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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

ORDER ON RECONSIDERATION,
SECOND REPORT AND ORDER, AND
FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: August 15, 1997 **Released:** August 15, 1997

Comment Date: September 11, 1997

Reply Date: September 26, 1997

By the Commission:

I. INTRODUCTION

1. In this Order, we direct the National Exchange Carrier Association, Inc. (NECA) to assume the duties of the Universal Service Administrative Company (USAC) pertaining to the distribution, receipt, and processing of the Universal Service Worksheet, FCC Form 457, until such time as USAC is prepared to begin its operations and assume these duties. We also authorize NECA to perform certain ministerial functions on behalf of the Schools and Libraries Corporation and the Rural Health Care Corporation to the extent that the performance of those functions is necessary to meet the January 1, 1998 starting date established by the Commission.

2. We also authorize NECA, in its capacity as the Administrator of the Telecommunications Relay Services Fund (TRS Fund),[1] to make available to USAC, to NECA, to the extent that it is acting on behalf of USAC, and to the entity selected to be the

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

permanent universal service Administrator, certain TRS Fund information consisting of the names, addresses, contact persons, type of business, and other non-financial, identifying information relating to TRS Fund contributors. Such information shall be used by USAC, NECA, and the permanent universal service Administrator solely for the purpose of identifying contributors to the universal service support mechanisms and identifying entities engaged in certain types of business. With respect to revenue data submitted to the TRS Administrator by TRS contributors, we propose in a Further Notice of Proposed Rulemaking set forth below to amend section 64.604(c)(4)(iii)(I) of the Commission's rules to permit the use of such data by USAC, NECA, to the extent that it is acting on behalf of USAC, and the permanent universal service Administrator, to verify revenue information provided on the Universal Service Worksheet by contributors to the universal service support mechanisms.

3. Finally, in this Order we instruct entities that currently are unable, without substantial difficulty, to distinguish their intrastate, interstate, or international revenues or are unable to provide specific, line-by-line revenue totals for certain categories of revenues, to provide good faith estimates of such revenues in the Universal Service Worksheet that must be completed by September 1, 1997.

II. UNIVERSAL SERVICE IMPLEMENTATION ISSUES

A. Background

4. In the Universal Service Order,[2] the Commission determined that, subject to changes in its governance, 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.[3] The Commission also held that, beginning January 1, 1998, only designated eligible telecommunications carriers shall receive universal service support pursuant to the Commission's rules.[4] In the NECA Order,[5] the Commission instructed NECA to create an independent subsidiary, USAC, to administer temporarily certain portions of the universal service support mechanisms.[6] The Commission specified the number and composition of USAC's Board of Directors and adopted a procedure for

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[2] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 62 Fed. Reg. 32862 (rel. May 8, 1997) (Universal Service Order).

[3] Universal Service Order at para. 866.

[4] 47 C.F.R. § 54.201(a)(1).

[5] Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, CC Docket Nos. 97-21 and 96-45, FCC 97-253, *Report and Order and Second Order on Reconsideration*, (rel. July 18, 1997) (NECA Order).

[6] NECA Order at para. 30.

nominating candidates for seats on the USAC Board.[7] In the NECA Order, the Commission also directed NECA to establish an unaffiliated, not-for-profit corporation to manage specified portions of the universal service support mechanisms for schools and libraries (referred to herein as the "Schools and Libraries Corporation") and another unaffiliated, not-for-profit corporation to manage specified portions of the support mechanisms for rural health care (referred to herein as the "Rural Health Care Corporation").[8]

5. In the NECA Order, the Commission adopted rules requiring universal service contributors to file information regarding their end-user telecommunications revenues in a Worksheet that will be filed semi-annually.[9] The Office of Management and Budget (OMB) approved the final Worksheet on July 31, 1997, and the Commission announced the release of the Worksheet on August 4, 1997.[10] As stated in the instructions to the Worksheet, the first Worksheet must be completed and returned to the temporary Administrator of the universal service support mechanisms by September 1, 1997.[11]

6. In a letter filed with the Commission by NECA on August 1, 1997, NECA asserts that the ability of USAC, the Schools and Libraries Corporation, and the Rural Health Care Corporation to implement the new universal service support mechanisms by the January 1, 1998 deadline established by the Commission may be jeopardized unless NECA is immediately authorized to undertake certain start-up activities on behalf of those entities prior to the time that the USAC, Schools and Libraries Corporation, and Rural Health Care Corporation Boards of Directors assume responsibility for their respective operations.[12] NECA estimates that the USAC Board will not be established and hold its first meeting until late August or early September and that development and implementation work on behalf of the Schools and Libraries and Rural Health Care Corporations might not begin until late September or early October, leaving only two or three months before January 1, 1998 to put the necessary systems in place.[13] NECA estimates that at least four months' time is needed

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[7] NECA Order at paras. 33-40.

