperson of the Board, if any, the Vice-Chairperson of the Board, if any, the Chief Executive Officer, or of a majority of the directors in office.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time for the convenient assembly of the directors thereat. Notice need not be given to any director or to any member of a committee of directors who submits a written waiver of notice signed by him before or after the time stated therein. Attendance of any such person at a meeting shall constitute a waiver of notice of such meeting, except when he or she attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice.

QUORUM AND ACTION. A majority of the whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third of the whole Board. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the Delaware General Corporation Law, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the Delaware General Corporation Law and these By-Laws which govern a meeting of directors held to fill vacancies and newly created directorships in the Board or action of disinterested directors.

Any member or members of the Board of Directors or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

CHAIRPERSON OF THE MEETING. The Chairperson of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairperson of the Board, if any and if present and acting, or the Chief Executive Officer, if present and acting, or any other director chosen by the Board, shall preside.

7. **REMOVAL OF DIRECTORS.** As provided by the Delaware General Corporation Law, any director may be removed, with or without cause. Removal may only occur with the prior written approval of the Chairperson of the Federal Communications Commission. Upon the removal of one or more directors, the FCC Common Carrier Bureau Chief shall initiate a nomination and selection process in accordance with 47 C.F.R. § 69.617(b) to replace the director(s) removed. Upon selection of the new director(s) by the FCC Chairperson, the Board will elect such director(s).