DOCKET FILE COPY ORIGINAL
FCC MAIL SECTION
JUL 24 3 40 PM '97

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

In the Matters of:	)	
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45

REPORT and ORDER and SECOND ORDER on RECONSIDERATION

Adopted: July 17, 1997 Released: July 18, 1997

By the Commission (Chairman Hundt and Commissioners Quello and Ness issuing separate statements; Commissioner Chong dissenting and issuing a separate statement):

Table of Contents

Topic		Paragraph No.
I.	INTRODUCTION	1
II.	BACKGROUND	3
	A. The Universal Service Proceeding	3
	B. The NECA Proceeding	8
III.	COMMENTS	14
IV.	DISCUSSION	25
	A. Overview	25
	B. Appointment of NECA as Temporary Administrator	27
	C. USAC Board of Directors	33
	D. Functions of USAC	41
	E. Creation and Functions of High Cost and Low Income Committee	52
	F. Creation of Schools and Libraries and Rural Health Care Corporations	57
	G. Boards of Directors of Schools and Libraries and Rural Health Care	

Corporations 61
H. Functions of Schools and Libraries and Rural Health Care Corporations 65
I. Implementation Issues 71

V. PROCEDURAL MATTERS 83
A. Final Regulatory Flexibility Analyses 83
B. Effective Date 94

VI. ORDERING CLAUSES 97

Appendix A (Parties Filing Comments)
Appendix B (Final Rules)
Appendix C (Universal Service Worksheet)

I. INTRODUCTION

1. In the Universal Service Order released on May 8, 1997,[1] we determined that, subject to changes in its governance, the National Exchange Carrier Association (NECA) should serve as the temporary administrator of the universal service support mechanisms established pursuant to section 254 of the Communications Act of 1934, as amended.[2] In this Order, we direct NECA to create an independently functioning not-for-profit subsidiary through which it will administer temporarily certain portions of the federal universal service support mechanisms. We conclude that NECA's creation of an independently functioning subsidiary, in accordance with the directives set forth below, will assure significant industry-wide representation in the administration of the universal service support mechanisms.

2. In this Order, we also reconsider, on our own motion,[3] our determination in the Universal Service Order that the universal service administrator should select a subcontractor to manage the applications process for schools and libraries. In lieu of the selection of a subcontractor, we direct that NECA create an unaffiliated, not-for-profit corporation to manage the application and other processes relating to administering the schools and libraries

[1] Federal-State Joint Board on Universal Service, *First Report and Order*, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1996) (hereinafter, Universal Service Order), at para. 866.

[2] For a history of NECA's governance structure, *see* 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 (rel. Jan. 10, 1997), at paras. 3-5.

[3] *See* 47 C.F.R. § 1.108 ("The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of the public notice of such action, as that date is defined in § 1.4(b) of these rules").

program. We further direct that NECA create another unaffiliated, not-for-profit corporation to manage specified portions of the rural health care program. We conclude that the establishment of these corporations will bring to the administration of the schools and libraries and rural health care programs the necessary expertise to ensure that the programs are administered efficiently and in the best interests of their intended beneficiaries. To ensure continuity in, and efficient administration of, the schools and libraries and rural health care programs, we also conclude that these corporations should continue to perform their designated functions even after the date on which the permanent administrator is appointed. In short, they will perform the same functions for the permanent administrator as they will for the temporary administrator. In making this determination, we reconsider the scope of the functions that will be performed by the temporary administrator and by the permanent administrator, which will be selected pursuant to the Federal Advisory Committee Act (FACA).[4] Specifically, in this Order we assign to the unaffiliated corporations all functions associated with administering the schools and libraries and rural health care programs, except those relating to billing and collecting universal service contributions and disbursing support. Furthermore, we assign to both NECA's independent subsidiary and the permanent administrator, selected under FACA, responsibility for administering the universal service support mechanisms for high cost areas and low-income consumers, as well as collection and disbursement functions associated with the schools and libraries and rural health care programs. We also direct NECA's independent subsidiary to create a special committee of that subsidiary's Board of Directors with the power and authority to make binding decisions on designated issues relating to the universal service support mechanisms for high cost areas and low-income consumers. We further direct NECA to submit to the Commission the independent subsidiary's and the unaffiliated corporations' articles of incorporation and bylaws for review to ensure, prior to their incorporation, compliance with Commission rules. The unaffiliated corporations, NECA's independent subsidiary, and the special committee shall be accountable to the Commission for their performance of all functions relating to the administration of the universal service support mechanisms. Thus, the Commission may take appropriate action including, for example, directing the removal of one or more directors or recommending the performance of an audit by an independent auditor, if the Commission finds that the independent subsidiary is not performing its functions in accordance with Commission rules or if it is determined that its administrative expenses are unreasonable. Finally, in this Order we establish requirements by which the temporary and permanent administrators will calculate, and the Commission will approve, the quarterly universal service contribution factors.

II. BACKGROUND

A. The Universal Service Proceeding

[4] 5 U.S.C. App. § 4(a) and 3(2)(C).

3. The proceeding culminating in our May 8, 1997 Universal Service Order began on March 8, 1996 when the Commission initiated a rulemaking[5] to reform our system of universal service support, pursuant to section 254 of the Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996 (the 1996 Act).[6] In the 254 NPRM, the Commission sought comment on issues relating to the administration of the new universal service support mechanisms under section 254.[7] The Commission noted that the entity chosen to serve as administrator must operate in an efficient, fair, and competitively neutral manner and the Commission set forth tentative criteria for selecting the administrator.[8] The Commission further noted that the administrator would be required to process information, create and manage databases on a large scale, calculate the proper amount of each carrier's contribution, and apply eligibility criteria consistently, in order to ensure that only carriers eligible for support are compensated by the universal service support mechanisms.[9]

4. On November 8, 1996, the Federal-State Joint Board on Universal Service (Joint Board) released a Recommended Decision[10] recommending, *inter alia*, that the Commission appoint a universal service advisory committee pursuant to the Federal Advisory Committee Act (FACA)[11] to recommend a neutral, third-party permanent administrator, selected through competitive bidding.[12] The Joint Board recommended four criteria for selection of a permanent administrator of the universal service support mechanisms. 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

---

[5] Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing a Joint Board*, CC Docket No. 96-45, FCC 96-93 (rel. Mar. 8, 1996) (hereinafter, 254 NPRM).

[6] 47 U.S.C. § 254. *See also* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[7] 254 NPRM at paras. 127-130.

[8] *Id.* at para. 128.

[9] *Id.*

[10] *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 96J-3 (rel. Nov. 8, 1996) (hereinafter, *Recommended Decision*). On November 18, 1996, the Commission's Common Carrier Bureau issued a public notice seeking comment on the Joint Board's recommendations. FCC Common Carrier Bureau Public Notice Seeking Comment on Universal Service Recommended Decision, DA 96-1891 (Nov. 18, 1996) (hereinafter, *Public Notice*).