[8] NECA Order at paras. 57-60.

[9] NECA Order at paras. 43 and 80. *See also* 47 C.F.R. §§ 54.711 and 54.713.

[10] *See* FCC Announces Release of Universal Service Worksheet, FCC Form 457, *Public Notice*, DA 97-1671 (rel. Aug. 4, 1997). The Commission announced minor changes to the worksheet instructions on August 1, 1997. *See* FCC Announces Non-Substantive Changes to Universal Service Worksheet Instructions Released on August 4, 1997, FCC Form 457, *Public Notice*, DA 97-1671A (rel. Aug. 11, 1997).

[11] Universal Service Worksheet, FCC Form 457, at 5.

[12] *See* Letter from Bruce Baldwin, NECA, to William F. Caton, FCC, dated August 1, 1997 (NECA Letter).

[13] NECA letter at 2.

before the competitive bidding system for the schools and libraries and rural health care programs, and all necessary funds collection and distribution processes, are in place.[14]

7. In its August 1, 1997 letter, NECA also asks the Commission to provide a mechanism for the recovery of NECA's administrative expenses, including the expenses associated with preparing and filing the corporate documents needed to incorporate USAC and the Schools and Libraries and Rural Health Care Corporations.[15] NECA proposes that it be required to keep a separate account of its costs for implementing the new support mechanisms, including interest on funds advanced for start-up activities, and proposes that it be entitled to recover costs incurred in 1997 from the new universal service support mechanisms in 1998.

B. Discussion

1. Authorization for NECA to Perform Functions Relating to Distribution and Processing of the Universal Service Worksheet on Behalf of USAC

8. We direct NECA to assume the duties assigned to USAC, as set forth in the NECA Order,[16] relating to the distribution, receipt, and processing of the Universal Service Worksheet until USAC is prepared to assume these duties. In making this determination, we reconsider on our own motion[17] our decision in the NECA Order immediately to assign these duties to USAC.[18] In order to ensure timely distribution of the Universal Service Worksheet, we conclude that it is critical that we authorize NECA to begin distributing the Worksheet immediately to potential contributors. Although the Universal Service Worksheet was released by the Commission on August 4, 1997, the NECA Order nevertheless charged USAC with responsibility for distributing the Worksheet to contributing carriers and entities.[19] We conclude that for potential contributors that may not have received the Commission's August 4th public notice announcing release of the Worksheet and, as a result, may not be aware of

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[14] *Id.*

[15] NECA letter at 3.

[16] NECA Order at para. 43.

[17] *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").

[18] *Id.*

[19] NECA Order at para. 43.

their obligation to complete and submit the Worksheet to the universal service Administrator by September 1, 1997, it is imperative that NECA be authorized immediately to distribute the Worksheet to all potential contributors so that entities have sufficient time to complete and submit the Worksheet by the September 1, 1997 deadline.

9. We also agree with NECA that USAC's ability to meet the January 1, 1998 target implementation deadline may be jeopardized unless NECA begins work immediately on establishing the systems that are necessary to process the revenue information provided on the Universal Service Worksheet and on processing the Worksheet information that is received, until the USAC Board of Directors is in place and is prepared to assume these responsibilities. It is our expectation, however, that, as soon as possible following its establishment, the USAC Board of Directors will provide direction to NECA with respect to any developmental work already begun by NECA and, when it is prepared to do so, will assume responsibility for these functions.

2. Authorization for NECA to Perform Certain Functions on Behalf of Schools and Libraries Corporation and Rural Health Care Corporation

10. In its August 1, 1997 letter, NECA maintains that, unless it is authorized to begin the necessary development and implementation work on behalf of the Schools and Libraries and Rural Health Care Corporations, the corporations will not have sufficient time to design and implement websites, to establish capabilities for reviewing and posting service requests from qualified entities, and to have procedures in place for issuing funding confirmations before the January 1, 1998 implementation date.[20] We agree that certain preliminary steps need to be taken in order for the corporations to have the necessary procedures in place to permit eligible beneficiaries to begin drawing support by January 1, 1998. Accordingly, we authorize NECA to perform certain ministerial functions on behalf of the Schools and Libraries and Rural Health Care Corporations to the extent that the performance of those functions is necessary to meet the January 1, 1998 deadline.

