schools, libraries, and library consortia to finance universal service support discounts, and its determination regarding contribution assessments for the next quarter.[127] Similarly, the Commission concluded that funds for assistance to health care providers should be collected on an as-needed basis in order to meet anticipated actual expenditures over time.[128] Therefore, the Commission directed the administrator to collect $100 million for the first three months of 1998 and to adjust future contribution assessments quarterly based on its evaluation of health care provider demand for funds, within the limits of the spending cap established in the Universal Service Order.[129] We instructed the administrator to report to the Commission, on a quarterly basis, both the total amount of payments made to entities providing services to health care providers to finance universal service support and its determination regarding contribution assessments for the next quarter.[130] These obligations will apply to USAC to the extent described below.

45. Consistent with our determinations in the Universal Service Order, we conclude that during each funding year, there will be four quarterly sets of universal service contribution factors.[131] Universal service contribution factors shall be based on the ratio of quarterly projected costs of the support mechanisms, including administrative expenses, to the applicable revenue base. USAC will adjust the contribution factors for each quarter based on quarterly demand for services and administrative costs, subject to any funding caps established in the Universal Service Order.

46. Based on historic demand,[132] the High Cost and Low Income Committee will determine quarterly projected demand for support for the high cost and low-income programs and submit those projections, 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. Once these

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[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] Because contributors will have differing ratios of interstate to intrastate revenues, two contribution factors are needed. One factor will be applied to subject interstate end-user telecommunications revenues, and one factor to subject interstate and intrastate end-user telecommunications revenues.

[132] USAC shall base demand for high cost support on historic data or on demand from a previous quarter until a forward-looking economic cost model is implemented. We will provide USAC or the permanent administrator further instructions when we adopt a forward-looking economic cost model.

figures are approved by the Commission,[133] USAC shall use these projections to calculate the interstate and international end-user telecommunications revenues contribution factor. Similarly, the Schools and Libraries and Rural Health Care Corporations shall submit all quarterly projections of demand for their respective programs, including the underlying data used to calculate the projections, to the Commission for review at least 60 days before the start of each quarter.[134] Once these figures are approved by the Commission, USAC shall use these projections to calculate the quarterly interstate, intrastate, and international end-user telecommunications revenues contribution factor.

47. At least 60 days before the start of each quarter, USAC also will project its administrative costs and submit those projected costs to the Commission for review for reasonableness. USAC shall not allocate all of its administrative costs to the high cost and low-income programs' quarterly cost projections. USAC's costs that can be directly attributed to the schools and libraries or rural health care programs should be identified so that they can be included in the projected administrative expenses of the relevant programs. USAC's joint and common costs associated with billing and collection of contributions or disbursement of funds also should be identified. One-fourth of USAC's joint and common costs should be included in the projected administrative expenses of the high cost, low-income, schools and libraries, and rural health care programs, respectively. Once these figures are approved by the Commission,[135] USAC shall use the projections of its costs to administer the high cost and low-income programs along with the approved High Cost and Low Income Committee's projections of demand to calculate the interstate and international end-user telecommunications revenues contribution factor. Similarly, at least 60 days before the start of each quarter, the Schools and Libraries and Rural Health Care Corporations will project their quarterly administrative costs for the respective Corporations and submit those projected costs to the Commission for review.[136] Once these figures are approved by the Commission, USAC shall use these projections, USAC's projected administrative costs allocated to the schools and libraries and to rural health care programs, and the Corporations' approved projections of demand to calculate the quarterly interstate, intrastate, and international end-user

[133] Projected quarterly demand will be deemed approved by the Commission if the Commission does not act within 14 days following publication of the projections along with the projections of administrative expenses in a Public Notice.

[134] As discussed below in section IV.G, the Schools and Libraries and Rural Health Care Corporations will submit to the Commission their demand projections.

[135] Projected quarterly administrative expenses will be deemed approved by the Commission if the Commission does not act within 14 days following publication of the projections along with the projections of demand in a Public Notice.

[136] As discussed below in section IV.G, the Schools and Libraries and Rural Health Care Corporations will submit to the Commission their projected administrative expenses.

telecommunications revenues contribution factor for the schools and libraries and rural health care support programs. In addition to the actual projections of administrative expenses, USAC and the Corporations must submit to the Commission and the Common Carrier Bureau the underlying data used to calculate their projections. By receiving USAC's and the Corporations' projections of administrative expenses and the data supporting those projections, the Commission will be able to determine whether USAC's and the Corporations' administrative expenses are reasonable and take appropriate action if it is determined that their projected expenses are unreasonable. In addition, USAC will submit the latest total revenue base information that it has collected from the Worksheets to the Commission at least 60 days before the start of each quarter.

48. USAC must obtain Commission approval of all projections of demand and administrative expenses before using them to calculate the contribution factors and before applying the factors to calculate individual contributions. The quarterly projections of demand and administrative expenses, total revenue base information submitted by USAC, the Committee, and the Corporations, and the proposed quarterly contribution factors will be announced by the Commission in a Public Notice and will be made available on the Commission's website. If the Commission takes no action within 14 days of the date of the Public Notice announcing the projections of demand and administrative expenses and the contribution factors, then the projections and contribution factors will be deemed approved by the Commission. The Commission reserves the right to set projections of demand or administrative expenses at amounts that the Commission determines will serve the public interest at any time within the 14-day period following release of the Commission's Public Notice.

49. After the Commission approves the projections of demand by the Schools and Libraries and Rural Health Care Corporations and the High Cost and Low Income Committee and the projected administrative expenses of the Schools and Libraries and Rural Health Care Corporations and USAC, USAC will calculate and apply the quarterly contribution factors to determine each entity's contribution and bill and collect contributions from contributors. To calculate an individual entity's quarterly contribution, USAC will multiply the entity's universal service contribution base (i.e., its interstate, intrastate, and international end-user telecommunications revenues or its interstate and international end-user telecommunications revenues) by the relevant universal service contribution factor. USAC then will bill each contributor for the amount of its contribution. Contributors must remit all contributions to USAC by the contribution due date. USAC will file with the Commission and the Bureau periodic reports regarding the status of contributors' payments and failure to make payments.

50. If, in any quarter, contributions exceed universal service support payments and administrative costs, contributions for the following quarter will be reduced by an amount that takes into account the unused funds from the previous quarter. Similar to our rules governing NECA's administration of the TRS fund, if contributions in one quarter are inadequate to

meet demand, USAC may request authority from the Commission to borrow funds commercially subject to any spending or collection caps, with such debt secured by future universal service contributions.[137] In such event, contributions for subsequent quarters will be increased by an amount to cover the added costs associated with borrowing funds.

