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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	CC Docket Nos. 97-21 and 96-45
	)	
USAC Plan of Reorganization	)	DA 98-1336

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COMMENTS

The National Exchange Carrier Association, Inc. (NECA)[1] hereby files comments regarding the Commission's *Public Notice* in the above captioned matter.[2] In its *Public Notice*, the Commission seeks comment on a number of issues involving the combining of the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into the Universal Service Administrative Company (USAC) (together, "the Support Companies") by January 1, 1999. Among the issues on which the Commission seeks comment are: (1) divestiture of USAC from NECA and the timing of such divestiture; and (2) whether government compensation limits should apply to officers and employees of NECA, as well as to USAC.[3]

I. USAC Should Be Divested from NECA

NECA supports the divestiture of USAC from NECA. NECA agrees with the conclusion

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[1] NECA is a private Delaware corporation, a not-for-profit association of over 1,400 incumbent local exchange carriers. Pursuant to the Commission's Part 69 rules (47 C.F.R. Part 69), NECA primarily administers interstate access charge tariffs and revenue pools on behalf of its exchange carrier members, as well as providing contractual administrative services to various organizations responsible for federal support programs, among its other activities.

[2] Common Carrier Bureau Seeks Comment on Administration of Federal Universal Service Support Mechanisms, *Public Notice*, CC Docket Nos. 97-21 and 96-45, DA 98-1336 (rel. July 15, 1998).

[3] *Public Notice* at 3-4.

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of the Commission's *Report to Congress* and the Support Companies' *Reorganization Plan* that the divestiture of USAC is consistent with NECA's earlier proposals during the universal service proceedings.[4] NECA also agrees with the Support Companies that divestiture would be a simple task given the arms-length relationship between NECA and USAC; that divestiture should have a minimal impact on USAC operations; and that current USAC-NECA contracts, as well as the ability to enter into post-divestiture contracts for the performance of particular administrative functions, will provide continuity in the administration of the support mechanism for all universal service programs.[5]

II. Government Compensation Limits Do Not Apply to NECA

The Commission also seeks comment on whether government compensation limits should apply to NECA officers and employees.[6] The imposition of such restrictions on NECA would be unlawful and wholly inappropriate to a private corporation; could compromise NECA's representation of its members as a tariff filing agent; and, in any event, is moot due to USAC's impending divestiture. When the Commission directed AT&T to create NECA, it explicitly stated that the association would not function as a government agency or department:

> [NECA] will not be performing any adjudicatory or other governmental functions; it will be preparing tariffs as an agent for the carriers that offer the tariffed services. The association tariffs will be reviewed by the Commission under the same panoply of procedural and substantive rules that apply to a tariff filed by an individual

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[4] *See* Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579, *Report to Congress,* FCC 98-85 at ¶ 13 (rel. May 8, 1998); *Report and Plan of Reorganization,* USAC, SLC and RHCC (July 1, 1998) at Appendix A-1, 20-21.

[5] *Reorganization Plan* at Appendix A-1, 20-21.

[6] *Public Notice* at 4.

carrier.[7]

NECA's primary function continues to be the preparation of tariffs and revenue distribution on behalf of numerous telephone companies. The Commission has long recognized that, in order to perform this function effectively, NECA must be independent of government control over its internal management policies. In fact, the Commission has at least twice specifically defended NECA's independence in its staffing arrangements:

> We do not plan to adopt rules that would restrict the association's discretion in acquiring staff . . . . We do not believe, and have never believed, that it would be necessary or desirable for this Commission to prescribe the staffing arrangements the association would be required to adopt.[8]

Consistent with such independence, exchange carrier members of the association, through the board of directors, must be able to set compensation for NECA employees as their tariff agent. This allows the represented companies to maintain the quality of representation they require. Appropriation of this function by a government agency could not be justified under the standards of the Communications Act or any other federal statute.

The Commission's *Public Notice* offers no rationale for applying government salary limits to NECA. NECA is neither a government agency nor does it perform a

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[7] MTS and WATS Market Structure, *Order*, 97 FCC 2d 682 at ¶ 180 (1983).

[8] Amendment and Clarification of Part 69 Rules Governing the National Exchange Carrier Association, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, 2 FCC Rcd 381 at ¶ 25 (1987) (quoting MTS and WATS Market Structure, *Third Report and Order*, 93 FCC 2d at ¶ 347 (1983)). The Commission also concluded that NECA's internal budget review process and internal and external audit controls are "quite thorough". *See* 2 FCC Rcd 381 at ¶ 13 and n.28.

governmental function.[9] NECA's corporate affiliation with USAC provides no legal justification for regulating NECA compensation. USAC, too, is a private organization and is not an agency of the government.[10] In any event, USAC's impending divestiture from NECA sets to rest any question that government salary limits should be extended to NECA.

Insofar as NECA is engaged in other activities, imposing government compensation limits on NECA runs counter to the increasingly competitive environment for the types of administrative services that NECA and other firms offer. For example, NECA currently competes to provide administration contract services to a variety of organizations. The Commission has resisted regulating NECA compensation levels in the past; it would be incongruous and especially inappropriate to impose regulation now, at a time when NECA is becoming more involved in the competitive marketplace.

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[9] *See supra*, notes 1, 7 and 8. Under the relevant legal standards, NECA also is clearly *not* controlled by the government: its board of directors continue to be elected from the private sector by its exchange carrier members; it employs its own personnel; its expenses are recovered via the access charge revenue pool it administers; and the FCC is not obligated in any way to provide financial assistance to NECA. *See Varicon Int'l v. Office of Personnel Management*, 934 F.Supp. 440 (D.D.C. 1996); *Lebron v. Nat'l Railroad Passenger Corp.*, 115 S.Ct. 961, 969-75 (1995).

[10] USAC is a private, not-for-profit Delaware corporation that is neither government controlled nor an "agent" of the Commission. Government officials do not occupy any seats on USAC's board. Rather, USAC board members are nominated from the private sector by those industry segments represented on the board. *See Varicon Int'l v. Office of Personnel Management*, 934 F.Supp. 440 (D.D.C. 1996); *Lebron v. Nat'l Railroad Passenger Corp.*, 115 S.Ct. 961, 969-75 (1995).

III. Conclusion

For all of the foregoing reasons, the Commission should authorize USAC's divestiture from NECA, and should find that government compensation limits do not apply to NECA as a private corporation.

Respectfully Submitted,

NATIONAL EXCHANGE
CARRIER ASSOCIATION, INC.

/s/ Richard A. Askoff

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Its Attorneys

August 5, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served this 5th day of August, 1998, by hand delivery or by mailing copies United States Mail, first class postage paid, to the persons listed below.

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