11. For example, we anticipate that NECA will begin developmental work relating to the creation of websites for the posting of applications submitted on behalf of schools, libraries, and rural health care providers. We also anticipate that NECA will begin assigning identification numbers to eligible schools, libraries, and rural health care providers and taking steps to create a database containing this information. In making these determinations, we reconsider on our own motion[21] our decision in the NECA Order immediately to assign these

[20] NECA letter at 2.

[21] *See* 47 C.F.R. § 1.108.

duties to the Schools and Libraries and Rural Health Care Corporations.[22] We conclude that this action is critical to the ability of the Schools and Libraries and Rural Health Care Corporations to meet the January 1, 1998 implementation date. It is our expectation, however, that, as soon as possible following their establishment, the Schools and Libraries and Rural Health Care Corporation Boards of Directors will provide direction to NECA with respect to any developmental work already begun by NECA and, when they are prepared to do so, will assume responsibility for these functions.

3. Mechanism for Recovery of Administrative Expenses Incurred by NECA

12. We also establish a mechanism by which NECA will receive reimbursement for administrative expenses associated with its performance of the incorporation and other start-up functions that have been assigned to it. We conclude that NECA should be entitled to recover from the new universal service support mechanisms in 1998 all reasonable administrative costs, including interest on funds advanced for start-up activities, that NECA incurs in 1997 in performing the duties assigned to it pursuant to this Order and the NECA Order.[23] We direct NECA to keep a separate accounting of all implementation expenses that it incurs in performing the incorporation and other start-up functions that we have directed it to perform on behalf of USAC and the Schools and Libraries and Rural Health Care Corporations.

4. Use of TRS Fund Carrier Identification Information Data by the Universal Service Administrator

13. We also authorize NECA, in its capacity as the Administrator of the TRS Fund, to make available to USAC, to NECA to the extent that it is acting on behalf of USAC, and to the entity selected to be the permanent universal service Administrator, certain TRS Fund information consisting of the names, addresses, contact persons, type of business, and other non-financial, identifying information relating to TRS Fund contributors. Such information shall be used by these entities solely for the purpose of identifying contributors to the

[22] NECA Order at paras. 65-67.

[23] In the NECA Order, the Commission stated that USAC and the Corporations may contract with NECA for particular services when doing so would minimize administrative expenses or facilitate the prompt implementation of the support mechanisms. NECA Order at paras. 71-74. In this Order, we clarify that NECA also may receive compensation for services provided on behalf of USAC and the Corporations even before the establishment of those entities.

universal service support mechanisms[24] and for the related purpose of identifying entities engaged in certain types of business.[25] We conclude that the use of TRS Fund information for purposes of identifying contributors to which the Universal Service Worksheet will be sent will facilitate the timely filing of the Worksheet. Access to this information will enhance the likelihood that contributors will receive the Worksheet in a timely manner. We are concerned that the ability of NECA, acting on behalf of USAC, to meet the September 1, 1997 filing deadline and the ability of USAC, or NECA, acting on behalf of USAC, to meet the January 1, 1998 implementation deadline would be jeopardized absent access to identifying TRS Fund information.

14. We conclude that granting NECA, USAC, and the permanent Administrator the authority to use TRS Fund data in the manner described is consistent with section 64.604(c)(4)(iii)(I) of the Commission's rules. The rule provides that "[t]he Administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company specific form unless directed to do so by the Commission. The Administrator shall not use [TRS] data except for purposes of administering the TRS Fund . . . ."[26] We interpret the limitation on TRS Fund data in section 64.604(c)(4)(iii)(I) to apply only to financial data, such as carrier revenue data, in light of language in the order in which it was adopted directing carriers to provide "identification information and revenue data."[27] We conclude, therefore, that the section imposes no specific restriction on use by NECA, USAC, or the permanent administrator of the non-financial, identifying information described above.

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[24] Carriers providing interstate telecommunications services already contribute to the TRS Fund and their current addresses and other identifying information are stored in the TRS Fund database. 47 C.F.R. § 64.604(c)(4)(iii)(A). These entities also will be required to contribute to the new universal service support mechanisms. *See* Universal Service Order at paras. 777 and 794.