51. Disbursements. In disbursing universal service support in connection with the support mechanisms for high cost areas and low-income consumers, USAC will review and process data submitted by service providers and disburse payments to eligible service providers, as directed by the High Cost and Low Income Committee. In disbursing universal service support in connection with the support mechanisms for schools, libraries, and rural health care providers, USAC will be directed by the Schools and Libraries and Rural Health Care Corporations to disburse payments to service providers. Eligible schools, libraries, and rural health care providers will be instructed to provide to USAC and the Schools and Libraries Corporation or Rural Health Care Corporation copies of a form designating the services provided to the school, library or health care provider and the support amount due to the service provider. We direct the Schools and Libraries and Rural Health Care Corporations to authorize USAC to disburse the appropriate payment amounts as quickly as possible, but no later than 20 days following receipt of the forms. We direct USAC to distribute universal service support to eligible service providers as quickly as possible, but no later than 20 days following receipt by USAC of the Corporations' authorization to disburse funds under the schools, libraries and rural health care programs.

E. Creation and Functions of High Cost and Low Income Committee

52. Consistent with Delaware law, we direct the USAC Board to adopt bylaws providing for the creation of a special committee of its Board to be designated the High Cost and Low Income Committee, which will have the power and authority to bind the USAC Board on issues relating specifically to the universal service support mechanisms for high cost areas and low-income consumers. The Universal Service Order significantly reformed these programs to make them consistent with the mandates of the Act, including making universal service support available to all eligible telecommunications carriers rather than solely to ILECs. In light of the substantial modifications that have been made to the high cost and low-income programs, we conclude that the creation and operation of the Committee are necessary to ensure the successful implementation of and transition to the new high cost and low-income programs. Because, in contrast to the new schools, libraries and rural health care programs, some form of high cost and low-income support mechanisms has been in place for several years, we do not find that creation of an unaffiliated corporation for the high cost and low-income programs is necessary at this time.

[137] *See* 47 C.F.R. § 64.604(c)(ii)(B).

53. Our decision to employ a committee rather than a separate corporation for the high cost and low-income programs is not intended to suggest that these programs are any more -- or any less -- important than those for schools and libraries and for rural health care. At a later date, we may well conclude that the same structure is appropriate for each of the programs contemplated by section 254. But it is in the area of section 254(h) that we are establishing a completely new universal service program, as to which NECA has no prior expertise and for which the necessary processes must be operational by January 1, 1998. The changes to the high cost and low-income programs pose fewer new administrative challenges than the new schools and libraries and rural health care programs. Furthermore, the most far-reaching, significant changes to the high cost support program will not be implemented until January 1, 1999. Thus, the differing treatment given here to schools, libraries, and health care, on the one hand, and to low-income and high-cost support, on the other, is possibly temporary and in any event fully justified by our desire that the former programs be launched with speed, independence, efficiency, and accountability.

54. The Committee will consist of 10 USAC Board members, including seven service provider representatives (i.e., the three representatives of ILECs, two representatives of IXCs, one representative of CMRS providers, and one representative of CLECs) and the low-income, state consumer advocate, and state telecommunications regulator representatives described above. We conclude that the creation of a committee comprised of Board members with expertise on the issues associated with the support mechanisms for high cost areas and low-income consumers will facilitate efficient and responsive decision making on these issues. We conclude that the cable operator, information service provider, schools, libraries, and rural health care representatives should not serve on the Committee because we anticipate that these representatives will have relatively less interest and expertise in matters affecting the administration of the high cost and low-income support mechanisms. These board members do not represent entities that are eligible to receive universal service support from the high cost and low-income universal service support mechanisms and that directly benefit from these programs.[138] In addition, including on the Committee only those USAC Board members with expertise in issues relating to the universal service support mechanisms for high cost areas and low-income consumers will relieve the remaining USAC Board members of the responsibility to make decisions concerning issues that may be outside the scope of their knowledge and that do not directly affect their constituent interests. This also will allow the members to focus on the issues that more directly impact their constituencies.

55. The High Cost and Low Income Committee will have the power and authority to make binding decisions on issues related to the administration of the high cost and low-income support mechanisms, as specifically delineated in USAC's bylaws, except on issues related to USAC's billing, collection, and disbursement functions discussed above. For

[138] We note that cable operators, in their capacity as telecommunications providers, will be represented on the High Cost and Low Income Committee by the CLEC representative.

example, the Committee will have binding authority to make decisions related to how USAC projects demand for the high cost and low-income programs, any forms needed for the programs, and processing of such forms. The Committee also will have binding authority to set the amounts of high cost and low-income support that USAC will disburse to eligible telecommunications carriers.

56. Based on the authority granted to the administrator under Commission universal service rules to audit contributors and carriers that report data to the administrator,[139] we conclude that the Committee should have the authority to recommend the performance of such audits of telecommunications carriers receiving universal service support, when its members find it necessary to do so. We conclude that the Committee, the majority of which will represent service providers, likely will recognize when there is the need for an audit of such entities and how such an audit can be structured in order to obtain the relevant information in an efficient manner. We note that the Commission independently may direct the performance of audits of telecommunications carriers receiving high cost or low-income universal service support. In the event that a majority of the members of the Committee is unable to reach a decision, the Chairman of the Committee is authorized to cast an additional vote to resolve the deadlock.

F. Creation of Schools and Libraries and Rural Health Care Corporations

57. As noted above, we reconsider, on our own motion, our decision to require the administrator to select a subcontractor to manage the application process for eligible schools and libraries and instead direct NECA to incorporate two not-for-profit, unaffiliated corporations that will be responsible for administering the schools and libraries and rural health care programs, except with regard to those matters directly related to billing, collection, and disbursement of funds.[140] Specifically, we conclude that the structure and carefully delineated responsibilities of the Corporations, as set forth herein, will provide for greater accountability and more efficient administration of the schools and libraries and rural health care programs than would the approach adopted earlier because a subcontractor, unlike the Corporations, would not be directly accountable to the Commission. Accordingly, as soon as possible following release of this Order, NECA shall incorporate the Corporations as unaffiliated, not-for-profit corporations under the laws of Delaware. The Corporations shall be designated the Schools and Libraries Corporation and Rural Health Care Corporation. NECA initially shall establish the Schools and Libraries and Rural Health Care Corporations and then take such steps as are necessary and appropriate under Delaware and federal law to make the Corporations independent of, and unaffiliated with, NECA and USAC. We direct NECA to submit to the Commission for approval the proposed articles of incorporation,

[139] *See* 47 C.F.R. § 54.707.