[11] 5 U.S.C. App. § 4(a) and 3(2)(C).

[12] Recommended Decision, 12 FCC Rcd at 505.

direct financial interest in the support mechanisms established by the Commission. In addition, the Joint Board recommended that the permanent administrator also must have the ability to process large amounts of data and bill large numbers of carriers.[13] Finally, the Joint Board recommended that "the Commission and the advisory board require the administrator to implement the support mechanisms no later than six months after its appointment."[14]

5. Noting that parties in the record questioned NECA's ability to appear as a neutral arbiter among contributing carriers because of the composition of NECA's current membership and Board of Directors, as well as its advocacy positions in several Commission proceedings, the Joint Board declined to recommend the appointment of NECA as the permanent administrator of the universal service support mechanisms.[15] The Joint Board did recommend, however, that the Commission remove any regulatory barriers to NECA's rendering itself a neutral, third party and eliminating what the Joint Board described as NECA's current appearance of bias in favor of incumbent local exchange carriers (ILECs).[16] The Joint Board further recommended that NECA be eligible to compete in the advisory board's process for selecting a permanent administrator if changes to NECA's membership and governance, in fact, render NECA a neutral, third party.[17]

6. Regarding the appointment of a temporary administrator, the Joint Board recommended that NECA be appointed the temporary administrator of the new universal service support mechanisms in order to bring support for telecommunications services to eligible schools, libraries, and rural health care providers as quickly as possible.[18] The Joint Board also recommended that, prior to appointing NECA the temporary administrator, the Commission should "permit NECA to add significant, meaningful representation" of non-ILEC interests to the NECA Board of Directors.[19]

7. On May 8, 1997, the Commission released an order adopting, *inter alia*, the Joint Board's recommendations regarding the selection of both a permanent and temporary administrator. The Order requires the creation of a Federal Advisory Committee to

---

[13] *Id.*

[14] *Id.* at 506.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 506-507.

[19] *Id.* at 506.

recommend a permanent universal service administrator in accordance with the Joint Board's four recommended criteria for the selection of a permanent administrator.[20] The Commission concluded that NECA, as currently structured, does not satisfy those criteria and, therefore, is not qualified to be the permanent administrator. The Commission concluded, however, that if changes to its Board of Directors or corporate structure enable it to satisfy the Joint Board's recommended criteria for the selection of a permanent administrator, NECA would be permitted to participate in the permanent administrator selection process. In the interest of speedy implementation of the universal service support mechanisms, the Commission also adopted the Joint Board's recommendation that NECA temporarily administer the universal service support mechanisms, subject to changes in NECA's governance that would render it more representative of non-ILEC interests. Finally, the Commission noted that the temporary administrator may not commit universal service support mechanism resources until it is appointed by the Commission.

B. The NECA Proceeding

8. On October 18, 1996, NECA requested that the Commission modify the size and composition of NECA's Board of Directors to reflect the interests of competitive local exchange carriers (CLECs), interexchange carriers (IXCs), wireless carriers, and non-carriers such as schools, libraries, rural health care providers, and states.[21] NECA proposed adding to its current 15-member Board of Directors six directors from groups that would have a substantial stake in the new universal service support mechanisms. NECA explained that three directors would represent different segments of the telecommunications industry such as IXCs, wireless carriers, and CLECs, and three would represent non-carriers, such as schools, libraries, rural health care providers, and states. NECA further stated that the new Board members would participate in NECA's administration of the current universal service, Lifeline Assistance, and Long Term Support (LTS) programs (i.e., programs predating the Commission's Universal Service Order), as well as Board oversight of auditing, finance, and general corporate matters. Access tariffs and pool revenue distribution, however, would continue to be the responsibility of the access charge committees, consisting of current members of NECA's Board. Thus, 15 of the 21 directors would continue to be direct representatives of ILECs or outside directors chosen by ILECs. NECA argued that this proposal represented a reasonable step for an interim period until a permanent administrator is chosen because it would allow broader representation on universal service matters, while preserving the existing Board to direct NECA's other administrative functions.[22]

---

[20] Universal Service Order at para. 861.

[21] Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, October 18, 1996 (hereinafter, NECA October 18, 1996 Letter).

[22] NECA October 18, 1996 Letter.

9. On January 10, 1997, the Commission issued a Notice of Proposed Rulemaking and Notice of Inquiry addressing NECA's October 18th proposal and the Joint Board's recommendation that the Commission permit NECA to alter its governance structure.[23] The NECA NPRM sought comment on how the Commission should amend its rules to enable NECA to reform its Board of Directors in a manner that would enable it to become eligible to serve as the temporary administrator of the universal service support mechanisms. The NECA NPRM tentatively concluded that, in order for NECA to be eligible to serve as temporary administrator, NECA's Board must become more representative of the telecommunications industry as a whole. Accordingly, the NECA NPRM proposed to act upon the Joint Board's recommendations by amending section 69.602 of the Commission's rules[24] to permit NECA to modify the size and composition of its Board to make it more representative of the telecommunications industry. The NECA NPRM also sought comment on whether other sections of Part 69 should be modified in conjunction with the proposed changes to section 69.602. In the accompanying NECA NOI, the Commission sought comment on what additional rule changes the Commission should make to enable NECA to become a neutral, third party, and thus, eligible for consideration as the permanent universal service administrator.[25]

10. In the NECA NPRM, the Commission also sought comment on whether NECA's October 18th proposal would satisfy the Joint Board's recommended criteria for a temporary administrator, and particularly whether the proposal would assure "significant, meaningful representation" of non-ILEC interests, given that ILEC interests would account for more than 71 percent of the Board's total composition.[26] We asked commenters to address whether any legal limitations would preclude NECA from creating an advisory committee or, alternatively, a new subset of directors and confining the latter's responsibilities solely to matters relating to the administration of the universal service support mechanisms.[27] We asked commenters taking the position that NECA's proposal does not meet the Joint Board's recommended criteria to set forth a specific alternative that would satisfy the Joint Board's

---

[23] 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 97-2 (rel. Jan. 10, 1997), *errata*, mimeo 71784, CC Docket No. 97-21, (rel. Jan. 15, 1997) (NECA NPRM and NOI).

[24] 47 C.F.R. § 69.602. Section 69.602 generally defines the composition of NECA's Board of Directors.

[25] NECA NOI at paras. 15, 16. We will address any rule or structural changes pertaining to NECA's eligibility to compete for the position of permanent administrator in a Further Notice of Proposed Rulemaking that will reflect comments received in response to the Joint Board's Recommended Decision and the NECA NOI.