[25] For example, we are aware that the names and addresses of certain entities, including certain private network operators, may be entered in the TRS database even though those entities are not under an obligation to contribute to the TRS fund. We anticipate that such filings might be useful to NECA or USAC for purposes of identifying certain private network operators that may be obligated to contribute to the universal service support mechanisms. *See* Universal Service Order at paras. 777 and 794.

[26] 47 C.F.R. § 64.604(c)(4)(iii)(I).

[27] Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, *Third Report and Order*, 8 FCC Rcd 5300, 5303 (1993) ("The [TRS] worksheet will direct each carrier to provide identification information and revenue data, to calculate a TRS contribution, and to file the worksheet and contribution with the FCC TRS Fund Administrator."). The instructions to the TRS worksheet list as "identification information" the carrier's legal name, the holding company or controlling entity, the principal name under which the company conducts carrier activities, the mailing address of the corporate headquarters, and a telephone number that can be used for customer inquiries. TRS Worksheet, Block 1 instructions. The instructions further note that "[i]nformation provided in Block 1 will be published by the Common Carrier Bureau in the 'Long Distance Locator.'" *Id.*

15. We note that our decision here to permit the use of identification information from the TRS Fund for purposes of identifying contributors to the universal service support mechanisms is interpretive in nature. Because this is an interpretative rule that does not represent a change in an existing rule nor the adoption of a new rule, but merely explains and clarifies our existing rule, section 553(b)(A)[28] of the Administrative Procedure Act (APA) does not require the Commission to conduct a notice and comment proceeding in this instance.[29]

16. As a separate matter, we propose to amend section 64.604(c)(4)(iii)(I) of the Commission's rules specifically to permit the use of TRS Fund revenue data by USAC or NECA, to the extent that it is acting on behalf of USAC, and the permanent universal service Administrator, for purposes of verifying revenue information reported on the Universal Service Worksheet. We seek comment on this proposal in a Further Notice of Proposed Rulemaking set forth in section IV. below.

5. Other Implementation Issues

17. In the Universal Service and NECA orders, the Commission adopted detailed rules governing the implementation and operation of the new universal service support mechanisms. As in the case of any new program, implementation of the support mechanisms will require the administering corporations to exercise judgment and discretion in interpreting the governing rules. USAC, the Schools and Libraries Corporation, or the Rural Health Care Corporation may encounter complex issues that require expeditious resolution in order to avoid undue prejudice to individual applicants for support or in order to prevent delayed implementation of the universal service program generally, but with respect to which our rules do not provide specific guidance. We anticipate that USAC and the Corporations will exercise sound judgment and discretion in such circumstances, in a manner that is consistent with the Commission's overall policies and rules governing the universal service programs.[30] Of course, acknowledging the need for such discretion in no way diminishes our commitment to the impartial allocation of funds to individual applicants by entities administering the

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[28] 5 U.S.C. § 553(b).

[29] *See Metropolitan School Dist. of Wayne Township v. Davila*, 969 F.2d 485, 489-92 (7th Cir.1992) (holding that an expression of agency opinion on a subject never before considered may be interpretive when the agency's ruling does not constitute a change in policy); *Southern California Edison Co. v. Federal Energy Regulatory Comm'n*, 770 F.2d 779, 783 (9th Cir.1985) (holding that "[i]nterpretative rules merely clarify or explain existing law or regulations" and go "to what the administrative officer thinks the statute or regulation means") (citations omitted).

[30] We note that USAC and the Corporations remain accountable to the Commission for their performance of all functions relating to the administration of the universal service support mechanisms. NECA Order at para. 2.

universal service support mechanisms.

III. REPORTING END-USER TELECOMMUNICATIONS REVENUE DATA AND OTHER REVENUE DATA ON THE UNIVERSAL SERVICE WORKSHEET

A. Background

18. In the Universal Service Order, the Commission adopted rules requiring all telecommunications carriers that provide interstate telecommunications services, private service providers that offer their services to others for a fee, and payphone aggregators, to contribute to the new federal universal service support mechanisms.[31] The Commission concluded that, beginning January 1, 1998, contributions for support for high cost, rural, and insular areas and low-income consumers will be based on interstate and international end-user telecommunications revenues.[32] The Commission further concluded that, beginning January 1, 1998, contributions for support for schools, libraries, and rural health care providers will be based on interstate, international, and intrastate end-user telecommunications revenues.[33]

19. The Universal Service Worksheet requires contributors to list their revenues by certain categories. Contributors also must list the percentage of each revenue category that represents interstate and international revenues. The Worksheet instructions state that "[c]ontributors who cannot calculate a percentage [of interstate and international revenues] by using information from their books of account and other internal data reporting systems may elect to rely on a special study to estimate the percentages."[34] Contributors are instructed to make information supporting special studies available to the Commission or universal service Administrator upon request.