[140] For a discussion of the Corporations' functions, *see* section IV.H below.

bylaws, and any documents necessary to incorporate the Corporations, by August 1, 1997, in order to permit us to determine prior to NECA's establishing the Corporations whether the requirements of this Order have been satisfied.

58. We conclude that the creation and operation of the Corporations are critical to the successful implementation of the schools and libraries and rural health care support mechanisms.[141] The schools and libraries and rural health care support mechanisms are, as MCI points out,[142] new programs involving new categories, and potentially large numbers, of participants and beneficiaries. Because of the complexity and unique issues related to the schools and libraries and rural health care provider support mechanisms, in addition to the significance of these programs under the 1996 Act, we conclude that decisions concerning their implementation may require special expertise. Not only is such expertise outside the competence of NECA's Board and existing staff, as MCI asserts,[143] but we conclude that it is also outside the competence of the USAC Board. We conclude that establishing separate corporations to administer the schools and libraries and rural health care programs, as set forth in section IV.G below, will help ensure that these programs are administered by individuals with expertise and, of equal importance, with a direct stake in the success of the programs.

59. To ensure continuity in, and efficient administration of, the schools and libraries and rural health care programs, we 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 pursuant to the FACA. Specifically, we provide that both USAC and, subsequently, the permanent administrator will share responsibility with the Corporations for administering the schools and libraries and rural health care programs as detailed in sections IV.D and IV.H herein. As reflected in those sections, we assign to the Corporations responsibility for administering significant portions of the schools and libraries and rural health care programs, respectively, and assign to both USAC and the permanent administrator responsibility for collection and disbursement functions associated with the schools and libraries and rural health care programs. We conclude that it is critical to the success of the schools and libraries and

[141] Section 254(c)(3) states that "[i]n addition to the services included in the definition of universal service under paragraph [c](1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection [254](h)." 47 U.S.C. § 254(c)(3). Section 254(h)(2) states that "[t]he Commission shall establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries." 47 U.S.C. § 254(h)(2).

[142] MCI reply comments at 2.

[143] MCI reply comments at 2.

rural health care programs and, specifically, to the ability of the Corporations to attract and develop qualified personnel, that significant portions of the schools and libraries and rural health care programs be implemented by entities that will have an ongoing role in the administration of those programs, notwithstanding the identity of the permanent administrator. Moreover, we conclude that it would be disruptive and wasteful of the resources invested in the creation of the Corporations and in their start-up operations if we were to dissolve them upon the appointment of a permanent administrator.

60. To the extent that we are modifying the scope of the functions to be performed by the temporary and permanent administrators in connection with the administration of the schools and libraries and rural health care programs in a manner that differs from the scope defined in our Universal Service Order, we also modify our charge to the federal advisory committee that will be recommending to the Commission a permanent administrator. Its task will now be to identify and recommend as permanent administrator the candidate that is best suited to perform the functions that we have set out in section IV.D above. As a condition of the appointment of a permanent administrator, we also require that the entity selected as the permanent administrator take whatever steps as are necessary or ordered by the Commission to maintain the relationship and division of responsibilities with the Corporations as described in section IV of this Order.

G. Boards of Directors of Schools and Libraries and Rural Health Care Corporations

61. The Board of Directors of the Schools and Libraries Corporation will consist of seven members, including three schools representatives, one libraries representative, one service provider representative, one independent director, and the CEO of the corporation. The three directors representing schools and one director representing libraries will be the same directors as those representing schools and libraries on the USAC Board. The Chairman of the Federal Communications Commission will select, simultaneously with selection of the USAC Board members, an individual not affiliated with schools, libraries, or service providers to serve as an independent director of the Schools and Libraries Corporation Board.[144] The USAC Board will select the service provider representative who will serve on the Schools and Libraries Corporation Board from among the service provider representatives on the USAC Board within seven calendar days of the USAC Board's first meeting. Once the service provider representative has been appointed to the Schools and Libraries Corporation Board, those six Board members (including the independent director and the schools and libraries representatives) will submit a CEO candidate to the Chairman for approval. The chosen CEO also will serve on the Board of the Schools and Libraries Corporation. We note that, unlike the other directors on the Schools and Libraries Corporation's Board, the independent director

[144] An individual not affiliated with schools, libraries, or service providers is one who, for example, do not have a direct financial interest in schools, libraries, or service providers and/or who is not employed by one of these entities.

and CEO will not serve on the USAC Board.

62. The Board of Directors of the Rural Health Care Corporation will consist of five members, including two rural health care representatives, one service provider representative, one independent director, and a CEO. One of the rural health care provider representatives also will be the director representing rural health care providers on the USAC Board. In a forthcoming public notice soliciting nominations for the USAC Board of Directors, interested parties also will be instructed to nominate a second rural health care provider representative to serve only on the Board of Directors of the Rural Health Care Corporation. The Chairman of the Federal Communications Commission will select the second representative of rural health care providers who will serve only on the Board of the Rural Health Care Corporation simultaneously with the selection of the members of the USAC Board. The Chairman of the Federal Communications Commission also will select, simultaneously with the selection of the USAC Board members, an individual not affiliated with rural health care providers or service providers to serve as an independent director of the Rural Health Care Corporation Board.[145] The USAC Board will select a service provider representative to serve on the Rural Health Care Corporation's Board from among the service provider representatives on the USAC Board within seven calendar days of the USAC Board's first meeting. Once the service provider representative has been appointed to the Rural Health Care Corporation Board, the four Board members (including the independent director and the rural health care provider representatives) will submit a CEO candidate to the Chairman for approval. The chosen CEO also will serve on the Board of the Rural Health Care Corporation. We note that the independent director, CEO, and one rural health care provider representative will not serve on the USAC Board.

63. We conclude that, with the exceptions discussed above, the Corporations' directors representing schools, libraries, health care providers, and telecommunications service providers should be the same directors as those on the USAC Board representing schools, libraries, rural health care providers, and telecommunications service providers. We reach this conclusion based on our expectation that the Corporations' Board members will be required to work closely with USAC operations staff because of the shared responsibility of USAC and the Corporations for administering the schools and libraries and rural health care programs. We also conclude that including a service provider representative on each of the Corporation's Boards will help to ensure that the viewpoint of those providing eligible services to schools, libraries, and rural health care providers and those contributing to the universal service support mechanisms will be represented. Therefore, the four USAC Board members representing schools and libraries and the one USAC Board member representing rural health care providers will be appointed to the Boards of Directors of the Schools and Libraries and

[145] An individual not affiliated with rural health care providers or service providers is one who, for example, does not have a direct financial interest in rural health care providers or service providers and/or who is not employed by one of these entities.

Rural Health Care Corporation, respectively, contemporaneously with their appointment to the USAC Board.

