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PUBLIC NOTICE

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DA 98-1336
Released July 15, 1998

COMMON CARRIER BUREAU SEEKS COMMENT ON ADMINISTRATION OF FEDERAL UNIVERSAL SERVICE SUPPORT MECHANISMS

CC Docket Nos. 97-21 and 96-45

Comment Date: August 5, 1998
Reply Date: August 12, 1998

In connection with supplemental appropriations legislation enacted on May 1, 1998,[1] Congress requested that the Commission propose a single entity to administer the support mechanisms for schools and libraries and rural health care providers. In its *Report to Congress*,[2] the Commission proposed to merge the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into the Universal Service Administrative Company (USAC) as the single entity responsible for administering the universal service support mechanisms for schools, libraries and rural health care providers by January 1, 1999. The Commission indicated that USAC, SLC, and RHCC would be required jointly to prepare and submit a plan of reorganization, for approval by the Commission.[3]

On July 1, 1998, SLC, RHCC and USAC filed a Report and Proposed Plan of Reorganization (Plan) for revising the administrative structure of the federal universal service support mechanisms. RHCC filed a Separate Statement of the Rural Health Care Corporation and Request for Three Changes in the Plan (RHCC Statement), proposing certain modifications to the Plan. An executive summary of the Plan is attached hereto.[4] In this Public Notice, we seek comment from interested parties on issues raised by the Plan and the

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[1] Conference Report on H.R. 3579, H. Rept. 105-504.

[2] *Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579, Report to Congress*, FCC 98-85 ¶ 8 (rel. May 8, 1998).

[3] *Id.* ¶ 10.

[4] The complete report and plan of reorganization is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554. An electronic copy of the complete plan of reorganization also may be found on the Commission's Universal Service Web Page at <www.fcc.gov/ccb/universal_service/usacjuly.pdf>.

RHCC Statement. We also seek comment on other issues regarding the administration of the federal universal service support mechanisms, including processes for Commission review of actions by USAC, RHCC and SLC, divestiture of USAC from the National Exchange Carrier Association (NECA), and compensation limitations.

Issues for Comment

Revised Administrative Structure

USAC, SLC, and RHCC have proposed a plan to merge SLC and RHCC into USAC as the single entity responsible for administering the universal service support mechanisms for schools, libraries and rural health care providers by January 1, 1999. As described more fully in the Plan, USAC would consist of three divisions -- the High Cost & Low Income Division, the Schools and Libraries Division, and the Rural Health Care Division.[5] The current USAC Board consists of seventeen members representing a cross-section of industry and beneficiary interests. Under the revised administrative structure, the USAC Board of Directors (the Board) would consist of seventeen members plus the USAC Chief Executive Officer (CEO).[6] In addition, the Plan proposes that two new committees of the USAC Board would be established to oversee the schools and libraries and rural health care support mechanisms.[7] Any action taken by the Rural Health Care, Schools and Libraries, and High Cost and Low Income committees with regard to their respective support mechanisms would be binding on the Board, unless such action is presented for review to the full Board by the USAC CEO and the Board disapproves of such action by a two-thirds vote of a quorum of directors.[8] Under the Plan, the USAC CEO would manage all three universal service support mechanisms.[9]

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[5] *See* Appendix A-3 to Plan at 25.

[6] *See* Appendix A-2 to Plan at 22.

[7] *See* Appendix A-2 to Plan at 23-24.

[8] *Id.* at 23-24. We note, however, that all committee budgetary matters would be presented to the full USAC Board and could be disapproved by a two-thirds vote of a quorum of directors. Id. at 23. In addition, the committees would not have the power or authority to bind the Board on matters related to billing, collection and disbursement functions, which are performed separately by USAC.

[9] *See* Plan at 11.

We seek comment on whether vesting the consolidated USAC with the administrative responsibilities for all of the universal service support mechanisms would best further the goals of efficient administration and accountability. We also seek comment on whether the Plan fulfills the goal of administrative efficiency while preserving the distinct missions of the three universal service support mechanisms. We seek comment on any other administrative structures the Commission could adopt. To the extent that parties suggest alternative structures, we urge them to provide as much detail as possible, and to evaluate fully the benefits and disadvantages of such structure in comparison to USAC's Plan. We also seek comment on the proposed functions and composition of the three committees of the Board, as described in the Plan.

Although the Plan is silent on the selection process for the USAC CEO, we seek comment on whether the Commission should adopt the procedure that currently applies to the selection of a CEO for SLC and RHCC. Under that procedure, the consolidated USAC Board would submit to the Chairman of the Commission a candidate to serve as the USAC CEO. Final selection of that individual would be subject to the approval of the Chairman of the Commission.