20. Following release of a draft copy of the Worksheet in an appendix to the NECA Order, several parties requested clarification on how, for purposes of completing the Worksheet, entities that cannot derive various revenue data directly from their books of account should identify the requested revenue information.[35]

B. Discussion

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[31] Universal Service Order at paras. 777 and 794.

[32] Universal Service Order at paras. 833, 836, and 843.

[33] Universal Service Order at paras. 837, 841, and 843.

[34] NECA Order at Appendix C-18.

[35] *See, e.g.*, Letter from Wendy Chow, Cellular Telecommunications Industry Association, to William F. Caton, FCC, dated July 11, 1997.

21. We recognize that some contributors to the universal service support mechanisms may not be able, without substantial difficulty, to derive from their existing books of account the revenue information required by the Worksheet. For example, because some contributors are not required by Commission rules to identify their interstate revenues for non-universal service purposes, it may be difficult for these entities to identify interstate revenues. We note that several parties have filed petitions for reconsideration of the Universal Service Order requesting clarification on how to distinguish their interstate from intrastate revenues for purposes of providing this information to the universal service administrator.[36] The record in the reconsideration proceeding has not closed and we anticipate that we will address this issue in further detail after we receive responses to the petitions. Furthermore, we recognize that some non-common carrier contributors to the universal service support mechanisms will face similar difficulties identifying their revenues by the specific line-by-line categories listed on the Worksheet. In light of the Worksheet's September 1, 1997 due date, however, we must provide immediate guidance to these contributors. Therefore, on an interim basis, until such time as the Commission takes action on the pending petitions for reconsideration, contributors that cannot derive interstate revenues from their books of account or cannot derive the line-by-line revenue breakdowns from their books of account may provide on the Worksheet good faith estimates of these figures. Contributors may derive their estimates using a method that they, in good faith, believe will yield a reasonably accurate result. Contributors must document how they calculated their estimates and make such information available to the Commission or Administrator upon request.

22. We conclude for good cause that compliance with the notice and public comment provisions of the APA is impracticable and is not required at this time with respect to our interim decision to permit contributors to make good faith estimates of their end-user telecommunications and other revenues as described above for purposes of completing the Universal Service Worksheet.[37] In order to facilitate the timely filing of Universal Service Worksheets and implementation of the universal service support mechanisms, and because the action we take represents an interim solution to a problem that will be addressed more comprehensively in a forthcoming order on reconsideration of the Universal Service Order, in CC Docket No. 96-45, we find that compliance with the notice and comment provisions of the APA is impracticable at this time.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

23. In this Further Notice of Proposed Rulemaking (FNPRM) we propose to amend

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[36] *See, e.g.*, Airtouch Communications, Inc. petition for clarification and partial reconsideration at 10-11; Cellular Telecommunications Industry Association petition for reconsideration and clarification at 18-25.

[37] 5 U.S.C. § 553(b)(B) (notice requirements inapplicable "when the agency for good cause finds ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

section 64.604(c)(4)(iii)(I) of the Commission's rules to permit the use of TRS Fund revenue data by USAC, NECA, to the extent that it is acting on behalf of USAC, and the permanent universal service Administrator to enable those entities to verify revenue information provided by contributors pursuant to the Universal Service Worksheet.[38] Section 64.604(c)(4)(iii)(I) provides as follows:

> The [TRS] administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers.[39]

24. Although this rule specifically provides that the Commission may order the disclosure of the underlying revenue data contained in the TRS Fund database, we note that the rule also imposes limitations regarding permissible use of the data. Therefore, in light of the limitations imposed on NECA by section 64.604(c)(4)(iii)(I) regarding permissible use of the data, and consistent with our prior practice,[40] we propose to amend the rule rather than directing NECA, in its capacity as TRS Administrator, to disclose the data to the universal service Administrator. Accordingly, we propose to amend the rule as set forth in Appendix A to state that the TRS Fund data also may be used by USAC, NECA, to the extent that it is acting on behalf of USAC, and the permanent universal service Administrator, for the purpose of verifying revenue information provided by contributors to the universal service support mechanisms. We further propose to amend section 54.711(b)[41] to clarify that, except as

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[38] In section III above, we interpreted the term "data" in section 64.604(c)(4)(iii)(I) to apply only to financial data, such as carrier revenue data, and concluded, therefore, that that section imposes no specific restriction on NECA's, USAC's, or the permanent Administrator's use of the non-financial, identifying information.