64. Like the members of the USAC Board, all of the Corporations' Board members shall be appointed for two-year terms. Board members may be reappointed for subsequent terms pursuant to the appointment process used initially to select the Corporations' Board members, as discussed above. In the event that a Corporation's Board member vacates his or her seat prior to the completion of his or her term, the Corporations will notify the Bureau of such vacancy and a successor will be chosen pursuant to the process used initially to select the Corporation's Board members. Removal of members of the Corporations' Board must be consistent with Delaware law and may only occur with the approval of the Chairman of the Federal Communications Commission.

H. Functions of Schools and Libraries and Rural Health Care Corporations

65. The Schools and Libraries and Rural Health Care Corporations will perform all functions relating to administering the support mechanisms for eligible schools and libraries and rural health care providers, except those directly related to billing and collecting contributions and disbursing support, as discussed above. In administering the support mechanisms for eligible schools and libraries and rural health care providers, the Corporations must comply with all Commission rules. The Corporations' functions will include, but will not be limited to: (1) administering the application process for eligible schools, libraries, and rural health care providers, including the dissemination, processing, and review of applications for service from schools, libraries, and rural health care providers; (2) creating and maintaining a website on which applications for services will be posted on behalf of schools, libraries, and rural health care providers seeking to attract the competitive bids of service providers; (3) performing outreach and public education functions, by, for example, communicating with interested parties about the availability of, and requirements for receiving, universal service support for schools, libraries, and rural health care providers; (4) reviewing bills for services that are submitted by schools, libraries, and rural health care providers on which service providers designate the amount of universal service support they should receive for services rendered and on which schools, libraries, and rural health care providers confirm that they have received such services; (5) submitting all quarterly projections of demand and their own administrative expenses to the Commission; (6) informing USAC, based on the information contained in the bills for services provided, of the amount of universal service support to be disbursed to service providers; (7) authorizing the performance of audits of schools and libraries and rural health care provider beneficiaries of universal service support; (8) and any other function relating to the administration of the

schools and libraries and rural health care programs that is not specifically assigned to USAC.[146] With regard to authorizing the performance of audits of schools and libraries, we clarify our decision in the Universal Service Order that the Commission, in consultation with the Department of Education, should engage and direct an independent auditor to conduct audits of schools and libraries.[147] Because it will assume many of the functions related to the administration of schools and libraries program and will work closely with eligible schools and libraries, we conclude that the Schools and Libraries Corporation, rather than the Commission in consulation with Department of Education, is better suited to determine when the performance of audits of schools and libraries should occur.[148] For this reason, we conclude that the Schools and Libraries Corporation, rather than the Department of Education, should be authorized, in consultation with us, to engage and direct the individual audit of schools and libraries.

66. Furthermore, we clarify our provision in the Universal Service Order that the administrator should project school, library, and rural health care provider demand for funds for the purpose of calculating the universal service contribution factors, and monitor such demand for the purpose of determining when, in the case of the schools and libraries program, the $2 billion trigger has been reached,[149] and when, in the case of the rural health care program, the $400 million annual cap has been reached.[150] We specify that the Corporations, rather than USAC or the permanent administrator, will monitor demand for the purpose of determining when the $2 billion trigger has been reached in the case of the schools and libraries program and when the $400 million cap has been reached in the case of the rural health care providers program. Once the $2 billion trigger has been reached, the Schools and Libraries Corporation will be responsible for implementing the rules of priority under which it will determine, consistent with our Universal Service rules, the procedures by which the

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[146] Schools, libraries, and rural health care providers, as well as service providers, are subject to compliance review and must maintain records necessary to assist in audits, as provided in our Universal Service rules. These entities are required to produce their records at the request of the appointed auditor whether the auditor suspects fraud or other illegal conduct or is merely conducting a routine, random audit. *See* 47 C.F.R. §§ 54.516 & 54.619. *See also* Universal Service Order at paras. 581 and 728.

[147] Universal Service Order at para. 581.

[148] We note, however, that the Commission retains independent authority to authorize the performance of audits of schools and libraries.

[149] As established in the Universal Service rules, once there is only $250 million available to be committed in a given funding year to schools and libraries, only those schools and libraries that are most economically disadvantaged and have not yet received discounts from the universal service mechanism in the previous year would be granted guaranteed funds, until the cap is reached. *See* 47 C.F.R. § 54.507(f).

[150] The Universal Service rules provide for a $400 million annual cap on universal service support for rural health care providers. *See* 47 C.F.R. § 54.623(a).

remaining funds will be disbursed under the schools and libraries program.[151] We conclude that the Corporations are best suited to project and monitor demand for funds for purposes of calculating the quarterly contribution factors because the Corporations will be responsible for reviewing the bills for services on which service providers will designate the amount of universal service funds to which they are entitled and on which schools, libraries, and rural health care providers will confirm the receipt of such services. In addition, we clarify that the Schools and Libraries and Rural Health Care Corporations' administrative expenses shall be applied to their respective programs' annual funding caps.

67. We also conclude that the Schools and Libraries Corporation may review and certify schools' and libraries' technology plans[152] when a state agency has indicated that it will be unable to review such plans within a reasonable time. We anticipate that consistent with the Universal Service Order, the Department of Education and the Institute for Museum and Library Services will recommend to the Commission alternative review measures.[153] Upon receipt of such recommendations, the Commission will determine whether to adopt alternative review measures. Furthermore, we clarify our statement in the Universal Service Order that the administrator should classify schools and libraries as urban or rural and use the discount matrix adopted in the Universal Service Order to set the discount rate that will be applied to eligible interstate services purchased by schools and libraries.[154] We conclude that the Schools and Libraries Corporation is best suited to classify schools and libraries as urban or rural and to use the discount matrix to set the discount rate because, as discussed above, the Schools and Libraries Corporation will be responsible for reviewing and processing applications for services in which schools and libraries provide the information that will be used in setting the discount rate.

68. In a discussion paper filed on June 23, 1997, NECA indicated a preference for the creation of a single subsidiary corporation as opposed to the formation of multiple corporations for purposes of administering the universal service support mechanisms.[155] We are unpersuaded by NECA's arguments that a single corporation would provide a more

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[151] As provided in 47 C.F.R. § 54.507(f), certain rules of priority will apply to the disbursement of funds when expenditures in any funding year reach the level where only $250 million remains before the cap will be reached.

[152] The Universal Service rules require schools and libraries to submit technology plans as part of their application for service. *See* 47 C.F.R. § 54.504(b)(2)(vii).

[153] *See* Universal Service Order at para. 574.

[154] *See* 47 C.F.R. § 54.505.