In the RHCC Statement, RHCC proposes three modifications to the proposed Plan. First, RHCC proposes that two additional rural health care representatives serve on the USAC Board and that the Plan identify the individuals who initially would serve on the combined Board and the individuals who would serve on the initial Rural Health Care Committee.[10] Second, RHCC proposes that the RHCC Committee have the authority to bind the full USAC Board with regard to all of the Committee's programmatic functions and that Committee decisions not be subject to disapproval by a two-thirds vote of a quorum of the Board.[11] Third, while RHCC agrees that the CEO should have the authority to hire and fire the division heads, RHCC proposes that the RHCC division head be granted the authority to hire and fire division staff.[12] We seek comment on RHCC's proposals.

Compensation Limitations

In the Commission's recent order regarding funding for the schools and libraries universal service support mechanism, the Commission concluded that the Administrator must, as a condition of its continued service, compensate all officers and employees of SLC and RHCC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive

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[10] *See* RHCC Statement at 5.

[11] *Id.*

[12] *Id.*

Schedule under section 5312 of Title 5 of the United States Code.[13] The Commission further stated that such level of compensation would apply, effective July 1, 1998, to all officers and employees of SLC and RHCC, as currently organized, as well as to all such officers and employees in the consolidated administrative corporation following reorganization on January 1, 1999.[14] We seek comment on whether compensation limitations also should apply to all USAC officers and employees, including, for example, those responsible for administering the support mechanisms for high cost areas and low income consumers as well as those responsible for performing the billing and collection functions for all of the support mechanisms. We also seek comment on whether such compensation limitations should apply to officers and employees of NECA.

USAC's Permanence and Divestiture from NECA

In the *Report to Congress*, the Commission proposed that the revised administrative structure be made permanent, subject to the Commission's review and determination after one year that the new structure is administering the distribution of universal service support and benefits to eligible entities in an efficient, effective and competitively neutral manner.[15] We seek comment on the Commission's proposal to designate USAC as the permanent Administrator. In the *Report to Congress*, the Commission further proposed that, pending Commission review of USAC's performance after one year, USAC should be divested from NECA.[16] The Plan proposes to divest USAC from NECA as soon as possible.[17] We seek comment on the proposed divestiture of USAC from NECA and the timing of such divestiture.

FCC Oversight

The Commission has always retained ultimate control over the operation of the federal universal service support mechanisms through its authority to establish the rules governing the support mechanisms and to review all decisions concerning administration of the support mechanisms. The consolidated USAC would continue to be accountable to the Commission pursuant to the procedures that currently apply to USAC, SLC, and RHCC.[18] SLC and RHCC have the authority to direct the performance of audits of schools and libraries and rural health

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[13] *See Federal-State Joint Board on Universal Service, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45 (rel. June 22, 1998)* ¶ *46.*

[14] *Id.*

[15] *See Report to Congress* ¶ 12.

[16] *See Report to Congress* ¶ 13.

[17] *See* Appendix A-1 to Plan at 20-21.

[18] *See* 47 C.F.R. Parts 54 and 69.

care provider beneficiaries of universal service support.[19] The Commission also oversees the structure and content of the annual independent audit that USAC, SLC and RHCC are required to undertake.[20]

The Commission will levy a forfeiture for a violation of the Act under section 503(b)(1)(B) and (2)(C) of the Act.[21] Furthermore, persons found willfully to have made false statements to the Commission may be subject to criminal penalties under Title 18 of the United States Code.[22]

We note that parties already have asked the Commission what procedures will be used to review decisions by SLC, RHCC, and USAC.[23] Any affected party may seek review from the Commission using existing Commission procedures.[24] However, until a revised administrative structure is adopted, we strongly encourage parties seeking relief from a decision of USAC, SLC, or RHCC to seek initial reconsideration from SLC, RHCC or the High Cost and Low Income Committee, as appropriate.

In the *Report to Congress*, the Commission proposed to establish specific appeal procedures under which administrative decisions made by USAC would be reviewable by the Commission.[25] We seek comment on the following proposal: An affected party would be permitted to file with the Common Carrier Bureau (the Bureau), within sixty days of an action taken by USAC, a petition for Commission review. The Bureau would have delegated authority to rule on such petition and if the Bureau took no action within sixty days, USAC's

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[19] *See* 47 C.F.R. §§ 69.618(a)(8) and 69.619(a)(8); *see also Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration*, 12 FCC Rcd 18400, 18434 (1997) (*NECA Governance Order*).

[20] 47 C.F.R. § 69.621.

[21] 47 U.S.C. §§ 503(b)(1)(B) and (2)(C).

[22] 18 U.S.C. § 1001. Section 54.711(a) of the Commission's rules, 47 C.F.R. § 54.711(a), provides, *inter alia*, that "[i]naccurate or untruthful information contained in the Universal Service Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code." Similarly, section 54.713 of the Commission's rules, 47 C.F.R. § 54.713, provides, *inter alia*, that "[f]ailure to file the Universal Service Worksheet or to submit required quarterly contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law." In addition, FCC Form 457, "Universal Service Worksheet," provides that "[p]ersons making willful, false statements in the worksheet can be punished by fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001."

[23] *See* Letter to Magalie Roman Salas from Integrated Systems & Internet Solutions, Inc., dated May 14, 1998. *See also* Broadband Networks, Inc., Objection to Application, CC Docket No. 96-45 (dated April 24, 1998).

