

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

**COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

May 12, 2016

SUMMARY

The National Exchange Carrier Association, Inc. (NECA) herein responds to questions raised in the Commission's *Further Notice* in this proceeding. NECA's comments focus on its administrative responsibilities relating to the preparation and filing of interstate access tariffs, operation of the interstate access charge revenue pools, and the collection of certain universal service high-cost loop support data under Part 54 of the Commission's rules.

NECA agrees there is a need for the Commission to clarify what expenses may or may not be included in carrier rate bases and universal service data submissions. New rules adopted in this proceeding should be clear and simple for carriers, NECA, and the Universal Service Administrative Company (USAC) to administer, and should apply on a prospective basis.

To aid the Commission in considering improved methods of enforcing existing cost accounting rules, NECA provides information on its review and dispute resolution processes as they relate to NECA's responsibilities for administering the interstate access tariffs and pools. NECA also suggests the Commission not implement a general exception to "deemed lawful" status for incorrect certifications of company data, but should at most consider implementing an exception applicable only to individual carriers that have been found to have willfully or deliberately misrepresented data to gain financial or other advantages.

The *Further Notice* seeks comment on potential disaggregation methods in areas where support is reduced due to competitive overlap, as well as on alternative cost recovery methods, including de-averaged SLC rates. NECA's existing tariff and pooling processes can be adapted to implement a variety of such approaches, including imposition of differing SLC charges within partially-competitive areas.

Finally, the *Further Notice* asks parties to comment on potential methods to improve administration of the current rate-of-return system. To assist the Commission in evaluating these issues, NECA provides information regarding existing methods used by NECA and USAC to coordinate administration of existing access and high-cost universal service cost recovery methods. These procedures, implemented within the context of the existing Part 54 and 69 rules, enable the Commission, NECA and USAC to process data representing over 1,000 companies in a unified, consistent, and timely manner. NECA supports the Commission's further review of these administrative techniques and looks forward to working with staff to improve such processes.

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. PERMISSIBLE EXPENSES.....	2
III. COST ALLOCATION/AFFILIATE TRANSACTION RULE ENFORCEMENT	5
IV. COMPETITIVE OVERLAP.....	8
V. OTHER MEASURES TO IMPROVE THE OPERATION OF THE CURRENT RATE-OF-RETURN SYSTEM	9
VI. CONCLUSION	18

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NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

I. INTRODUCTION

The Commission’s March 30th *Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking* in the above-captioned proceeding¹ establishes a new, two-path approach to Universal Service Fund (USF) reform for rate-of-return regulated local exchange carriers (RLECs). It provides a new model-based option for companies wishing to receive support based on the Commission’s A-CAM support model, and a new Connect America Fund Broadband Loop Support (CAF BLS) mechanism that will replace existing Interstate Common Line Support for non-model companies.

¹ *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, FCC 16-33 (rel. Mar. 30, 2016) (*Report and Order* or *Further Notice*).

The *Further Notice* seeks comment on a number of implementation details relating to the new programs, with particular emphasis on the extent to which certain types of expenses are “used and useful” in the provision of universal service and thus includable in carrier rate bases and revenue requirements.² As administrator of the Commission’s access charge plan,³ NECA is pleased to respond to these questions insofar as they relate to NECA’s role in preparing interstate access tariffs on behalf of participating companies; its operation of the interstate access charge revenue pools; and its role in collecting certain universal service high-cost loop support data.

II. PERMISSIBLE EXPENSES

The *Further Notice* notes that LECs may not include expenses in their revenue requirement unless they are necessary to the provision of telecommunications services and used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁴ Consistent with a *Public Notice* issued by the Commission in 2015,⁵ the *Further Notice* tentatively concludes that certain expenditures are in fact unnecessary to the

² *Further Notice* ¶¶ 330-359. The *Further Notice* also raises questions regarding methods of disaggregating support in competitive areas, support for tribal areas, methods to improve the administration of current rate-of-return mechanisms, and reporting requirements for RLECs. *See id.* ¶¶ 364-393.

³ NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. See generally, 47 C.F.R. §§ 69.601 et seq.; MTS and WATS Market Structure, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983) (*1983 Third Report and Order*).

⁴ *Further Notice* ¶ 327, citing 47 U.S.C. § 254(e).

⁵ *All Universal Service High-Cost Support Recipients Are Reminded That Support Must Be Used for Its Intended Purpose*, Public Notice, WC Docket Nos. 10-90, 14-58, 30 FCC Rcd. 11821 (2015) (*Public Notice*).

provision of regulated interstate services, and thus not appropriately included in a rate-of-return carrier's interstate revenue requirement or in calculating high-cost support.⁶

The *Further Notice* recognizes, however, that the types of expenditures listed in the *Public Notice* are broad, and questions whether there are definable subsets of such expenses that should not be excluded from carriers' interstate revenue requirements.⁷ The Commission also seeks comment on whether such subsets of expenses, if allowed in revenue requirements for ratemaking purposes, should also be permitted for inclusion in high-cost support data submissions.⁸

NECA agrees there is a need for the Commission to clarify what expenses may or may not be included in carrier rate bases and universal service data submissions. For example, it is commonly understood that Commission rules prohibit inclusion of expenditures for personal items and political contributions in regulated accounts or USF submissions.⁹ The rules are less clear, however, as to certain of the other expenses described in the Commission's *Public Notice* and *Further Notice*. Section 32.6720 of the Commission's rules (governing accounting for Corporate Operations Expenses) permits carriers to include costs of "[m]aintaining relations with government, regulators, other companies and the general public" such as "[p]erforming public

⁶ *Further Notice* ¶ 341.