[26] *Id.*

[27] *Id.*

criteria.[28] Moreover, we asked commenting parties to identify other structural changes to NECA's Board or alternatives to NECA's proposal that would help ensure that NECA has added significant, meaningful representation for non-ILEC interests.[29]

11. Also on January 10, 1997, NECA requested that the Commission consider a revised proposal in lieu of NECA's October 18th proposal, based on NECA's finding that it might not be possible to develop a satisfactory governance proposal within the context of a single administrative organization.[30] Under the January 10th proposal, NECA would not make changes to its current Board of Directors but would establish instead a separate subsidiary to administer the universal service support mechanisms.[31] NECA proposed that, once the Commission appointed NECA the temporary administrator and authorized it to commit resources to fulfill its administrative duties, NECA would create a wholly-owned subsidiary, designated as the Universal Service Administrative Company (USAC).[32] According to NECA, USAC would have a balanced, representative Board based on Commission recommendations and would include some representation from the current NECA Board.[33] Although USAC would have full control over the administration of the new universal service support mechanisms, certain NECA personnel would be dedicated to USAC functions on a full-time basis and other NECA employees would perform certain functions for USAC as needed.[34] Under NECA's proposal, USAC's labor costs would be recovered on a "chargeback" basis in accordance with the allocation procedures set forth in NECA's cost allocation manual.[35] Thus, as we understand the January 10th proposal, USAC's accounting structure would be a

---

[28] *Id.*

[29] *Id.*

[30] Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, January 10, 1997 (hereinafter, NECA January 10, 1997 Letter).

[31] NECA January 10, 1997 Letter.

[32] *Id.*

[33] *Id.*

[34] Letter from Kathryn Falk to William Caton, Acting Secretary, FCC, February 12, 1997, recording an *ex parte* meeting between NECA personnel and Commission staff.

[35] *Id.* NECA uses the term "chargeback" to mean the apportionment of costs among the specific revenue categories defined in the cost allocation manual that NECA files annually. In order to prevent cross-subsidization, NECA must submit and obtain Commission approval of a cost accounting and procedures manual prior to engaging in any of its authorized intrastate activities. *See* NECA's Request for Authority to Provide Intrastate Services to Exchange Carrier Members, 2 FCC Rcd 6853 (Com. Car. Bur. 1987).

component of NECA's accounting system for all of NECA's operations.[36] NECA also noted that USAC would compete in any competitive bidding process to select a permanent administrator.[37]

12. In comments filed on January 27, 1997, NECA stated that it does not take any specific positions on the size or composition of the USAC Board, except to recommend that the Commission clearly establish, by rule or order, a reasonable size for the Board and clear criteria and methods for selecting representatives from a cross-section of the telecommunications industry.[38] NECA contended that including on the USAC Board representatives from the NECA Board, who have experience with NECA's administrative operations and the complexities of managing universal service support mechanisms, would assure operational continuity.[39] NECA indicated that USAC Board members could be appointed by the Commission, nominated by interested parties, or selected by NECA based on the recommendations of the Commission and interested parties.[40]

13. In a discussion paper filed on June 23, 1997, NECA proposed that the most effective method of administering the new universal service support mechanisms would be through a separate subsidiary as described in NECA's January 10th proposal.[41] NECA also proposed the creation of board committees that would have specific program responsibilities, including a committee for the high cost and low-income programs, a committee for the schools and libraries program, and a committee for the rural health care program.[42] As proposed by NECA, these committees would have final decision-making authority with respect to defined aspects of program administration. In its discussion paper, NECA indicated a preference for a single subsidiary approach as opposed to the formation of multiple subsidiary corporations for purposes of administering the universal service support mechanisms.[43] NECA supported a single subsidiary approach based on its belief that a single

---

[36] Letter from Kathryn Falk to William Caton, Acting Secretary, FCC, February 12, 1997, recording an *ex parte* meeting between NECA personnel and Commission staff.

[37] *Id.*

[38] NECA comments at 7.

[39] *Id.*

[40] *Id.*

[41] Letter from Robert Haga to William Caton, Acting Secretary, FCC, June 23, 1997, recording an *ex parte* meeting between NECA personnel and Commissioner Quello and Commission staff.

[42] *Id.*

[43] *Id.*

subsidiary corporation under NECA would result in more efficient administration of the universal service support mechanisms by avoiding duplication of functions, systems, and resources by each company and by saving resources required to coordinate activities among multiple companies. NECA indicated that a single NECA subsidiary could implement the support mechanisms more quickly than multiple companies; would provide "one-stop shopping" for support beneficiaries; would be more accountable to the Commission than multiple companies; would result in better coordination and fewer disputes resulting from inconsistent operational practices; and would provide for better continuity to a permanent administrator because any groups currently responsible for temporary administration of the support mechanisms that may become responsible for permanent administration of the support mechanisms would have better overall knowledge of the universal service programs under a single corporate structure.[44]

14. Fifteen parties filed comments in response to the NECA NPRM and nine parties filed replies.[45] Because of the wide dissemination by NECA of its January 10th proposal to interested parties,[46] the majority of commenters to CC Docket 97-21 discussed both the October 18th and January 10th proposals.

III. COMMENTS

15. Appointment of NECA as Temporary Administrator. Commenters generally agree that NECA's present Board of Directors is not sufficiently representative of the broad spectrum of participants in the telecommunications industry for NECA to serve as the temporary administrator of the new universal service support mechanisms.[47] Several parties question whether an organization composed primarily of small ILECs can administer in a neutral manner a program in which all telecommunications carriers have direct, and potentially conflicting, interests.[48] At the same time, many commenters agree with the Joint

---

[44] *Id.*

[45] Bell Atlantic filed jointly with NYNEX, and their joint comments are referred to as "BA and NYNEX." The Rural Telephone Coalition also filed jointly with the United States Telephone Association, and their joint comments are referred to as "RTC and USTA." *See* Appendix A, Parties Filing Comments.

[46] NECA comments at 5, n.11. NECA states that copies of NECA's January 10, 1997 letter were served on all parties participating in CC Docket 96-45. All of the commenters responding to CC Docket 97-21 participated in CC Docket 96-45. In addition, a copy of NECA's letter was placed in the dockets of both proceedings.

[47] *See, e.g.*, ALA comments at 4; Ameritech comments at 3; AT&T comments at 3; MCI comments at 2; NCTA comments at 5; PCIA comments at 2; Sprint comments at 2; WorldCom comments at 6.

[48] *See* LDDS *254 NPRM* reply comments at 19-20; MCI *254 NPRM* reply comments at 16-17; MFS *254 NPRM* reply comments at 8; WinStar Communications, Inc. *254 NPRM* reply comments at 6; Letter from Mary L. Brown, MCI, to Reed Hundt, Chairman, FCC, October 25, 1996.

