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

In the Matter 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

SECOND ORDER on RECONSIDERATION in CC Docket No. 97-21

Adopted: November 26, 1997 Released: November 26, 1997

By the Commission:

I. BACKGROUND

1. In the *Universal Service Order*, the Commission created new federal universal service support mechanisms and concluded that all telecommunications carriers that provide interstate telecommunications services, other providers of interstate telecommunications, and payphone service providers will contribute to universal service.[1] In the *NECA Report and Order*, the Commission instructed the National Exchange Carrier Association (NECA) to create an independent subsidiary, the Universal Service Administrative Company (USAC or Administrator),[2] to administer temporarily portions of the universal service support

[1] Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, 8789-8798 (*Order*). The Commission released an erratum correcting this *Order* on June 4, 1997. *See* Federal-State Joint Board on Universal Service, *Order on Reconsideration*, CC Docket No. 96-45, FCC 97-246, 62 Fed.Reg. 40,742 (July 30, 1997).

[2] The term "Administrator" refers to both the temporary and permanent administrators of the universal service support mechanisms. 47 C.F.R. § 54.5.

mechanisms.[3] The Commission also instructed the Administrator to bill contributors and collect contributions to the federal universal service support mechanisms on a quarterly basis.[4]

2. USAC requests that it be authorized to collect universal service contributions on a monthly, as opposed to a quarterly, basis.[5] USAC states that collecting contributions on a quarterly basis may create significant cash flow problems for contributors. USAC explains that, because of the delay between the collection and distribution of funds, monthly billing will not increase the likelihood that the Administrator will be required to borrow money to fund early requests for discounts by eligible schools and libraries.[6] In addition, USAC notes that collecting contributions on a monthly basis will generate some interest income, albeit less than would be collected on a quarterly basis, that can be applied to meet program demands. NECA supports USAC's request.[7]

II. DISCUSSION

3. Based on the Administrator's request, we reconsider, on our own motion, our requirement that the Administrator collect contributions on a quarterly basis.[8] Allowing monthly payments would reduce the cash flow impact on contributors because their payments would be smaller. It also would better enable contributors to offset their contributions by payments from the support mechanisms. We conclude that permitting monthly as opposed to quarterly contributions will not jeopardize the sufficiency of the support mechanisms. The Commission reduced the estimated total contribution base by two percent when calculating the universal service contribution factors to take account of the possibility that contributions to the support mechanisms may fall short of estimated levels due to, for example,

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[3] Changes to the Board of Directors of the National Exchange Carriers Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Docket No. 97-21, CC Docket No. 96-45, FCC 97-253, 62 Fed.Reg. 41294 (1997) (*NECA Report and Order*).

[4] *NECA Report and Order* at para. 49. *See also* 47 C.F.R. § 54.709(a)(4).

[5] Letter from William E. Stern, USAC, to Secretary, FCC, filed November 4, 1997 (*USAC Letter*).

[6] *USAC Letter* at 2.

[7] Letter from James W. Frame, NECA, to Magalie Roman Salas, FCC, dated November 10, 1997.

[8] In light of pending petitions for reconsideration in this proceeding, the Commission retains jurisdiction to reconsider its own rules on its own motion. *See* 47 U.S.C. § 405, 47 C.F.R. § 1.108, and *Central Florida Enterprises, Inc. v. FCC*, 598 F.2d 37, 48, note 51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979).

uncollectibles or higher-than-foreseen demand.[9] In addition, since March 20, 1998 appears to be the earliest date on which the Administrator could be required to make distributions under the schools, libraries, and rural health care programs,[10] we anticipate that, under our revised billing schedule, the Administrator will have sufficient funds to meet initial demand for support for these and all other service programs. USAC has not requested that we revise the manner in which the amount of each contributor's obligation is determined and we see no reason to do so. Thus, as provided in section 54.709 of the Commission's current rules, the Administrator will apply the quarterly contribution factors to determine the amount that contributors must remit to the Administrator.[11] We amend section 54.709 of our rules to authorize the Administrator to require payment of those quarterly contributions in equal monthly installments.[12]

4. We understand that USAC intended to begin sending out bills in December, 1997, which would require contributors to begin making payments in January, 1998. We find that both USAC and contributors need a reasonable opportunity to respond to the modification from a quarterly to a monthly billing schedule. We therefore direct USAC not to require contributors to make payments pursuant to the new universal service mechanisms set forth in section 254[13] prior to February 1998. This will provide USAC additional time to issue bills

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[9] Proposed First Quarter Universal Service Contribution Factors, CC Docket No. 96-45, *Public Notice* DA 97-2392 (Nov. 13, 1997).