[24] *See* 47 C.F.R. § 1.41.

[25] *Report to Congress* ¶ 14.

decision would be deemed approved by the Bureau. As with other decisions made by the Bureau acting pursuant to its delegated authority, parties could seek Commission review of the Bureau's decision.[26] The Bureau also would have the authority to review the decisions of USAC at any time on the Bureau's own motion. The Bureau would conduct *de novo* review of appeals from USAC decisions. If an application for discounted services or support is approved, and that approval is appealed to the Commission, the pendency of that appeal would not affect the eligibility of the applicant to receive discounted services, nor would it prevent reimbursement of carriers for discounted services provided to such applicants. We seek comment on all aspects of this proposal. At the same time, we propose to limit the Bureau's authority to issues that are not novel questions of fact, law or policy. We seek comment on this proposal. We also seek comment on whether state procurement rules or other state experiences may serve as useful models in addressing appeals of USAC's decisions.

In addition, we seek comment on whether a party affected by a decision made by the division staff should be required to seek relief from the appropriate committee of the Board before filing an appeal with the Commission. Similarly, if the relief sought pertains to a matter that is solely within the jurisdiction of the full USAC Board, we seek comment on whether the affected party should be required to seek relief from the full USAC Board before filing an appeal with the Commission. We also seek comment on the timing issues that would be raised if the USAC CEO chose to bring the matter before the full USAC Board under the supermajority procedure. In addition, we seek comment on other ways in which the appeals process may be made as fair and efficient as possible.

To foster greater accountability of the consolidated USAC entity, the Commission proposed in the *Report to Congress* that, in connection with its annual audit, USAC prepare and file with Congress and the Commission an annual report describing all significant aspects of its structure and operations for the preceding year.[27] We seek comment on this proposal and on ways to structure such a report to enhance the Commission's oversight of USAC's administration and operations.

We seek comment on whether there are any additional enforcement mechanisms that the Commission should invoke. Furthermore, we seek comment on what action the Commission should take if it is determined that an application was approved and funds subsequently disbursed erroneously.

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[26] *See* 47 C.F.R. § 1.115.

[27] *Report to Congress* ¶ 14.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA)[28] requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[29] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[30] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[31] This regulatory flexibility analysis supplements our prior certification and analyses.

Supplemental Regulatory Flexibility Certification. In the *NECA Governance Order*, the Commission directed NECA, as a condition of its service as temporary Administrator of the universal service support mechanisms, to create an independent subsidiary, USAC, to administer temporarily certain aspects of the universal service support mechanisms and to establish SLC and RHCC to administer specific aspects of the universal service mechanisms for schools and libraries and rural health care providers.[32] In that *Order*, the Commission concluded that NECA is not a small organization within the meaning of the RFA, finding that NECA is a non-profit association that was created to administer the Commission's interstate access tariff and revenue distribution processes.[33] On this basis, the Commission certified pursuant to the RFA that the rules adopted in the *NECA Governance Order* would not have a significant economic impact on a substantial number of small entities.[34]

This Public Notice seeks comment on the proposed plan to merge SLC and RHCC into USAC as the single entity responsible for the administration of the universal service support mechanisms for schools, libraries and rural health care providers. We also seek comment on a proposal to require USAC to prepare and file with Congress and the Commission an annual

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[28] *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 Act of 1996 (SBREFA), Title II of the Contract with American Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

[29] 5 U.S.C. § 605(b).

[30] 5 U.S.C. § 601(6).

[31] 5 U.S.C. § 601(4).

[32] *NECA Governance Order*, 12 FCC Rcd at 18444-45.

[33] *Id. See also* 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 Long Term Support program (47 C.F.R. §§ 69.2(y), 69.612), and the Telecommunications Relay Services fund (47 C.F.R. § 64.604(c)(4)(iii)).

[34] *NECA Governance Order*, 12 FCC Rcd at 18444-45.

report describing all significant aspects of its structure and operations for the preceding year. For the same reasons stated in the *NECA Governance Order*, we find that NECA is not a small organization within the meaning of the RFA. Similarly, USAC, as a wholly-owned, non-profit subsidiary of NECA, is not a small organization. SLC and RHCC are non-profit corporations created by NECA as a condition of its service as temporary Administrator. Even if NECA, USAC, SLC and RHCC are small entities, we certify that the reorganization of SLC, RHCC, and USAC proposed here will affect directly only those four entities and thus will not have a direct, significant impact on a substantial number of small entities. We therefore certify, pursuant to RFA, 5 U.S.C. § 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Supplemental Regulatory Flexibility Analysis. This public notice seeks comment on the proposed procedures under which administrative decisions made by USAC would be reviewable by the Commission. This notice also seeks comment on the enforcement mechanisms the Commission should invoke in connection with the universal service support mechanisms. We previously performed a regulatory flexibility analysis regarding the implementation of the universal service support mechanisms.[35] This supplemental regulatory flexibility analysis addresses possible changes to our previous analyses that might result from our proposal here.