Board that NECA could be appointed temporary administrator if it adds "significant, meaningful representation" of non-ILEC interests to its Board of Directors.[49] In comments filed in response to the Recommended Decision, a few parties opposed the Joint Board's recommendation that NECA be appointed temporary administrator notwithstanding the Joint Board's directive that NECA first add significant, meaningful representation of non-ILEC interests to its Board.[50] AT&T, for example, initially proposed alternatives to NECA,[51] but stated in subsequent comments that the creation of a separate subsidiary by NECA, in accordance with NECA's January 10, 1997 proposal, could satisfy the Joint Board's criteria for a temporary administrator.[52] WorldCom recommended the selection of an entity without any pecuniary or institutional interest in the universal service funds that it will collect and disburse, and without ties to any category of contributors or recipients.[53]

16. NECA's January 10th Proposal. The majority of commenters support adoption of NECA's January 10th proposal and consider it an appropriate provisional measure for ensuring neutral administration and timely implementation of the new universal service support mechanisms.[54] Several commenters favor the approach set forth in the January 10th proposal because USAC, through its parent company, NECA, would have access to the experience, resources, and background necessary to implement the new support mechanisms as quickly as possible.[55] Likewise, NECA asserts that because of its experience in administering the current universal service programs, it will be able to "hit the ground running," thereby assuring that the programs will be operational on schedule, despite the short implementation

[49] AT&T *Recommended Decision* comments at 26-27; Iowa UB *Recommended Decision* comments at 1-2; PacTel *Recommended Decision* comments at 60; RTC *Recommended Decision* comments at 52; TCA *Recommended Decision* comments at 9; Teleport *Recommended Decision* comments at 12.

[50] *See, e.g.*, AT&T *Recommended Decision* comments at 26-27; Teleport *Recommended Decision* comments at 12.

[51] AT&T *Recommended Decision* comments at 26-27.

[52] AT&T reply comments at 5. Teleport opposed appointment of NECA as temporary administrator in comments filed in response to the Recommended Decision, but did not file comments responding to either the NECA Board NPRM or NECA's January 10, 1997 proposal.

[53] WorldCom comments at 4. *See also* MCI comments at 2.

[54] *See, e.g.*, BA and NYNEX comments at 2; PacTel comments at 2; PCIA comments at 8; RTC and USTA comments at 5; Sprint comments at 2; U S West comments at 2; AT&T reply comments at 5; BellSouth reply comments at 2; SWBT reply comments at 2.

[55] *See, e.g.*, U S West comments at 2-3; USTA comments at 5; BellSouth reply comments at 2; RTC reply comments; SWBT reply comments at 6.

periods.[56]

17. NECA further contends, and commenters generally agree,[57] that NECA's January 10th proposal would assure significant, meaningful, industry-wide representation in universal service administration processes.[58] Through balanced representation of affected parties, NECA asserts that USAC could take advantage of the industry expertise of the USAC Board members without being aligned with any particular industry segment.[59] NECA maintains that a Board composed of members with experience and expertise in telecommunications services, as well as representation from contributing companies and beneficiaries of the universal service support mechanisms, will provide better guidance to the administrator than a Board composed of individuals who lack such experience and involvement.[60]

18. Several parties comment favorably upon the fact that NECA's January 10th proposal would separate NECA's advocacy functions from its administration of the universal service support mechanisms, while permitting NECA's ILEC members to be represented by agents that they elect.[61] Commenters contend that establishing a wholly-owned subsidiary also avoids potential legal issues raised by the October 18th proposal because, according to commenters, NECA may be precluded legally from limiting the scope of its non-ILEC directors' authority to administration of the new universal service support mechanisms and general oversight of auditing and finance matters, as the October 18th proposal envisioned.[62] Problems associated with limiting the scope of certain NECA Board members' authority would be avoided under the January 10th proposal, according to these commenters, because the USAC Board's authority would be limited to overseeing the temporary administrator functions and the corporate governance of USAC.[63] SWBT asserts that USAC should

---

[56] NECA comments at 9.

[57] *See, e.g.*, BA and NYNEX comments at 2; NCTA comments at 7; PacTel comments at 2; PCIA comments at 8; RTC and USTA comments at 5; Sprint comments at 2; U S West comments at 2; AT&T reply comments at 5; BellSouth reply comments at 2; GTE reply comments at 4; SWBT reply comments at 2.

[58] NECA comments at 7.

[59] NECA reply comments at 7.

[60] *Id.*

[61] *See, e.g.*, BA and NYNEX comments at 3; PacTel comments at 3; RTC and USTA comments at 5; BellSouth reply comments at 4.

[62] *See, e.g.*, PacTel comments at 3; RTC and USTA comments at 5; SWBT reply comments at 3.

[63] *See, e.g.*, PacTel comments at 3; RTC and USTA comments at 5; SWBT reply comments at 3.

maintain independent control of its own day-to-day operations to avoid any potential conflict concerning fiduciary obligations of USAC Board members.[64] BellSouth agrees with Sprint that any interested party should be allowed to nominate a representative to the USAC Board and also contends that LEC representation on the USAC Board should not be limited to members of the current NECA Board.[65]

19. MCI asserts that NECA should not be appointed the temporary administrator even under NECA's January 10th proposal.[66] MCI argues that the proposed structure of the separate subsidiary would prevent it from administering the support mechanisms in a neutral manner because, as a subsidiary of NECA, USAC would be under the control of the ILEC-dominated NECA Board and all USAC employees would continue to be NECA employees.[67] MCI further maintains that because NECA has no particular expertise in administering universal service programs for schools, libraries, and rural health care providers, there is no significant benefit in appointing NECA the temporary administrator.[68] MCI suggests that the functions necessary to administer universal service are not difficult and could be performed by many other firms.[69] MCI thus urges the Commission to reject both NECA proposals and immediately request neutral entities to submit proposals to be the temporary administrator.[70] Additionally, in its comments filed in response to the NECA Board NPRM, WorldCom maintained its position articulated in prior comments that NECA should not be appointed temporary administrator.[71]

20. NECA's October 18th Proposal. Several parties, some of which also support NECA's January 10th proposal, contend that NECA's October 18th proposal would offer meaningful and significant representation of non-ILEC interests.[72] If the Commission adopts

---

[64] SWBT reply comments at 4.

[65] BellSouth reply comments at 3.

[66] MCI reply comments at 2.

[67] *Id.*

[68] *Id.* at 1.

[69] MCI comments at 2.

[70] *Id.* WorldCom, which previously had disapproved of NECA's appointment as temporary administrator, WorldCom comments at 3-6, did not comment on NECA's January 10, 1997 proposal.