[10] We calculate that March 20, 1998 reflects the earliest date on which the Administrator will distribute funds under these programs, by starting with November 24, 1997 and adding to it a 75-day period and two 20-day periods, derived from the requirements described below. The Schools and Libraries and Rural Health Corporations must authorize USAC to disburse the appropriate payment amounts as quickly as possible, but no later than 20 days following receipt of the requisite forms. USAC must distribute payments as quickly as possible, but no later than 20 days following receipt of authorization to disburse funds. *NECA Report and Order* at para. 51. In addition, the Schools and Libraries and Rural Health Care Corporations established 75-day window filing periods in which all requests will be treated with equal priority. The window period will begin to run when the Schools and Libraries and Rural Health Care Corporations begin to receive applications for support. Funds will not be committed until the closing of the 75- day window filing period. Thus, even assuming the window period were to begin on November 24, 1997, support would not begin to be distributed before March 20, 1998. *See* Schools and Libraries Corporation and Health Care Corporation Adopt Length of Filing Windows, *Public Notice*, DA 97-2349 (rel. Nov. 6, 1997).

[11] 47 C.F.R. § 54.709.

[12] The Administrator would apply the approved quarterly contribution factors to the amounts listed in contributors' Universal Service Worksheets to calculate quarterly contributions to universal service. Contributors would submit one-third of the contribution in the first month of the quarter, one-third in the second month of the quarter, and one-third in the last month of the quarter.

[13] 47 U.S.C. § 254.

that are consistent with the billing modification set forth herein. The additional time will not delay disbursement of funds pursuant to the new universal service mechanisms, because distribution of funds pursuant to the schools and libraries and rural health care universal service programs will not begin before March 20, 1998 and distributions for the new high cost and low income universal service programs will not begin until February 1998.[14]

III. SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS

5. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking and Order Establishing Joint Board (NPRM).[15] In addition, the Commission prepared an IRFA in connection with the Recommended Decision, seeking written public comment on the proposals in the NPRM and Recommended Decision.[16] A Final Regulatory Flexibility Analysis (FRFA) was also included in the *Order*.[17] The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Order conforms to the RFA, as amended.[18]

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

6. The Commission is required by section 254 of the Act, as amended by the 1996 Act, to promulgate rules to implement promptly the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules whose principle goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. In this Order, we reconsider one aspect of those rules. Our reconsideration was prompted by *ex parte* letters filed by USAC and NECA suggesting that contributions to the universal service support mechanisms be collected on a monthly, rather than the quarterly basis currently specified in our rules.[19] In

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[14] *See* Letter from Edward English, USAC, to Richard A. Metzger, Jr., FCC, dated November 24, 1997.

[15] In the Matter of Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing a Joint Board, CC Docket No. 96-45, 11 FCC Rcd. 18,092 (1996) (NPRM) at paras. 135-42.

[16] 61 Fed. Reg. 63,778, 63,796 (1996).

[17] *Order*, 12 FCC Rcd at 9219.

[18] *See* 5 U.S.C. § 604. 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).

[19] 47 C.F.R. § 54.709(a)(4).

addition, on our own motion, we adopt a rule in order to give contributors and USAC a reasonable opportunity to respond to the billing modification.

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

7. Other than those described in the *Order*,[20] no additional comments were filed in response to the IRFAs described above. Nor were any comments filed in response to the *ex parte* letters from the Administrator and NECA.

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

8. In the FRFA at paragraphs 890-922 of the *Order*, we described and estimated the number of small entities that would be affected by the new universal service rules. The rule adopted here 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 *Order*.[21]

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.

9. In the FRFA to the *Order*, we described the projected reporting, recordkeeping, and other compliance requirements and significant alternatives and steps taken to minimize significant economic impact on a substantial number of small entities consistent with stated objectives associated with the Administration section of the *Order*. Because the rule adopted herein will only marginally affect those requirements, we incorporate by reference paragraphs 980-981 of the *Order*, which describe those requirements and provide the following analysis of the new requirements adopted herein. Under the rule adopted herein, telecommunications carriers and providers must submit their quarterly contributions on a monthly basis. Although monthly contributions may slightly increase the paperwork burdens imposed on small entities, this payment scheme may reduce their cash flow burdens and thus provides an offsetting benefit. We also adopt a rule herein to provide contributors, including small entities, a reasonable opportunity to respond to the billing change.

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[20] *Order*, 12 FCC Rcd at 9220-9223.

[21] *Order*, 12 FCC Rcd at 9227-9241.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 254, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, and 405, section 1.108 of the Commission's rules, 47 C.F.R. § 1.108, and section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, this ORDER IS ADOPTED, effective 30 days from publication of the text in the Federal Register.

11. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, is amended as set forth in Appendix A hereto, effective 30 days from publication of the text thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary

Appendix A
Final Rules

47 C.F.R. § 54.709(a)(4) is replaced by the following:

For each quarter, the Administrator shall bill contributors monthly and require payment of contributions in equal monthly installments.

47 C.F.R. § 54.709(a)(5) is added to read as follows:

The Administrator shall not require contributors to make payments pursuant to the universal service mechanisms set forth in 47 U.S.C. § 254 prior to February 1998.