[39] 47 C.F.R. § 64.604(c)(4)(iii)(I).

[40] We note that the Commission similarly elected in a previous proceeding to amend the rule as opposed to ordering the disclosure of the TRS Fund revenue data. *See* Assessment and Collection of Regulatory Fees for Fiscal Year 1996, *Report and Order*, MD Docket No. 96-84, 61 Fed. Reg. 36629-03 (rel. July 5, 1996). In the Regulatory Fees proceeding, the Commission amended section 64.604(c)(4)(iii)(I) to permit the TRS Administrator to use TRS Fund revenue data for the purpose of calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. *Id.* at para. 67.

[41] 47 C.F.R. § 54.711(b)

specified here, the duty of NECA, USAC, and the permanent Administrator to keep confidential all data obtained from universal service contributors, not to use such data except as provided in the proposed rule amendment, and not to disclose the information in company-specific form unless directed to do so by the Commission extends to data obtained from the TRS Fund as well.

25. We tentatively conclude that these proposed amendments are sufficient to maintain the confidentiality of the TRS Fund revenue data disclosed to the universal service Administrator in light of the restrictions we propose to impose upon their use. We seek comment on this tentative conclusion and the proposed rule amendments set forth in Appendix A.

V. PROCEDURAL MATTERS

A. *Ex Parte*

26. Section IV of this Order is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, providing they are disclosed as provided in the Commission's rules.[42]

B. Regulatory Flexibility

27. Section 603 of the Regulatory Flexibility Act (RFA), as amended,[43] requires an Initial Regulatory Flexibility Analysis in notice and comment rulemaking proceedings, unless the head of the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[44] The FNPRM portion of this proceeding applies only to NECA's obligation to disclose certain TRS Fund data to the universal service Administrator.

28. For the purposes of this FNPRM, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[45] Under the Small Business Act, a "small business concern" includes a small organization, which is defined as a non-profit enterprise that is not independently owned and operated and is not dominant in its

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[42] *See generally* 47 C.F.R. §§ 1.1202, 1.203, and 1.1206.

[43] 5 U.S.C. § 603.

[44] 5 U.S.C. § 605(b).

[45] 5 U.S.C. § 601(3).

field.[46] NECA is a non-profit, quasi-governmental association that was created to administer the Commission's interstate access tariff and revenue distribution processes.[47] Therefore, NECA is not a small organization within the meaning of the RFA. Furthermore, this FNPRM does not apply to other "small business concerns" because it proposes to modify a rule that applies only to NECA. For this reason, we tentatively conclude that these proposals would not have a significant economic impact on a substantial number of small entities.

29. We therefore certify, pursuant to section 605(b) of the RFA, that the proposed rule amendments would not have a significant economic impact on a substantial number of small entities. We seek comment on this tentative conclusion. The Commission shall publish this certification in the Federal Register, and shall provide a copy of this FNPRM, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.[48]

E. Effective Date

30. We find that the conclusions adopted herein should become effective immediately upon release of this Order for the following reasons.

31. First, in order to implement promptly and effectively the new universal service programs mandated by section 254 of the Act, it is critical that development and implementation work begin immediately on behalf of USAC, the Schools and Libraries Corporation, and the Rural Health Care Corporation. The Commission's Universal Service Order requires that the new universal service programs begin by January 1, 1998. To implement the new programs by January 1, 1998, USAC and the Schools and Libraries and Rural Health Care Corporations must complete 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. Accordingly, we conclude that NECA must be permitted to begin performing the functions specified herein, including using identifying information submitted in connection with the TRS Fund for purposes of identifying universal service contributors, on behalf of USAC, the Schools and Libraries Corporation, and the Rural Health Care Corporation as soon as possible.