[71] WorldCom comments at 3-6.

[72] See BA and NYNEX comments at 2; SWBT comments at 2. These three parties also express support for NECA's January 10, 1997 proposal. *See also* ALA comments at 4; Ameritech comments at 4.

the October 18th proposal, BA and NYNEX recommend that the Commission's Part 69 rules, which currently prescribe the structure of NECA's Board, be modified to require that the NECA Board represent the industry as a whole.[73] BA and NYNEX suggest that, rather than undertaking a rulemaking proceeding each time NECA wishes to modify its Board to reflect industry changes, NECA should be permitted to submit future changes to the Commission for approval under a public interest test.[74] If, after reforming its Board, NECA ceases to administer the universal service support mechanisms, SWBT suggests that NECA be permitted to reconstitute its Board to represent primarily ILEC interests.[75]

21. Parties opposing the adoption of NECA's October 18th proposal maintain that it would not permit meaningful representation of non-ILEC interests and therefore would not satisfy the Joint Board's criteria for selecting a temporary administrator.[76] WorldCom argues that the competitive environment created by the 1996 Act in which ILECs will soon compete outside their traditional markets with IXCs and other entities that will contribute to and receive universal service support requires appointment of an administrator that is even-handed in both appearance and fact.[77] WorldCom contends that NECA's lack of neutrality and independence was highlighted when NECA, after nominating itself to be temporary administrator, actively participated in a policymaking proceeding in which NECA recommended the adoption of specific policy proposals, such as maintenance of the existing universal service programs and use of a revenue-based payment methodology.[78]

22. Several commenters cite potential problems associated with NECA's October 18th proposal. For example, a few commenters suggest that NECA legally would be precluded from limiting the scope of the six non-ILEC directors' authority to administration of the new universal service support mechanisms and general Board oversight of auditing and

[73] BA and NYNEX comments at 3.

[74] *Id.*

[75] SWBT comments at 3.

[76] *See* AT&T comments at 7; MCI comments at 2; NCTA comments at 6; PCIA comments at 2; WorldCom comments at 5. In its January 10, 1997 filing, NECA acknowledged that its October 18, 1996 proposal did not address to the satisfaction of several participants in the universal service proceeding the concern that ILEC members would still constitute a majority of NECA's Board. NECA itself now advocates adoption of its January 10, 1997 proposal. NECA comments at 5.

[77] WorldCom comments at 1, 4.

[78] *Id.* at 5.

finance matters.[79] Similarly, RTC and USTA note that because corporate law does not recognize the concept of a limited duty director, all directors on NECA's Board ultimately would share responsibility to NECA's members for all Board functions, including responsibility for proper management of the tariff and access charge pools.[80] Ameritech and PCIA contend that because NECA's membership would continue to consist solely of ILECs, non-ILEC and non-carrier directors may be confronted with conflicts involving their fiduciary duties to NECA members.[81] SWBT further notes that distinguishing between a tariff and pooling matter or a matter of general corporate, financial, or employee governance may be administratively complicated.[82]

23. Other Proposals. Commenters offer general proposals for ensuring NECA's neutrality as well as specific proposals to modify NECA's October 18th and January 10th proposals.[83] Several commenters state that a balanced Board should include a cross-section of providers and beneficiaries of supported services and that ILEC directors should not constitute a majority.[84] ALA asserts that NECA should be required to restructure its Board so that one-third of its members represent consumers, libraries, and schools, and one-third represent non-ILEC industry members.[85] AT&T and Sprint contend that achieving balanced representation requires a 21-member board, although each party would define the board's composition differently.[86] If NECA is appointed the temporary administrator, MCI asks that NECA be barred from advocating positions on universal service issues in any regulatory proceeding.[87] MCI also argues that, because the Commission previously has been forced to conduct audits of NECA, the Commission should require NECA to initiate an independent audit of the

[79] *See, e.g.*, Ameritech comments at 5; PCIA comments at 7; RTC and USTA comments at 5; SWBT comments at 3.

[80] RTC and USTA comments at 5.

[81] Ameritech comments at 5; PCIA comments at 7.

[82] SWBT comments at 3.

[83] *See* ALA comments at 4-6; Ameritech comments at 3, 5; AT&T comments at 6; MCI comments at 3; NCTA comments at 2, 6; PCIA comments at 7; WorldCom comments at 6.

[84] *See, e.g.*, ALA comments at 5; ATA comments at 6; MCI comments at 3; NCTA comments at 6; WorldCom comments at 6.

[85] ALA *Recommended Decision* comments at 15. *See also* EDLINC *Recommended Decision* comments at 19-20.

[86] AT&T reply comments at 6-7; Sprint comments at 2.

[87] MCI comments at 3.

temporary administration of the universal service support mechanisms and pay for the audit with its own funds.[88]

24. Arguing that the selection of a temporary administrator should be analyzed in the context of the criteria for selecting a permanent administrator, Ameritech questions whether the appointment of directors with industry or beneficiary involvement in the universal service support mechanisms is necessary to promote the Commission's goals of cost-efficient and neutral administration of universal service support.[89] Although it supports NECA's appointment as temporary administrator, Ameritech contends that the Commission should use the experience it gains during this interim period to evaluate whether the permanent universal service administrator need have on its board of directors any representation from the industry or beneficiaries of the fund.[90]

IV. DISCUSSION

A. Overview

25. In this Order, we direct NECA to create an independently functioning, not-for-profit subsidiary, to be designated the Universal Service Administrative Company (USAC) that will administer temporarily the universal service support mechanisms for high cost areas and low-income consumers, as well as perform billing and collection functions associated with the universal service support mechanisms for schools and libraries and rural health care providers. We require that USAC's Board of Directors, which will be representative of both contributors to and beneficiaries of the universal service support mechanisms, consist of 17 members. Following review of the nominations submitted to the Commission by interested industry and non-industry groups, the Chairman of the Federal Communications Commission will select the members of the USAC Board. We further direct that the bylaws adopted by the USAC Board provide for the creation of a High Cost and Low Income Committee with the power and authority to bind the USAC Board on specified matters relating to the administration of the support mechanisms for high cost areas and low-income consumers.

26. We also reconsider, on our own motion,[91] our determination in the Universal Service Order that a subcontractor should manage the application process for schools and

[88] *Id.*

[89] Ameritech comments at 2, 4.

[90] Ameritech comments at 4.