[155] 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.

efficient or effective method of administering the universal service support mechanisms than the administrative structure prescribed by this Order. First, we do not concur in the view that structuring all administrative functions within a single corporate structure would result in greater efficiency, avoid duplication of functions, or produce greater cost savings than would the structure described above. Rather, we anticipate that unique administrative functions will be performed by appropriate personnel whether those personnel serve as officers or employees under particular committees of a single corporation or perform those same functions within separate corporations. Because the schools and libraries program and the rural health care program will serve discrete categories of beneficiaries, we anticipate that the administrative functions associated with those programs will be performed by individuals with expertise and knowledge in the areas of education, library programs, or health care. Therefore, we reject the assertion that the creation of separate corporations will result in duplication of functions as NECA suggests. Moreover, in monitoring the quarterly projected administrative expenses of both USAC and the Corporations, as discussed in section IV.D, and in directing NECA, USAC, and the Corporations to share personnel and other resources whenever doing so would minimize expenses, as discussed in section IV.I, we conclude that the risk of unnecessary duplication of functions, systems, and resources is not significant.

69. We find no evidence to suggest, as asserted by NECA, that the new universal service support programs could be implemented more quickly under a single corporate structure. As a threshold matter, we do not anticipate that the time required to incorporate the Corporations will be significantly greater than that required to incorporate USAC alone. In addition, because of the distinct nature of the schools and libraries and rural health care programs, we expect that the process of hiring and training staff to administer those programs will not be more time consuming merely because staff are employed by particular corporations as opposed to reporting to particular committees within a corporation. To the extent that there may be overlapping functions, the Corporations will be encouraged, as both a cost and time saving measure, to enter into contracts with NECA or USAC for the performance of such functions. Finally, we anticipate that individuals within a smaller corporate structure may be able to make decisions more rapidly than could the same individuals within a larger corporate structure.

70. Given that an independent auditor will perform an annual audit of each corporation and that the performance and projected administrative expenses of each corporation will be closely monitored by the Commission, we reject the assertion that a single corporate structure ensures greater accountability of program administrators. In addition, we conclude that several of NECA's remaining concerns are addressed by the fact that the Corporations will continue to perform the same functions for the permanent administrator as they will for USAC, notwithstanding the identity of the permanent administrator. Specifically, we conclude that the permanent nature of the Corporations will make them more "user friendly" to program participants because they will be permanent, easily recognizable entities as opposed to transitional entities. For this reason, we also reject the assertion that a

single corporate structure will better facilitate the transition to a permanent administrator, since the entities whose creation we require in this Order will continue to perform the same functions for the permanent administrator. For all of these reasons, we conclude that the potential disadvantages that NECA maintains are associated with the administrative structure set forth herein are outweighed by the benefits that we anticipate will be realized by this structure.

I. Implementation Issues

71. Creation and Scope of Authority of USAC. As noted above, we direct NECA to establish USAC as a separate subsidiary. This separate subsidiary will have separate directors, pursuant to the requirements set forth above, and will maintain separate books of account from those of NECA's other operations. We direct that the appointment of NECA as the temporary administrator will become effective coincident with NECA's incorporation of the USAC subsidiary and the Corporations. We direct USAC to develop the necessary database systems, hire and train personnel, and discuss with contributors the assessment of universal service support requirements. We emphasize that, in its role as the temporary administrator, USAC may engage only in activities directly related to administration of the universal service support mechanisms. We further find that USAC Board and High Cost and Low Income Committee meetings shall be open to the public and shall be held in Washington, D.C., because this city is easily accessible and also may be particularly convenient for the many interested parties that have offices or representatives in the Washington, D.C. area. We also conclude that USAC Board members shall be entitled to receive reimbursement for expenses directly incurred as a result of their participation on the USAC Board.

72. Creation and Scope of Authority of Schools and Libraries and Rural Health Care Corporations. We direct NECA to incorporate the Schools and Libraries and Rural Health Care Corporations and to take such steps as are necessary to ensure that the Corporations are unaffiliated with either NECA or USAC once the Corporations begin to perform their universal service functions. We assign to the Schools and Libraries Corporation and the Rural Health Care Corporation the authority to perform the functions designated in section IV.H. above. We anticipate that the Corporations may need to engage in transactions with either NECA or USAC to enable them to begin operations as quickly as possible. Such transactions may include contracts for services of NECA and/or USAC employees, loans for the administration of the universal service support mechanisms, and transfers of assets. Start-up funds for the Corporations may not come from the TRS Fund or from TRS administrative accounts. We expect, however, that the Corporations will hire individuals other than NECA or USAC employees to perform functions unrelated to USAC's functions as described in section IV.H., such as reviewing schools' and libraries' technology plans. We also anticipate that the Corporations may seek to borrow start-up funds directly from commercial lenders.

73. We emphasize that, in administering the schools and libraries and rural heath care programs, the Corporations may engage only in activities directly related to administration of the program for which each was created. We further find that the Corporations' Board meetings shall be open to the public and shall be held in Washington, D.C., because this city is easily accessible and also may be particularly convenient for the many interested parties that have offices or representatives in the Washington, D.C. area. We also conclude that the Corporations' Board members shall be entitled to receive reimbursement for expenses directly incurred as a result of their participation on that Corporation's Board.

74. Intercorporate Transactions. As noted above, we anticipate that USAC and the Corporations may engage in transactions with NECA. We expect that NECA, USAC, and the Corporations will engage in such transactions whenever doing so would minimize expenses. We direct NECA and USAC to provide such services, including loaning start-up funds, upon the request of the Corporations on reasonable terms. As with the Corporations' start-up funds, mentioned above, start-up funds for USAC may not come from the TRS fund or from TRS administrative expense accounts.[156] All transactions that occur between NECA and USAC must be conducted on an arm's length basis. For transactions between NECA and USAC, NECA will be subject to the Commission's affiliate transaction rules.[157] We also direct NECA to revise its cost allocation manual (CAM) to reflect the formation of USAC.[158]

75. Accounting and Auditing Requirements. Concerns about fraud, waste, and abuse occurring in universal service support programs lead us to impose specific accounting and auditing requirements for USAC and the Schools and Libraries and Rural Health Care Corporations. Thus, USAC will maintain books of account in accordance with generally accepted accounting principles (GAAP) that are separate from NECA's books of account. Similarly, the Corporations will maintain books of account in accordance with GAAP that are separate from USAC's books of account and separate from each other. We direct that an audit be performed of USAC's and the Corporations' books on an annual basis by an independent auditor. In our *Accounting Safeguards Order*, we established specific audit procedures applicable to separate subsidiaries of the BOCs under section 272(d) of the Act.[159] Because we conclude that oversight of the administration of the universal service support

[156] *See* 47 C.F.R. § 64.604(c)(4)(iii)(H).