The Commission is required by sections 254(a)(2) and 410(c) of the Act to propose rules to implement properly the universal service support mechanisms. In this public notice, the Commission proposes procedures under which administrative decisions made by USAC would be reviewable by the Commission. This public notice also seeks comment on whether a party affected by a decision made by the division staff of USAC should be required to seek relief from the appropriate committee of the USAC Board before filing an appeal with the Commission. Specific appeal procedures are necessary to ensure that the Commission retains ultimate authority over the implementation of universal service support mechanisms. The description of the small entities to which the proposed rules would apply is set forth in the *Universal Service Order*[36] and continues to apply to our analysis. The Commission proposes a two-level appeal process. We do not believe that such a requirement will have a significant economic impact on the small entities affected by the process. Affected parties will benefit from review by the appropriate committee of the full USAC Board instead of having to resort to full Commission review in the first instance. We seek comment on these tentative conclusions.

The Commission will publish this Public Notice in the Federal Register. In addition, the Commission's Office of Public Affairs Reference Operations Division, will send a copy of

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[35] *See Federal-State Joint Board on Universal Service, First Report and Order*, CC Docket No. 96-45, 12 FCC Rcd 8776, 9219-9260 (1997), *appeal pending sub nom. in Texas Office of Util. Counsel*, No. 97-60421 (5th Cir. filed June 25, 1997) (*Universal Service Order*).

[36] *See Universal Service Order*, 12 FCC Rcd at 9241-9243.

this Public Notice, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.[37]

Ex Parte

Pursuant to 47 C.F.R. § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Deadlines and Instructions for Filing Comments

Interested parties may file comments in support of, or in opposition to, the proposed plan of reorganization on or before **August 5, 1998** and reply comments on or before **August 12. All filings should refer to USAC Plan of Reorganization, CC Docket Nos. 97-21 and 96-45, and DA 98-1336**. One original and six copies of all filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties also may file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is Docket No. 97-21. Parties not submitting their comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd, Accounting Policy Division, 2100 M Street, N.W., Room 8606, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding (including the lead docket number in this case, Docket No. 97-21), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

For information regarding this Public Notice, contact Sharon Webber at (202) 418-7400.

Action by the Chief, Common Carrier Bureau.

- FCC -

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[37] 5 U.S.C. § 605(b).

SLC
SCHOOLS AND LIBRARIES CORPORATION

USAC
UNIVERSAL SERVICE ADMINISTRATIVE CO.

RHCC
RURAL HEALTH CARE CORPORATION

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
SCHOOLS AND LIBRARIES CORPORATION
RURAL HEALTH CARE CORPORATION

REPORT TO THE FCC

Executive Summary
Report and Plan of Reorganization

July 1, 1998

SLC
SCHOOLS AND LIBRARIES CORPORATION

USAC
UNIVERSAL SERVICE ADMINISTRATIVE CO.

RHCC
RURAL HEALTH CARE CORPORATION

July 1, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Dear Ms. Salas:

In compliance with the request in the May 15, 1998 letter from Mr. A. Richard Metzger and consistent with the Commission's May 8, 1998 Report to Congress, we are submitting this Report and Plan of Reorganization approved by the Boards of Directors of the Universal Service Administrative Company (USAC) and the Schools and Libraries Corporation (SLC), and the accompanying Separate Statement approved by the Rural Health Care Corporation (RHCC).

Respectfully submitted,

Lisa Rosenblum
USAC Chair

Kathleen "K.G." Ouye
SLC Chair

Sanford D. Greenberg
RHCC Chair

Cheryl L. Parrino
CEO, USAC

Ira Fishman
CEO, SLC

Lee E. Bailey
President, RHCC

cc: Chairman William Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani

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Separate Statement of the RHCC and Request for Three Changes in the Plan

Executive Summary

Goals of the Reorganization

This Report and Plan of Reorganization proposes a more streamlined and efficient organizational structure for administering the various universal service programs by merging the Universal Service Administrative Company (USAC), the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into a single corporate entity, USAC. This new single corporate structure will bring significant efficiencies to the operation of all three programs by combining common functions and operations in those specific cases where consolidation is likely to achieve economies. The new structure will ensure the continued integrity of and focus on the targeted programs by vesting in committees, modeled on the High Cost and Low Income Committee as proposed, the authority to administer the distinctive programmatic functions of the two programs. The structure that is proposed recognizes and effectively balances the twin goals of efficiency and effectiveness.