[91] *See* 47 C.F.R. § 1.108.

libraries.[92] We instead direct that, as soon as possible, NECA create two unaffiliated, not-for-profit corporations, to be designated, for the purposes of this Order, the Schools and Libraries Corporation and Rural Health Care Corporation (collectively referred to as the Corporations), to administer portions of the schools and libraries and rural health care programs. The establishment of the Corporations will bring to the administration of the schools and libraries and rural health care programs valuable expertise that is needed to ensure that the schools and libraries and rural health care programs are administered efficiently and in the best interests of their intended beneficiaries. We also conclude that the Corporations should continue to perform their designated functions even after the date on which the permanent administrator is appointed. In making this determination, we reconsider the scope of the functions that will be performed by the temporary administrator and by the permanent administrator, which will be selected after recommendation by a federal advisory committee. Finally, in this Order we establish requirements that will govern the administrator or temporary administrator's calculation, and the Commission's approval of the quarterly universal service contribution factors.

B. Appointment of NECA as Temporary Administrator

27. Appointment of NECA as Temporary Administrator. In the Universal Service Order, we adopted the Joint Board's recommendation to appoint NECA the temporary administrator of the universal service support mechanisms, subject to the condition that NECA make certain changes to its governance that would make it more representative of non-ILEC interests.[93] We adopted this recommendation in the interest of speedy implementation of the universal service support mechanisms.[94] Because appointment of the permanent administrator based on the recommendations to the Commission by a Federal Advisory Committee will take time (possibly up to two years before the permanent administrator is fully operational),[95] our

[92] *See* Universal Service Order at para. 571. *See also* 47 C.F.R. § 54.504(b)(1); (b)(3).

[93] Universal Service Order at para. 866.

[94] *Id.*

[95] The Joint Board recommended the creation of a universal service advisory committee, created pursuant to FACA, 5 U.S.C., App. § 4(a) and 3(2)(C), whose function will be to recommend to the Commission, based on the results of a competitive bidding process, a permanent administrator of the universal service support mechanisms. The Commission adopted this recommendation in the Universal Service Order. *See* Universal Service Order at para. 861. Based on the Commission's experience with the North American Numbering Council, the creation and appointment of the advisory committee could take several months. *See* Administration of the North American Numbering Plan, *Report and Order*, 11 FCC Rcd 2588 (1995), at para. 54. Moreover, although the Joint Board recommended that a competitive bidding process be used to select the entity the committee would recommend to become a permanent administrator and that this process take no more than six months, Recommended Decision, 12 FCC Rcd at 505, Lockheed Martin has suggested that the process of creating a requirements document, soliciting bids, and evaluating the bids could take as long as a year. *See*

appointment of a temporary administrator is critical to ensuring timely implementation of the new universal service support mechanisms.

28. Our decision to appoint NECA the temporary administrator, subject to the guidelines set forth below, is not changed by MCI's suggestion that we solicit proposals from other "neutral" entities interested in serving as temporary administrator.[96] MCI reasons that NECA has no particular expertise in administering universal service programs for schools, libraries, and rural health care providers and therefore offers no significant benefit over other potential candidates.[97] Central to our determination to appoint NECA the temporary administrator, and overlooked by MCI's argument, however, is the Joint Board's recommendation that NECA continue to administer the existing high cost and low-income support mechanisms until the permanent administrator is prepared to implement the new high cost and low-income support mechanisms.[98] We conclude that NECA's substantial experience in administering the existing high cost and low-income support mechanisms provides a clear benefit in terms of assuring the operational continuity of these programs. Additionally, we conclude that MCI's concern that NECA lacks experience in administering programs for schools, libraries, and rural health care providers is addressed by the creation of the Schools and Libraries and Rural Health Care Corporations, which will manage significant portions of those programs.[99] We anticipate that these Corporations will be managed and staffed by individuals with substantial expertise in education, rural health care, and telecommunications issues.[100]

29. We are unpersuaded by MCI's additional assertion that USAC will not be impartial because the USAC Board will be dominated by NECA's Board and because USAC employees will continue to be NECA employees.[101] USAC's Board will be comprised of

---

Letter from Cheryl A. Tritt, Counsel for Lockheed Martin IMS, to William F. Caton, Acting Secretary, FCC, February 13, 1997. Finally, after its appointment, the administrator must develop systems to implement the support mechanisms. At a minimum, an administrator would need several months in which to prepare to begin its operations. Consequently, we estimate that it could take two to three years before a permanent administrator is fully operational.

[96] MCI comments at 2.

[97] MCI reply comments at 1.

[98] Recommended Decision, 12 FCC Rcd at 506.

[99] MCI reply comments at 2.

[100] The creation and functions of the Schools and Libraries and Rural Health Care Corporations are discussed below in sections IV.E-G.

[101] MCI reply comments at 2.

diverse participants representing a wide variety of industry and beneficiary interests and, therefore can be expected to ensure that USAC will be operated in a competitively neutral and unbiased manner.[102] Furthermore, it is within the authority of the USAC Board to limit the discretion of USAC's operations personnel as the USAC Board deems appropriate.[103]

30. Adoption of the January 10th Proposal. We conclude that, as modified below, NECA's January 10th proposal to establish a subsidiary with a separate board of directors will satisfy the condition established in the Universal Service Order that NECA must comply with the Joint Board's directive to provide "significant, meaningful representation" for non-ILEC interests in the temporary administration of the new universal service support mechanisms.[104] Specifically, we agree with the majority of commenters that balanced participation on the USAC Board by a wide range of industry interests as well as various beneficiaries of the support mechanisms will assure significant, meaningful representation of non-ILEC interests.[105] We also agree with MCI that there should be a separation of NECA's advocacy activities from the administration of the universal service support mechanisms. Therefore, we direct NECA to establish USAC in such a way that USAC will be permitted to advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms. We conclude that this restriction on USAC's advocacy activities will enhance the likelihood that the support mechanisms will be administered in a competitively neutral manner. We further conclude that, until January 1, 1998, NECA will continue to administer the current universal service, Lifeline Assistance, and LTS programs. USAC shall prepare for and administer the revised low-income and high cost programs.[106] We therefore direct NECA to establish USAC, in accordance with the January 10 proposal as modified by the specific requirements of this Order, to administer temporarily the universal service support mechanisms for high cost areas and low-income consumers, as well as to perform certain designated functions pertaining to the universal service support mechanisms for schools and libraries and rural health care providers.[107] We direct that USAC be

[102] *See* paras. 32-36, *infra*.

[103] USAC, however, may not intervene in the operations of the Schools and Libraries and Rural Health Care Corporations, except as specifically provided herein. *See* para. 61 *infra*.

[104] *See* Universal Service Order at para. 866.

[105] We agree, however, with MCI and Ameritech, that prior to our appointment of a permanent administrator, we should re-evaluate the efficacy of including industry and support beneficiaries on the administrator's Board of Directors.

[106] We note that NECA will continue to administer the common line and traffic sensitive access tariff pools and the TRS fund.