[157] *See* 47 C.F.R. § 32.27. *See also* Joint Cost Order, Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298 (1987), *modified on recon.* 2 FCC Rcd 6283 (1987); Implementation of the Telecommunications Act of 1996; *1996 Safeguards Order*.

[158] *See* 47 C.F.R. § 64.903.

[159] *See* Implementation of the Telecommunications Act of 1996; Accounting Safeguards under the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 17539 (1996) (*1996 Safeguards Order*).

mechanisms is necessary to ensure the integrity of the support mechanisms, we apply to USAC and the Corporations audit requirements similar to those contained in section 53.209 *et seq.* of our rules.[160] Before selecting the independent auditor, USAC and the Corporations shall submit to the staff of the Bureau preliminary audit requirements, including the proposed scope of the audit and the extent of the compliance and substantive testing. The Bureau will review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. The Bureau will make any modifications that it deems necessary to the audit requirements. After the audit requirements have been approved by the Bureau, USAC and the Corporations each shall engage an independent auditor to conduct an agreed-upon procedures audit[161] following the procedures determined by the Bureau. In making its selection, neither USAC nor the Corporations shall engage an independent auditor that has been involved in designing the accounting or reporting systems under review in the audit. In addition, USAC and the Corporations each shall require the independent auditor selected to develop a detailed audit program based on the final audit requirements and submit such audit program to the Bureau staff, which will determine whether any modifications are necessary for purposes of incorporating the proposed audit program into the final audit program.

76. Because the audit program is an agreed-upon procedures audit that will be conducted to assure that USAC's and the Corporations' administration of the support mechanisms serves the public interest, USAC and the Corporations each shall require the independent auditor it selects to inform the Bureau, during the course of an audit, of any revisions the auditor makes to the final audit program or scope of the audit. USAC shall require the independent auditor to notify the Bureau of any meetings with USAC or NECA in which audit findings are discussed, so that the Bureau can be kept apprised of audit results and can ensure that the audit program is conducted in accordance with Commission rules. Similarly, the Corporations shall require the independent auditor to notify the Bureau of any meetings with the Corporations in which audit findings are discussed. In addition, USAC and the Corporations each shall require the independent auditor selected to submit to the Bureau any accounting or rule interpretations that either USAC or the Corporations find necessary to make to complete the audit. By receiving the above information, the Bureau will be able to ensure that the auditor examines areas the Bureau has determined require review and that the Commission's rules are being followed.

77. USAC and the Corporations each shall require the independent auditor selected,

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[160] *See* 47 C.F.R. § 53.209 *et seq.*

[161] According to generally accepted auditing standards, an agreed-upon procedures audit is one in which the parties involved (i.e., the accountant and the client) determine the nature and scope of the audit. *See Statement on Standards for Attestation Engagements No. 1*, at 100.56-.61, 100.47-.48 (March 1986). Here, although USAC and the Corporations will be clients, the Commission, through its rulemaking authority, will set forth the nature and scope of the audit to be agreed upon by both USAC and the auditor and the Corporations and the auditor.

within 60 days after the end of the audit period, but prior to discussing the audit findings with USAC, NECA, or the Corporations, to submit a draft of the audit report to the Bureau. We conclude that submission of the audit report to the Bureau in this time period will permit an orderly release of the report while also allowing the Bureau to assess the validity of the report's findings and the adequacy of the work product. The independent auditor may request additional time to perform additional audit work as recommended by the Bureau staff. USAC and the Corporations each shall require the independent auditor selected to submit the audit to USAC and the Corporations, respectively, for their response to the audit findings. Within 30 days after receiving the audit report, USAC and the Corporations each shall respond to the audit findings and send a copy of their response to the Bureau staff. USAC and the Corporations also shall submit to the Bureau staff any reply that the independent auditor may provide relating to USAC's and the Corporations' response. In addition to the annual audit, we direct that a close-out audit of USAC's and the Corporations' operations should be performed within six months of the permanent administrator's beginning operations.

78. Recovery of Administrative Expenses. The permanent administrator's, USAC's, Schools and Libraries Corporation's, and Rural Health Care Corporation's annual administrative expenses, which may include, but are not limited to, salaries, equipment costs, costs associated with borrowing funds, operating expenses, directors' reimbursement for expenses, and costs associated with auditing contributors or support recipients, should be commensurate with the administrative expenses of programs of similar size. Once projections of the next quarter's administrative expenses have been approved by the Commission,[162] USAC shall disburse funds to the Schools and Libraries and Rural Health Care Corporations for administrative expenses for the next quarter. The Corporations shall submit to the Commission projected quarterly budgets at least 60 days prior to the start of every quarter. The Corporations' first projected budgets will include administrative expenses, including any interest, incurred prior to the first budget filing deadline. USAC will disburse payments to the Corporations on a quarterly basis. Each of the Corporations will receive such payments from the permanent administrator under the same terms as payments will be received from USAC pursuant to this Order.

79. Nondisclosure of Information. The Commission will have full access to all data received by the permanent administrator, USAC, and the Corporations. Requests for Commission nondisclosure can be made under section 0.459 of the Commission's rules at the time that the subject data is submitted to USAC or the Corporations.[163] As required by our rules, such requests for nondisclosure must contain a statement of the reasons for withholding

[162] Projected quarterly administrative expenses will be deemed approved by the Commission if the Commission does not act within 14 days following publication of the projections along with the projections of demand in a Public Notice.

[163] 47 C.F.R. § 0.459.

the materials from disclosure (e.g., competitive harm) and the facts supporting that statement. In any event, all decisions regarding disclosure of company-specific information will be made by the Commission. Therefore, we will require the administrator, USAC, and the Corporations to keep confidential all data obtained from universal service contributors, not to use such data except for purposes of administering the universal service support mechanisms, and not to disclose such data in company-specific form unless directed to do so by the Commission.

80. Universal Service Worksheet. The Universal Service Worksheet, which directs each contributing carrier or entity to provide, on a semi-annual basis, identification information and information regarding end-user telecommunications revenues, is attached hereto as Appendix C. After the Worksheet has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995,[164] copies of the Worksheet may be obtained from USAC or the FCC website. Carriers and contributing entities are required to provide on the Worksheet gross, end-user interstate, intrastate, and international telecommunications revenues information. An officer of the contributing carrier or entity must certify to the truth and accuracy of the Worksheet. The Worksheet will be subject to verification by the Commission, the permanent administrator, or USAC at the discretion of the Commission. Failure to file the Worksheet or to submit required contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law.[165] The permanent administrator or USAC will advise the Commission of any enforcement issues that arise and provide any suggested response.