The Plan of Reorganization specifically seeks to accomplish these goals:

- Efficient Administration of the Universal Service Programs
  - Consolidate Common Functions and Operations Where Efficiencies Would Be Achieved
  - Maintain Accountability to the FCC
  - Preserve Strong Safeguards and Audit Checks
  - Provide Continuity in the Administration of the Support Mechanisms
- Effective Implementation of the Programs
  - Preserve the Unique Missions, Expertise and Integrity of the High-Cost/Low-Income, Schools and Libraries and Rural Health Care Programs
  - Provide Professional Administration of the Funds
  - Provide Excellent Client Service to Each Client Base

Current Organizational Structure, Function and Mission of the Three Corporations

The Commission directed the National Exchange Carrier Association, Inc. (NECA), as a condition of its appointment as the temporary Administrator of the Universal Service programs, to establish an independent subsidiary, the Universal Service Administrative Company (USAC), to administer temporarily the High-Cost/Low-Income support mechanisms and to perform billing, collections, and disbursement functions for all of the universal support mechanisms on a temporary basis. The Commission further required the establishment of a universal service advisory committee, pursuant to the Federal Advisory Committee Act, that would recommend to the Commission a neutral third party to assume these functions on a permanent basis. The Commission also directed NECA, as a condition of its appointment as the temporary Administrator, to establish two independent corporations, the Schools and Libraries Corporation (SLC) and Rural Health Care Corporation (RHCC), to administer portions of the support mechanisms for schools and libraries and health care providers, respectively. These corporations would serve as permanent administrators of those mechanisms.

Universal Service Administrative Company

USAC is responsible for collecting and disbursing funds for the interstate High-Cost fund mechanism (the HCF), which includes High-Cost loop support (USF), Local Switching Support (LSS) and Long Term Support (LTS) mechanisms, and the interstate Lifeline Assistance fund. These functions are a direct outgrowth of telecommunications industry cost recovery mechanisms that have been in place for many years. USAC is also responsible for billing contributors, collecting contributions to the universal service support mechanisms, and distributing the universal service support funds for all of the universal service support programs (schools and libraries, rural health care, low-income consumers, and high-cost areas).

Schools and Libraries Corporation

SLC is charged with administering the application process, including the independent review of applications for compliance with FCC rules, creating and maintaining a website to post service applications, and performing outreach and public education functions needed to administer the schools and libraries program.

Rural Health Care Corporation

RHCC is charged with administering the application process, including the independent review of applications for compliance with FCC rules, creating and maintaining a website to post service applications, and performing outreach and public education functions needed to administer the rural health care program.

EVALUATION OF FUNCTIONS

In implementing the reorganization Plan, it is important to determine where opportunities for efficiency exist through the common operation of previously separate functions. Minimizing costs and the burden on consumers by eliminating duplicative functions is one of the major goals of this reorganization. In consolidating programs and operations, USAC's various committees and officers will confer and the USAC CEO will coordinate this effort.

The functions initially identified for consolidation are: office space, insurance, employee benefits and human resources, administrative policies, procedures and practices, accounting systems, auditing, reporting to federal agencies and Congress, budget, liaison with FCC and carriers, regulatory filings, counsel, information systems, invoice processing, boards and management.

The organization will continue to evaluate its operations. As we gain experience, additional opportunities for consolidation and efficiencies may be discovered. The USAC CEO will be on each programmatic Committee of the board which will ensure continued coordination and the ability to identify additional operating efficiencies.

STRUCTURES CONSIDERED AND RECOMMENDATION

Two restructuring options are available to achieve the Congressional and Commission goals reflected in the May 8th Report to Congress. They are:

(A) the Merger Option -- SLC and RHCC would merge into USAC in accordance with a merger agreement whereby the USAC Board and CEO would oversee all of the universal service programs. It would set up separate high cost and low income, schools and libraries and rural health care divisions overseen by separate committees of the board to perform the functions appropriate to their specialized expertise and missions, and common functions would be administered centrally by USAC; and

(B) the Subsidiary Option -- SLC and RHCC would convert to stock, not-for-profit corporations, issue their stock to USAC thereby becoming subsidiaries of USAC, cede functions common with each other to be discharged by USAC directly or through some outside service provider, and retain functions appropriate to their own specialized expertise and mission.

The Report and Plan of Reorganization recommends that the FCC adopt the Merger Option. The Merger Option will best accomplish the goals of the reorganization by increasing efficiencies through consolidation while preserving the unique functions and missions of the three universal service programs.

Summary of the Reorganization

The USAC Board of Directors would have responsibility for all universal service programs. The USAC board will consist of the current board with the addition of the USAC CEO, who would have overall management responsibility for the programs. The plan calls for three-year, staggered terms of the directors (the USAC CEO will have a permanent seat). The staggering of terms will provide for continuity on the board.

The plan recommends that USAC become the permanent administrator and that it be divested from NECA as soon as possible.

The new USAC board will create two new committees: the Schools and Libraries Committee and the Rural Health Care Committee. Those committees are modeled after the High Cost/Low Income Committee in existence today. Under the direction of the USAC Board, the Committees will have responsibility for the programmatic functions of each of the universal service programs. Decisions of the Committees are subject to full board review and decisions of those Committees can be modified or rejected by a supermajority of the board.

The USAC operations will consist of three program divisions: High-Cost/Low-Income, Schools and Libraries and Rural Health Care, each of which will be headed by a corporate officer and will have assigned staff. The combined USAC will have a small core group of permanent staff who will supervise the work of contractors for many of the administrative functions. The functions of collecting funds from contributors and disbursing these funds to program recipients and other common functions will be operated by USAC. To the extent practicable and depending upon the needs of the different programs, staff activities may be integrated across division lines.