32. Second, we conclude above that universal service contributors that currently are

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[46] 15 U.S.C. § 632(a).

[47] *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).

[48] 5 U.S.C. § 605(b).

unable, without substantial difficulty, to distinguish their intrastate, interstate, or international revenues or are unable to provide specific, line-by-line revenue totals for certain categories of revenues, should be permitted to provide good faith estimates of such revenues in the Universal Service Worksheet. Because the Universal Service Worksheet must be completed and submitted to the universal service Administrator by September 1, 1997, we conclude that our conclusions permitting contributing entities to provide such good faith estimates in the Universal Service Worksheet should become effective as soon as possible.

D. Procedures for Filing Comments

33. We invite comment on the proposed rule amendments, issues, and tentative conclusion set forth in the Further Notice of Proposed Rulemaking. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,[49] interested parties may file FNPRM comments on or before **September 11, 1997** and reply comments on or before **September 26, 1997**. To file formally in this proceeding, parties must file an original and six copies of all comments, reply comments, and supporting comments. Parties that want each Commissioner to receive a personal copy, must file an original plus eleven copies. Parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Five courtesy copies should also be sent to Sheryl Todd at 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Parties should also file one copy of any document filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. ITS's telephone number is 202-857-3800. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments must include a concise summary of the substantive arguments raised in the pleading.[50]

34. Parties are also asked to submit comments on diskette. Diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd at 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette in an IBM compatible format using WordPerfect 5.1 for Windows software in a "read only" mode. The diskette should be accompanied by a cover letter. For further information concerning this proceeding, contact Sheryl Todd, Accounting and Audits Division, Common Carrier Bureau at 202-418-7400.

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[49] 47 C.F.R. § § 1.415, 1.419.

[50] Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules. *See* 47 C.F.R. § 1.49. We require that a summary be included, however, with all comments and reply comments, regardless of length.

V. ORDERING CLAUSES

35. Accordingly, IT IS ORDERED, pursuant to sections 1-4, 254 of the Communications Act of 1934, as amended, 47 U.S.C. § § 151-154, and 254 that the ORDER ON RECONSIDERATION of the Report and Order and Second Order on Reconsideration in CC Docket Nos. 97-21 and 96-45, FCC 97-253, IS ADOPTED.

36. IT IS FURTHER ORDERED, pursuant to sections 1-4, 254 of the Communications Act of 1934, as amended, 47 U.S.C. § § 151-154, and 254 that the SECOND REPORT AND ORDER in CC Docket No. 96-45 IS ADOPTED.

37. IT IS FURTHER ORDERED, pursuant to sections 1-4, 254 of the Communications Act of 1934, as amended, 47 U.S.C. § § 151-154, and 254 that NOTICE IS HEREBY GIVEN of proposed amendments to Parts 64 and 54 of the Commission's Rules, 47 C.F.R. Parts 64 and 54, as described in the FURTHER NOTICE OF PROPOSED RULEMAKING in CC Docket No. 97-21 and COMMENTS ARE REQUESTED as described above.

38. IT IS FURTHER ORDERED that the conclusions adopted in this ORDER shall become effective immediately upon release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Appendix A

PROPOSED AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Part 64 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Section 64.604 is amended by revising paragraph (c)(4)(iii)(I) to read as follows:

Section 64.604 Mandatory minimum standards.
* * * * *

(c) ***

(4) * * *

(iii) * * *

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. The administrator shall not use such data except for purposes of administering the TRS Fund, enabling the universal service Administrator to verify revenue information provided by contributors to the universal service support mechanisms, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers.
* * * * *

Part 54 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 54 - UNIVERSAL SERVICE

Section 54.711 is amended by revising paragraph (b) to read as follows:

Section 54.711 Contributor reporting requirements.
* * * * *

(b) The Commission shall have access to all data reported to the Administrator, Schools and Libraries Corporation, and Rural Health Care Corporation. Contributors may make requests for Commission nondisclosure of company-specific information under § 0.459 at the time that the subject data are submitted to the Administrator. The Commission shall make all decisions regarding nondisclosure of company-specific information. The Administrator, Schools and Libraries Corporation, and Rural Health Care Corporation shall keep confidential all data obtained from contributors, including all data obtained from the Administrator of the Telecommunications Relay Service Fund, shall not use such data except for purposes of administering the universal service support programs, and shall not disclose such data in company-specific form unless directed to do so by the Commission.