[107] USAC's functions are discussed more fully below in section IV.D.

incorporated under the laws of Delaware, as an independent, not-for-profit subsidiary corporation of NECA. We further direct NECA to submit to the Commission for approval proposed articles of incorporation, bylaws, and any documents necessary to incorporate USAC, by August 1, 1997, in order to ensure prior to USAC's incorporation that all requirements of this Order have been satisfied. The Commission will approve or modify the proposed documents in a Public Notice.

31. The October 18th Proposal and Related Proposals. We conclude that expanding NECA's current Board, as NECA's October 18, 1996 proposal suggests, would not achieve the Joint Board's goal of ensuring significant and meaningful representation of non-ILEC interests. Despite the proposed addition of six non-ILEC directors, the 15 directors elected by NECA's ILEC membership would continue to constitute more than two-thirds of NECA's Board. We agree with NCTA and PCIA that because NECA's Board would continue to be controlled by ILEC interests, the minority non-ILEC directors would lack the voting strength to affect the Board's decisionmaking.[108] Moreover, because of the wide range of industry contributors and beneficiaries as well as the number of non-industry beneficiaries that will be affected by the new support mechanisms, we conclude that the addition of six non-ILEC directors to NECA's Board is insufficient to guarantee meaningful representation of this broad spectrum of potential participants. We also share the concern of commenters that suggest that legal limitations may preclude NECA from confining the authority of the newly added non-ILEC directors to matters relating solely to the administration of the universal service support mechanisms.[109] The alternative, permitting the newly added directors to participate in matters relating to NECA's management of the access tariff and pool revenue distribution processes in addition to NECA's administration of the support mechanisms, raises equally troubling questions concerning the scope and nature of the duty owed by non-ILEC and non-carrier directors to NECA's membership on matters unrelated to administering the universal service support mechanisms. Thus, we decline to adopt NECA's October 18th proposal.

32. For similar reasons, we decline to adopt proposed modifications to NECA's October 18th proposal that would expand NECA's current Board.[110] For the reasons stated above, and as recognized by NECA, we conclude that it is unlikely that a single organization can achieve the goals of neutral administration and balanced industry-wide representation in

[108] NCTA comments at 6; PCIA comments at 2.

[109] *See, e.g.*, Ameritech comments at 5; PCIA comments at 7; RTC and USTA comments at 5; SWBT comments at 3.

[110] *See, e.g.*, ALA comments at 4-6; Ameritech comments at 3, 5; AT&T comments at 6; MCI comments at 3; NCTA comments at 2, 6; PCIA comments at 7; WorldCom comments at 6. We note that several of the commenters supporting modifications to the October 18th proposal also support NECA's January 10th proposal.

matters relating to administering the universal service support mechanisms, while at the same time ensuring diligent representation of ILEC interests in access tariff and pooling matters.[111]

C. USAC Board of Directors

33. Size and Composition of USAC Board. We direct NECA to establish the USAC Board with 17 directors that will represent a cross-section of industry and beneficiary interests.[112] The USAC Board shall be comprised of: three directors representing ILECs; two directors representing IXCs; one director representing commercial mobile radio service (CMRS) providers, which includes cellular, Personal Communications Services (PCS), paging, and Specialized Mobile Radio (SMR) companies; one director representing CLECs; one director representing cable operators; one director representing information service providers; three directors representing eligible schools;[113] one director representing eligible libraries;[114] one director representing eligible rural health care providers;[115] one director representing low-income consumers; one director representing state telecommunications regulators; and one director representing state consumer advocates. The directors representing ILECs, IXCs, CMRS providers, CLECs, low-income consumers, state consumer advocates, and state telecommunications regulators also will serve on the High Cost and Low Income Committee of the USAC Board, as described in section IV.E below.

34. Our objective is to enable USAC's Board to achieve a balance of broad industry and beneficiary representation and administrative efficiency so that the Board can implement the new support mechanisms in a neutral and efficient manner. We conclude that the Board must have at least 17 members, as delineated above, to assure balanced representation of both industry and beneficiary interests. The Board should not be so large, however, that it is unable to give USAC the prompt and effective guidance USAC will need as it undertakes its new responsibilities.

35. We conclude that the allocation of three positions for ILEC interests is

---

[111] *See* NECA January 10, 1997 Letter.

[112] Because the TRS fund also draws contributions from a broad range of telecommunications carriers, we will consider at a later time if USAC should also administer the TRS fund.

[113] *See* 47 C.F.R. § 54.501 for a description of schools that are eligible to receive discounts on telecommunications and other supported services.

[114] *See* 47 C.F.R. § 54.501 for a description of libraries that are eligible to receive discounts on telecommunications and other supported services.

[115] *See* 47 C.F.R. § 54.601 for a description of rural health care providers that are eligible to receive discounts on supported services.

necessary in order to maintain a balance of competing interests because of the large, non-ILEC majority among the participants. The group of three ILEC directors will consist of one director representing the BOCs and GTE, one director representing other ILECs having annual operating revenues in excess of $40 million, and one director representing small ILECs having annual operating revenues of $40 million or less to ensure fair representation of the diversity of ILEC interests. We agree with BellSouth that ILEC representation on the USAC Board should not be limited to members of the current NECA Board. Rather, we conclude that any individual, including a current member of NECA's Board of Directors, who is nominated and appointed in accordance with the procedures set forth below, should be entitled to serve on the USAC Board. Although we agree with AT&T that IXCs will make a substantial percentage of the universal service support contribution, we cannot permit IXCs or any other industry group to dominate the administration of the support mechanisms. Thus, we allocate two seats on the USAC Board to representatives of IXCs. Of the two IXC directors, one director will represent IXCs with more than $3 billion in annual operating revenues, and one director will represent IXCs with annual operating revenues of $3 billion or less. Because we expect that contributions to the support mechanisms by CMRS providers and CLECs will be smaller than contributions by IXCs or LECs, we allocate one seat each on the Board to representatives of CMRS providers and CLECs. Because discounts for information and advanced services will be given to schools and libraries, we allocate one seat each on the Board to a representative of cable operators and information service providers.

36. We conclude that allocating three positions to schools representatives and one position to a libraries representative sufficiently represents the interests of schools and libraries, which will receive services at discounts covered by approximately $2.25 billion per year in universal service support.[116] We further conclude that one director representing rural health care providers will be sufficient based on the size of the funding mechanism for rural health care providers, which is capped at $400 million.[117] We conclude that one director will represent low-income beneficiaries' concerns because of the explicit reference to low-income individuals in section 254(b)(3) of the Act[118] and because of the newly expanded low-income

[116] *See* Universal Service Order at para. 529.

[117] *See* Universal Service Order at para. 704.