Conclusion

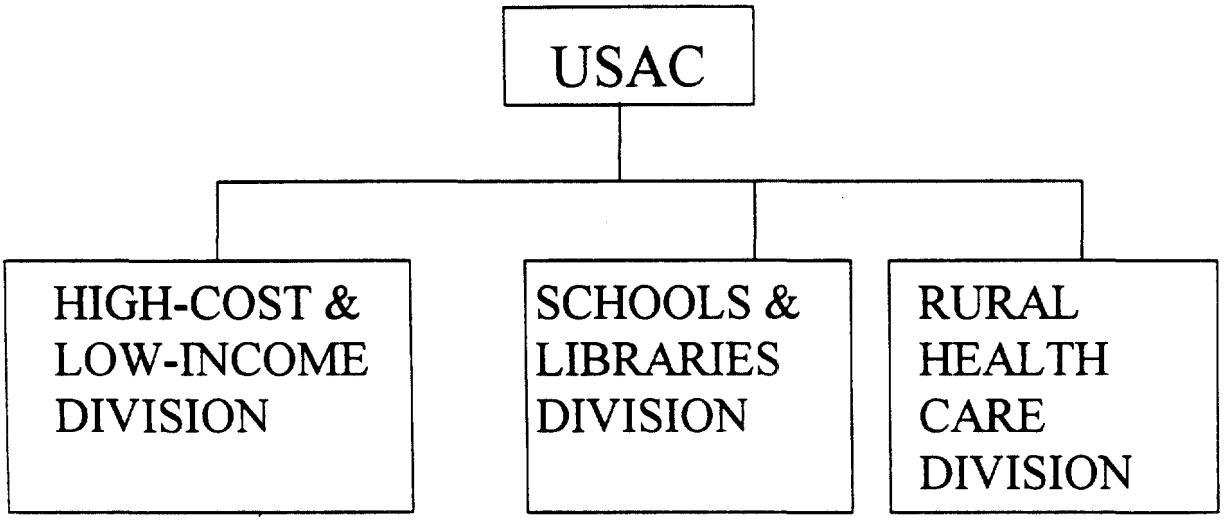
Consistent with the direction from the FCC and Congress to maximize efficiencies in the administration of the federal universal service programs, the proposed reorganization plan would merge the current universal service administrative organizations into one entity -- USAC. The USAC Board of Directors will be responsible for the operation and administration of all universal service programs. Consolidation of certain responsibilities will bring the efficiencies and accountability that the Commission and the Congress are seeking. Three key board committees will have responsibilities for the three program areas; High-Cost/Low-Income, Schools and Libraries, and Rural Health Care. Two of the committees proposed are new and the structure of those committees will be patterned after the High Cost and Low Income Committee as proposed in this report. The new USAC Board in cooperation with the Committees will ensure that the unique functions will be preserved and that -the programs will be effectively administered.

USAC will have three divisions for each of the universal service programs: High-Cost/Low-Income, Schools and Libraries, and Rural Health Care. These divisions will report to the CEO of USAC, and they will have responsibility for managing the unique functions. This operational structure replicates that of the USAC Board and ensures that the new USAC Board and organizational structure can accomplish the twin goals of the reorganization: efficient and effective administration of the programs. With these organizational changes, the USAC is positioned to effectively and efficiently implement the complex task of administering the federal universal service programs in an emerging competitive environment.

Appendix A

Organizational Chart

THE NEW USAC ORGANIZATIONAL STRUCTURE



Appendix B

Requirements of Congress Addressed in the Plan

	Requirement	How the Requirement is Met By the Plan
Congress - Senate Bill 1768, S2004(b)(2)	The Report should propose a revised structure for the administration of the programs. The revised structure shall consist of a single entity.	• The corporations will merge into one single company, USAC, to administer all three programs. • All programs will be governed by one board and managed by one CEO.
Congress - Senate Bill 1768, S2004(b)(2)(A)(i) & (ii)	USAC's authority should be limited to ministerial acts of processing the applications. May not administer the programs in any manner that requires it to interpret the intent of Congress or any FCC rule.	• The applications will be processed by the divisions in accordance with FCC rules. • USAC will make quarterly filings (or more frequently if requested) with the FCC regarding each fund. • The FCC reviews the structure and content of the independent audit of USAC. • The FCC will determine the amount to be collected and distributed. • The FCC will determine the amount of money allocated to each program.
Congress - Conference Report	Take into account the distinct mission of providing universal service to rural health care providers.	• USAC by-laws will provide for specific committees of the Board for Schools and Libraries (SL) and Rural Health Care (RHC). • The SL and RHC Committees will have independent decision making with regard to fulfilling the unique mission that can be modified by supermajority vote of the USAC board. • Separate operational divisions of USAC will be responsible for ensuring that these distinct missions are fulfilled. • Each division will be headed by an official with the targeted responsibility of achieving the specific program goals.