81. Bureau Authority to Modify Reporting Requirements. Because it is difficult to determine in advance precisely the information that will be needed to administer the new universal service programs, the Bureau will have delegated authority to waive, reduce, or eliminate contributor reporting requirements that may prove unnecessary. The Bureau also will have delegated authority to require any additional contributor reporting requirements necessary to the sound and efficient administration of the universal service programs.

82. Transition to Permanent Administrator. We emphasize that our appointment of NECA as the temporary administrator of the universal service support mechanisms subject to its establishment of USAC and the Corporations does not suggest that NECA or USAC will be selected as the permanent administrator, nor does it suggest that NECA or USAC will receive special consideration in the selection of a permanent administrator. We condition NECA's appointment as temporary administrator on NECA's and USAC's agreeing to the requirements of this Order, including making available, if NECA is not appointed permanent administrator, any and all intellectual property, including, but not limited to, all records and

[164] 44 U.S.C. §§ 3501, *et seq.*

[165] *See, e.g.*, 47 U.S.C. §§ 206-209, 312, 403, 503.

information generated by or resulting from its performance as temporary administrator, to whomever the Commission directs, free of charge.[166] Similarly, although the Corporations will continue to have the same role in administering the schools and libraries and rural health care programs once a permanent administrator has been appointed as they will have with the temporary administrator, we nevertheless require the Corporations, as a condition of their role in the administration process, to make available to whomever the Commission may direct, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from their role in administering the universal service support mechanisms if their participation in administering the schools and libraries and rural health care programs should discontinue at any time. NECA, USAC, and the Corporations must specify any property they propose to exclude from the foregoing category of property based on the existence of such property prior to NECA's assumption of duties pursuant to this Order. We note that a federal advisory committee will be established to recommend to the Commission a permanent administrator of the universal service support mechanisms. Under the circumstances just described, we also direct NECA, USAC, and the Corporations to cooperate fully with the permanent administrator's efforts to assume its duties.

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analyses

83. This Order achieves two main goals. First, we amend our rules to direct NECA to establish an independently functioning subsidiary (USAC) so that, as required by the Universal Service Order,[167] non-ILEC interests are represented in the administration of the universal service support mechanisms.[168] We further direct NECA to create two unaffiliated corporations to administer specific aspects of the universal service support mechanisms for schools and libraries and rural health care providers, respectively. For purposes of the Regulatory Flexibility Act (RFA), we certify, pursuant to 5 U.S.C. § 605 that these actions will not have a significant impact on a substantial number of small entities. Second, in this Order, we set forth the procedures that the permanent administrator and temporary administrator will follow to determine the amount of required universal service contributions and to collect such contributions from carriers and other affected entities. For this part of the Order, we have prepared a Final Regulatory Flexibility Analysis (FRFA), as required by 5 U.S.C. § 603.

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[166] Such property includes, for example, databases, processing systems, computer software programs, lists, records, information, or equipment created or purchased and used in the temporary administration of the universal service support mechanisms.

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

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

1. Certification

84. In the NECA NPRM, the Commission tentatively certified that the rules it proposed to adopt in this proceeding would not have a significant economic impact on a substantial number of small entities because the proposed rules did not pertain to small entities.[169] We did not receive any comments concerning our proposed certification. For the reasons stated below, we certify that the rules directing NECA to create USAC to administer temporarily certain aspects of the universal service support mechanisms and directing NECA to establish two unaffiliated corporations to administer specific aspects of the schools and libraries and rural health care programs, will not have a significant economic impact on a substantial number of small entities.[170] This certification conforms to the RFA, as amended by the Small Business Regulatory Fairness Act of 1996 (SBREFA).[171]

85. The NECA NPRM certified that no regulatory flexibility analysis was required because the proposed rule changes applied only to NECA, and NECA is not a small organization within the meaning of the RFA. NECA is a non-profit, quasi-governmental association created to administer the Commission's interstate access tariff and revenue distributions processes and is not dominant in its field.[172] Furthermore, we found that the amendments to our rules proposed in the NECA NPRM did not apply to other "small business concerns" because they proposed to modify the composition of NECA's Board of Directors.

86. In the NECA NPRM, we tentatively concluded that NECA's governance structure needed to become more representative of the industry as whole in order for NECA to be appointed the temporary administrator. In the Universal Service Order, we appointed NECA temporary administrator on the condition that NECA make changes in its governance that would render it more representative of non-ILEC interests. This Order adopts rules directing NECA to create an independently functioning subsidiary (i.e., USAC) to temporarily administer certain aspects of the universal service support mechanisms and directing NECA to create two unaffiliated corporations to administer certain aspects of the schools and libraries and rural health care programs. We have not received any comments requesting that we modify our initial certification that this rule change will not have a significant economic

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[169] NECA NPRM at paras 19-21.

[170] 5 U.S.C. § 605(b).

[171] 5 U.S.C. §§ 601-611. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), Subtitle II of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

[172] *See* 47 C.F.R. §§ 69.601, 69.603. NECA subsequently assumed responsibility for administering the existing universal service fund (47 C.F.R. §§ 69.116, 69.603), the Lifeline Assistance program (47 C.F.R. §§ 69.117, 69.603), the LTS program (47 C.F.R. §§ 69.2(y), 69.612), and TRS fund (47 C.F.R. § 64.604(c)(4)(iii).

impact on a substantial number of small entities. We therefore certify pursuant to section 605(b) of the RFA that the rules adopted in this Order directing NECA to create an independent subsidiary to administer temporarily certain aspects of the universal service support mechanisms and directing NECA to create two unaffiliated corporations to administer certain aspects of the schools and libraries and rural health care programs, will not have a significant impact on a substantial number of small entities.

2. Final Regulatory Flexibility Analysis

87. As required by section 603 of the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 254 NPRM.[173] The Commission also prepared an IRFA in conjunction with the Recommended Decision, seeking written public comment on the proposals in the 254 NPRM and Recommended Decision and included a FRFA in the Universal Service Order.[174] In our NECA NPRM, we tentatively certified that the rule amendments under consideration would not have a significant economic impact on a substantial number of small entities. We did not receive any comments concerning the proposed certification. The Commission's FRFA in this Order conforms to the RFA, as amended.

a. Need for and Objectives of this Order and the Rules Adopted Herein.

88. The Commission is required by sections 254(a)(2) and 410(c) of the Act, as amended by the 1996 Act, to promulgate these rules to implement promptly the universal service provisions of section 254. In the Universal Service Order, we adopted rules whose principal goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. The rules adopted in this Order clarify the structure and responsibilities of the temporary administrator and unaffiliated corporations and describe the steps these three entities must undertake in administering the universal service support mechanisms adopted in the Commission's Universal Service Order.

b. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA.