[118] Section 254(b)(3) provides that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3).

programs.[119] We include a representative of consumer interests because a major goal of universal service is that "[q]uality services should be available at just, reasonable, and affordable rates" to all Americans.[120] We also include a representative of state telecommunications regulators in light of the critical role that will be performed by the states in ensuring the effective implementation of the universal service support mechanisms.

37. We conclude that the establishment of a 17-member Board, as delineated above, will assure both fair representation of the diverse participants and competitively neutral administration of the universal service support mechanisms. To achieve a balanced board that is not so large that it is unable to provide USAC prompt and effective guidance, we limit Board membership to representatives of telecommunications carriers that, pursuant to section 254, are required to contribute to the support mechanisms, entities or persons that benefit from universal service support mechanisms, and state telecommunications regulators, who are vital to the effective implementation of the new universal service support mechanisms. In this way, parties directly affected by the support mechanisms and with an important role in their implementation will have a role in their administration.

38. Selection and Appointment of USAC Board Members. Members of the industry or non-industry groups that will be represented on the Board are directed to submit their nominees selected by consensus for USAC directors to the Chairman of the Federal Communications Commission[121] within 14 calendar days of the publication of this Order in the Federal Register. In order for us to be able to confirm the identity and credentials of the board member nominees, each nomination should be accompanied by professional and biographical information, such as the nominee's resume or professional biography. Only members of the industry or non-industry groups that a Board member will represent may submit a nomination for that position (e.g., only CMRS providers may submit nominations for the CMRS position on the Board and only IXCs with more than $3 billion in annual operating revenues may submit nominations for the IXC Board member who will represent IXCs of that size). In order to minimize controversy surrounding the selection and appointment of Board members and to expedite the appointment process, we strongly urge members of the industry

[119] Pursuant to our new universal service rules, Lifeline has been revised to make it available in every state and to increase federal support to reduce charges on qualifying consumers' bills for telecommunications services. The revised Lifeline program also offers qualifying low-income consumers certain services and prohibits carriers from disconnecting Lifeline service for non-payment of toll charges and from charging service deposits for Lifeline consumers who receive toll blocking. 47 C.F.R. §§ 54.400-54.417.

[120] 47 U.S.C. § 254(b)(1). *See also* 47 U.S.C. § 254(i) ("[t]he Commission should ensure that universal service is available at rates that are just, reasonable, and affordable").

[121] Nominations should be filed with both the Secretary and the Chairman of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

and other groups represented on the Board (e.g., IXCs, CMRS providers, schools) to nominate, by consensus, a candidate for each position on the Board who possesses substantial experience in, and knowledge of, telecommunications issues.

39. The Chairman of the Federal Communications Commission will review the nominations submitted to the Commission by industry and non-industry groups and select the members of the USAC Board of Directors.[122] Because we conclude that each group to be represented on the USAC Board is best suited to nominate a qualified individual or individuals to represent that group's interests, we reject parties' recommendation that the Commission, in the first instance, select all of the USAC Board members.[123] If a group fails to reach consensus on a candidate to serve on the USAC Board, however, and instead submits the names of more than one nominee for a single Board member position, the Chairman of the Federal Communications Commission will, in the interest of establishing USAC as quickly as possible, select an individual or individuals who will serve on the USAC Board. Similarly, if an industry or beneficiary group fails to submit even a single nomination for a USAC Board member position, the Chairman of the Federal Communications Commission will select an individual from the appropriate industry or non-industry group to serve on the USAC Board for the duration of the board member's term. We conclude that delegating to the Chairman of the Federal Communications Commission the authority to select USAC Board members will aid in establishing the full Board as quickly as possible.

40. We direct that, within 14 calendar days of the Chairman's selection of USAC Board members, all USAC Board members be appointed to the USAC Board, and the USAC Board hold its first meeting. Members of the USAC Board will be appointed for two-year terms. Board members may be re-appointed for subsequent terms pursuant to the initial nomination and appointment process described above. In the event that a Board member vacates his or her seat prior to the completion of his or her term, USAC will notify the Chief, Common Carrier Bureau (Bureau) of such vacancy and a successor will be chosen pursuant to the initial nomination and appointment process described above.

D. Functions of USAC

41. In General. In connection with the temporary administration of the universal service support mechanisms for schools and libraries and rural health care providers, USAC[124]

[122] As discussed in section F below, individuals appointed to the USAC Board to represent eligible schools, libraries and rural health care providers also will serve as directors on either the Board of the Schools and Libraries Corporation or the Rural Health Care Corporation.

[123] *See e.g.*, NECA comments at 7-8; GTE reply comments at 4.

[124] USAC's duties as the temporary administrator shall also apply to the permanent administrator.

will be directly responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds. USAC also will be responsible for administering the universal service support mechanisms for high cost areas and low-income consumers. In addition, as discussed below, the High Cost and Low Income Committee of the USAC Board will be responsible for implementing and overseeing designated aspects of the support mechanisms for high cost areas and low-income consumers.[125] USAC, including members of the High Cost and Low Income Committee, will be directly accountable to the Commission for the performance of their respective responsiblities. Thus, the Commission may take appropriate action including, for example, directing the removal of one or more directors or recommending the performance of an audit by an independent auditor, if the Commission finds that USAC or the High Cost and Low Income Committee is not performing its functions in accordance with Commission rules or if it is determined that USAC's administrative expenses are unreasonable.

42. Billing and Collection. The billing and collection process, for which USAC will be solely responsible, involves several steps: (1) collection of information regarding contributing entities' end-user telecommunications revenues; (2) calculation of quarterly universal service contribution factors; (3) calculation of individual entities' contributions; (4) billing of contributors; and (5) receipt of universal service contributions. USAC will perform these functions for all of the universal service support programs (i.e., high cost, low-income, schools and libraries, and rural health care providers).

43. For purposes of collecting information regarding contributing entities' end-user telecommunications revenues, USAC will distribute, receive, and process the Universal Service Worksheet (Worksheet), which directs each contributing carrier or entity to provide identification information and information regarding end-user telecommunications revenues on a semi-annual basis. A draft copy of the Worksheet appears in Appendix C hereto. Following receipt of the Worksheets, USAC will calculate the total of all of contributing entities' interstate, intrastate, and international end-user telecommunications revenues. This sum will represent the total universal service contribution base and will be used to calculate the quarterly contribution factors.

44. In the Universal Service Order, the Commission directed the universal service administrator to collect $100 million per month for the first three months of 1998 and to adjust future contribution assessments quarterly based on its evaluation of school and library demand for funds, within the limits of the spending caps established in the Universal Service Order.[126] The Commission directed the administrator to report to the Commission on a quarterly basis, on both the total amount of payments made to entities providing services to

[125] *See* section E, *infra*.

[126] Universal Service Order at para. 532.