Separate Statement of the Rural Health Care Corporation and Request for Three Changes in the Plan

The Board of Directors of the Rural Health Care Corporation (RHCC) has sought to reach a consensus with USAC and SLC concerning the reorganization plan, and supports those portions of the plan that propose combining USAC, SLC and RHCC functions where doing so would produce gains in efficiency. However, after careful consideration, we have concluded that we can support the plan only if three changes are made to bring the plan more fully into conformity with the directives provided by Congress and the Federal Communications Commission.

1. Reasons for Changes

The task set before USAC, SLC and RHCC was to develop a reorganization plan that achieved two fundamental objectives:

- Combine the three organizations in a manner that achieves increased efficiency.
- Maintain the specialized expertise and identity of the individual programs.

The two-fold character of the task was emphasized both by Congress and by the Commission.

- Thus, Congress specified that the revised administrative structure for the programs should consist of a single entity.[1] But it also emphasized that **"any proposed administrative structure should take into account the distinct mission of providing universal service to rural health care providers, and include recommendations as necessary to assure the successful implementation of this program."**[2]
- Similarly, the Commission directed USAC, SLC and RHCC to develop a plan of reorganization in which "the functions, assets, employees, rights and liabilities of SLC and RHCC would be transferred to USAC . . ."[3] But the Commission also made clear its expectation that **"the specialized knowledge and expertise of SLC and**

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[1] Section 2005(b) of S. 1768.

[2] Conference Report on H.R. 3789, H. Rep. No. 105-504.

[3] FCC Report to Congress in Response to Senate Bill 1768 and Conference Report on H.R. 3579, adopted and released May 8, 1998 (hereafter, "FCC May 8 Report"), ¶ 10.

RHCC would be maintained in the unified structure."[4] The Commission also stated that **"The joint proposal must be responsive to the direction of the Conference Report . . ."** quoted above: **"to that end, the existing SLC and RHCC boards may become subsidiaries or committees of the USAC board;" "in particular, we contemplate that any such proposed operational units have the power to bind the USAC Board on certain specialized matters comparable to the power and authority vested in the current High Cost and Low Income Committee of USAC;"** and **"this power should include the ability to make binding decisions on issues related to the schools and libraries and rural health care support mechanisms . . .."**[5]

This aspect of the proposed reorganization is of particular importance to RHCC because our program is very limited in size in relation to USAC's overall combined mission. We therefore consider it **critical** that the second objective of the reorganization be achieved -- **that the specialized expertise and separate identity of our program be preserved in the unified structure.** Without the changes we propose, the proposed Plan will not adequately accomplish this objective. Despite the directives quoted above from the Congress and the Commission, the Plan does **not** augment the governing body of the combined organization with **any** of the available existing expertise relating to the rural health care program and does **not** provide the merged rural health care division with the ability to preserve the identity and mission of the program.

Expertise: Although Congress singled out the rural health care program for special mention and concern, and the Commission's May 8 Report expressly contemplated that the RHCC Board would become a subsidiary or committee of the USAC Board, the Plan takes the position that there must be **no** new rural health care representation whatever on the USAC Board. Thus, if the Plan were to be adopted without further change, the composition of USAC's Board would remain as it was at a time when USAC performed only accounting-type functions (billing, collection and disbursement) and had no responsibility whatever for the substantive aspects of the rural health care program. As so composed, the Board includes only one (of 18) directors representing rural health care and one telecommunications industry representative who has served on the RHCC Board. In other words, the rural health care program for which Congress expressed special concern would have one (or two) representatives on the combined Board, while the schools and libraries program has four (or five) representatives and the telecommunications industry holds nine Board seats.

Program Identity and Mission: The principal structural mechanism needed to assure that the identity and mission of the rural health care program will be preserved is, as the Commission made clear, the establishment of a separate committee of the USAC Board with authority to make binding decisions concerning the unique aspects of the

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[4] FCC May 8 Report, ¶ 11.

[5] FCC May 8 Report ¶ 11.

program. The Plan as currently drafted does not adequately achieve this critical objective, in two inter-related respects.

First, because USAC itself under the Plan will have only a single director representing rural health care, the proposed committee likewise will have only one such member. Thus, the group that is supposed to be relied upon to preserve the special mission of the program will consist almost exclusively of members who do not represent the rural health care community. (In contrast, the equivalent committee relating to the schools and libraries program will include four representatives of schools and libraries who would comprise a majority of the committee.)

Second, even as so constituted, the rural health care committee will not have the ability to make any binding decisions. The Plan provides that any decision the committee makes can be overridden by the USAC Board. (The override would require a two-thirds vote, but this would provide no meaningful protection for the program, given the fact that far more than two-thirds of the USAC Board members would represent interests other than rural health care.)

2. Relief Requested

All of RHCC's directors believe that the Plan proposed by USAC can be accepted only if it is modified to include the changes described below.

1. Two additional rural health care representatives should be added to the USAC Board, and the merger agreement between USAC and RHCC should identify the individuals who initially would comprise the combined Board and who would serve on the initial Rural Health Care Committee of the USAC Board.