89. No comments in response to the IRFA in addition to those described in the

[173] 254 NPRM at paras. 135-142.

[174] 61 Fed. Reg. 63,778, 63,796 (1996).

Universal Service Order[175] were filed.

c. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order will Apply.

90. In the FRFA to the Universal Service Order, we described and estimated the number of small entities that would be affected by the new universal service rules, including the rule requiring telecommunications carriers and other entities to contribute to the universal service support mechanisms. The rules adopted here, which set forth the procedures by which contributions will be made to the universal service support mechanisms, will apply to the same telecommunications carriers and entities affected by the universal service rules. We therefore incorporate by reference paragraphs 890-922 of the Universal Service Order, which describe and estimate the number of affected telecommunications carriers and entities.[176]

d. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

91. Section 254(d) states "that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions" toward the preservation and advancement of universal service. The Universal Service Order FRFA[177] describes the obligation of telecommunications carriers and other providers of telecommunications services to contribute to the universal service support mechanisms and the concomitant requirement that they provide information regarding their end-user telecommunications revenues. This Order establishes the specific procedures that telecommunications carriers and other providers of telecommunications services will follow in providing such information to the administrator and temporary administrator. To compute carrier contributions, contributors must submit a semi-annual universal service Worksheet. The Worksheet will require all contributors to submit information relating to revenues derived from end users for telecommunications or telecommunications services to the administrator and temporary administrator of the support mechanisms. Contributors also will be required to

[175] Universal Service Order at paras. 874-881.

[176] *See* Universal Service Order at paras. 890-922.

[177] *See* Universal Service Order at para. 980.

submit a quarterly payment to the administrator or temporary administrator of the support mechanisms. Contributors that provide services to schools, libraries, and rural health care providers may be eligible to receive a credit against their contributions. Contributors seeking a credit must submit to the administrator or temporary administrator additional information regarding the services provided at less than their pre-discount price to receive the credit. Approximately 5,000 telecommunications carriers and providers will be required to submit revenue information and payments. We sought to limit the information requirements to the minimum necessary for evaluating and processing the application and to deter possible abuse of process. These tasks may require some legal and accounting skills.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

92. Pursuant to section 254(d), we concluded in the Universal Service Order that carriers with annual contributions of less than $100 will be exempt from universal service contribution and reporting requirements. Nothing in this proceeding leads us to alter our conclusion in the FRFA of the Universal Service Order[178] that the *de minimis* exception in section 254(d) may not properly be interpreted to except, on the basis of their size, small carriers and other telecommunications providers from the obligation to contribute to the universal service support mechanisms or to decrease the relative amount that they must contribute.

e. Report to Congress

93. The Commission shall send a copy of the FRFA and certification, along with the Report and Order, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of the certification also will be sent to the Chief Counsel for Advocacy of the SBA. Finally, a copy or a summary of this FRFA and certification also will be published in the Federal Register.

B. Effective Date

94. With respect to the rules adopted herein that are not subject to the PRA, we find good cause to depart from the general requirement of 5 U.S.C. § 553(d) that final rules take effect not less than 30 days after their publication in the Federal Register. We find good cause to make the rules effective upon publication in the Federal Register for the reasons described below.

95. First, the speedy establishment of both the USAC subsidiary and the

[178] *See* para. 982.

Corporations, is crucial to the Commission's effort to implement promptly and effectively the new universal service program mandated by section 254 of the Act. The Commission's Universal Service Order requires that the program begin by January 1, 1998. To initiate the program, and most notably the schools and libraries program by that date, the USAC subsidiary and the Corporations must complete quickly a number of administrative functions. USAC and the Corporations may not begin to perform these functions until certain preliminary tasks, some of which may require substantial, time-consuming deliberations among interested parties, are completed. Such preliminary tasks include the incorporation of both USAC and the Corporations and the appointment of these entities' Boards of Directors.

96. We also find good cause to make the rules governing establishment of the USAC subsidiary and the Corporations and appointment of these entities' Boards of Directors effective upon publication in the Federal Register. We make this determination because the rules adopted here are based, at least in part, on the reform proposal that NECA filed with the Commission on January 10, 1997, in which NECA expressed willingness to immediately begin establishing a subsidiary corporation to administer temporarily the universal service support mechanisms.[179] Furthermore, NECA has had notice of its appointment as temporary administrator since the release of the Universal Service Order on May 8, 1997, designating NECA as the temporary administrator.[180] Under these circumstances, the purpose of 5 U.S.C. § 553(d), to ensure an adequate period in which regulated entities may prepare to comply with new rules, can be met without affording the usual 30-day period prior to the rules' effective date. For this and the other reasons described above, we find good cause to make the rules regarding the establishment of the USAC subsidiary and the appointment of its Board members effective upon publication in the Federal Register.

VI. ORDERING CLAUSES

97. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 218-220, 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-05, 218-20, 254 and 403, that Parts 54 and 69 of the Commission's Rules, 47 C.F.R. Parts 54 and 69, are amended, as specified in this ORDER and attached as Appendix B hereto. The collections of information contained within are contingent upon approval by the Office of Management and Budget. Notice of that approval and availability of the Worksheet will be published in the Federal Register.

98. IT IS FURTHER ORDERED that, pursuant to section 553(d)(3) of the Administrative Procedures Act, 5 U.S.C. § 553(d)(3), except for the rules subject to the Paperwork Reduction Act (PRA), the rules adopted in this ORDER shall, for good cause

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

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

shown, become effective upon publication in the Federal Register.[181]

99. IT IS FURTHER ORDERED that, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chairman of the Commission to perform the following functions: (1) to review nominations to the USAC Board and select USAC Board members; (2) to review the nomination for the rural health care representative and select the representative who will serve only on the Rural Health Care Board; (3) to select the independent directors who will serve on the Schools and Libraries and Rural Health Care Corporation's Boards; and (4) to review and approve candidates for Corporation CEO positions.

100. IT IS FURTHER ORDERED that, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chief, Common Carrier Bureau to perform the following functions: (1) to waive, reduce, or eliminate any contributor reporting requirements that prove to be unnecessary or to require contributors to submit any additional reporting requirements that the Bureau deems necessary to the efficient administration of the universal service support mechanisms; and (2) to oversee and to modify, as necessary, the annual audit of USAC and the Schools and Libraries and Rural Health Care Corporations.

101. IT IS FURTHER ORDERED that, pursuant to sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), the 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 within 14 calendar days of the publication of this Order in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Secretary

[181] See para. 42 for the rules subject to the Paperwork Reduction Act.