2. The Rural Health Care Committee should have authority to bind USAC financially and otherwise with respect to the programmatic aspects of the rural health care program, and the Committee's decisions on such matters should not be subject to being overridden by the USAC Board.

3. The CEO of USAC should have the authority to hire and fire the head of the rural health care division of USAC, who in turn should have the authority to hire and fire personnel within that division.

We respectfully urge that the Commission: (a) modify the Plan as specified above before publishing the Plan for public comment; or (b) failing that, publish this Separate Statement along with the Plan and expressly invite public comment on both the Plan and our proposed modifications.

Sanford D. Greenberg Dr. Jay Sanders Isiah C. Lineberry Kevin G. Hess

July 15, 1998

STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Proposal to Revise Administrative Structure for Federal Universal Service Support Mechanisms; (CC Docket No 96-45) .

Today the Common Carrier Bureau releases a Public Notice seeking comment on the Universal Service Administrative Company's (USAC) proposed plan for reorganization of the universal service administrative structures. The proposal for consolidating the three corporations is a good first step in reaching a more rational and efficient structure to administer universal service. I also appreciate that the Bureau is following up on the Commission's commitment in its May 8, 1998 report to Congress to "establish a procedure under which administrative decisions made by USAC would be reviewable by the Commission." I have reservations, however, about the details of these proposals, including the specific functions of the consolidated entity and the Bureau's proposed procedures for Commission oversight.

Section 2005(b)(2)(A) of Senate Bill 1768, which prompted these revisions, provides for an extremely limited administrative entity:

> [T]he entity proposed by the Commission to administer the programs -- (i) is limited to implementation of the FCC rules for applications for discounts and processing the applications necessary to determine eligibility for discounts under section 254(h) of the Communications ct of 1934 (47 U.S.C. 254(h)) as determined by the Commission; (ii) may not administer the program in any manner that requires that entity to interpret the intent of Congress in establishing the programs or interpret any rule promulgated by the Commission in carrying out the programs, without appropriate consultation and guidance from the Commission.

In light of such limited administrative functions, I fail to see the need for such bureaucratic corporations with formal multiple committees. If the overall entity is prohibited from setting policy and limited to the function of processing applications, then any subcommittee must be similarly constrained. But what kinds of decisions will any subcommittee be making that would be of such paramount interest to the program that it would be necessary to bind the full USAC board absent a supermajority? In establishing an entity to review and process the applications, the Commission is merely contracting out administrative functions. All decisions regarding where the money should be going and how it should be distributed should -- indeed *must* -- be made by the Commission.

I am also concerned that the Commission itself is insufficiently involved in the decision-making process under the Bureau's proposal. For example, an affected party would file a petition for review first with the Common Carrier Bureau, who would have specific

delegated authority to rule on the petitions with possible appeal to the full Commission. I would prefer that the full Commission be more actively involved in overseeing the administration of these new programs. For example, unless amended, this process would allow for Bureau approval of USAC decisions without an order explaining their reasoning. My concerns regarding sufficient Commission involvement earlier in the process are only exacerbated by the Bureau's proposal to allow applicants to receive discounted services and carriers to be reimbursed during the pendency of such an appeal. Thus, if the Bureau failed to act for any number of reasons, public funds would still be disbursed while a potentially valid challenge remained. What assurances are there for taxpayers that erroneous payments will be returned?

I also fail to see the need for any party to be required to appeal a USAC staff decision first to the USAC Board, and possibly even to the relevant committee of the Board, as proposed. USAC has no policy-making or adjudicative authority. As such, an affected party should be able to seek relief directly from the full Commission, or the Bureau if appropriate under delegated authority.

Moreover, my concerns regarding appropriate Commission oversight are heightened by the fact that the proposed committees of USAC would have the power to bind the USAC Board regarding matters within their expertise, absent a supermajority of the full USAC Board voting to override the committee's actions. Matters within the Schools and Libraries Committee's expertise, for example, include "developing and implementing other distinctive program functions." I am concerned with such open-ended authority, especially in light of the protracted procedure for Commission review. I encourage parties to take these issues into account when commenting on the proposed structure.

I believe that the full Commission must take a more active role in the direct oversight of these quasi-public companies. Congress clearly favors a more efficient organization of only limited administrative functions, without the ability to "interpret the intent of Congress" or "any rule promulgated by the Commission."[1] While a good start, this public notice fails to ensure meaningful and early Commission involvement in budgetary decisions and the policy-making process.[2]

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[1] Section 2005(b) of Senate Bill 1768.

[2] For example, I am concerned about the degree of oversight that is being exercised regarding administrative and start-up costs. In their latest filing, the Schools and Libraries Corporation indicates that it paid NECA $1.86 million in start-up costs, more than three times the original estimate, and it is still not able to provide an accurate estimate of all its administrative costs for the first quarter. Third Quarter 1998 Fund Size Requirements for the Schools and Libraries universal Service Program, dated May 1, 1998.