⁷ *Id.* In addition to the items listed in the Commission's October 19, 2015 *Public Notice*, the *Further Notice* proposes to prohibit inclusion of expenses relating to artwork and other objects which possess aesthetic value; corporate aircraft, watercraft, and other motor vehicles designed for off-road use, (except insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles travelling on roads); any vehicles for personal use; tangible property not logically related or necessary to the offering of voice or broadband services; childcare; cafeterias and dining facilities; and, housing allowances or other forms of mortgage or rent assistance for employees. *Id.* ¶ 342.

⁸ *Id.* ¶ 341.

⁹ See 47 C.F.R. § 32.7300(h)(1).

relations and non-product-related corporate image advertising activities” in regulated accounts.¹⁰

In a 1987 Order adopting the rate base rules, the Commission responded to arguments suggesting that charitable contributions be removed from interstate revenue requirements by stating:

This Commission continues to believe that reasonable charitable contributions are very much an obligation of a business enterprise to the community it serves and upon which it is dependent for its revenues. We consider reasonable charitable contributions part of the cost of doing business and there is nothing in the record to suggest that they have become unreasonable or excessive. We also consider it appropriate for any company, whether regulated or unregulated, to support the services of the community in which it operates.¹¹

Thus, it would appear that current rules permit inclusion of reasonable business-related charitable contributions in rate bases and USF data submissions. The Commission’s Part 32 rules also appear to permit inclusion of expenses for “general administrative activities not directly charged to the user,” including “food services (e.g., cafeterias, lunch rooms and vending facilities).”¹² Based on the *Public Notice* and *Further Notice*, however, significant questions have arisen regarding the extent to which other business-related expenses including community relations activities, employee motivation programs and other expenses that would normally be incurred by companies in the ordinary course of providing services may now be considered impermissible by the Commission.

Therefore, if the Commission elects to revise its rules governing includable expenses in this proceeding as proposed in the *Further Notice*, it would be helpful for the Commission to provide as much guidance as possible so that carriers, NECA and USAC can clearly understand

¹⁰ Subject, however, to specific limits on recovery of corporate operations expenses and the overall caps on high-cost support. 47 C.F.R. § 32.6720(d) and (d)(3).

¹¹ *Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers*, CC Docket 86-497, Report and Order, 2 FCC Rcd. 269 (1987) ¶ 77.

¹² 47 C.F.R. § 32.6720(j).

how to implement these changes. The Commission may also wish to avoid rules that require subjective judgments, as it may be difficult for company managers, NECA reviewers, or USAC auditors to make *ad hoc* determinations of whether certain types of expenditures “fit” within or without specific categories. The Commission should also make clear that, to the extent any such rules or guidelines alter prior Commission policies, they will apply on a prospective basis, as it would appear unfair for the Commission to penalize carriers for following accounting practices that have not previously been questioned by the Commission or USAC auditors.

III. COST ALLOCATION/AFFILIATE TRANSACTION RULE ENFORCEMENT

In the *Further Notice*, the Commission expresses concern that RLECs may have broad latitude to interpret the Commission’s accounting rules so as to cause costs to be over-allocated to regulated operations, and thus increase high-cost support. The Commission accordingly seeks comment on ways to improve the process, and also asks for input on how to detect cases of misallocation.¹³ The *Further Notice* proposes specific additional certification requirements for RLECs in this area, and asks for comment on NECA’s role in enforcing these rules.

In the context of administering its tariffs and associated revenue pools and collecting universal service high-cost loop data, NECA is instrumental in the resolution of issues applicable to individual company data submissions. Participating companies generally appreciate NECA’s assistance in reviewing their data and helping to assure submissions are made in compliance with the Commission’s rules. NECA pool participants also recognize the importance of assuring equity among pool participants, and that NECA interpretations and guidelines are applied consistently among all members.

¹³ *Further Notice* ¶ 355.

Occasionally, however, issues are referred to the Commission for ultimate resolution. Such proceedings help resolve rule interpretation issues and provide needed guidance to carriers, NECA, and USAC. NECA has always implemented FCC guidance promptly and consistently in response to such declaratory rulings.

In considering NECA's role in enforcing rules compliance, the Commission should bear in mind that participation in NECA's tariffs and access charge pools is voluntary, and that companies may elect to participate in or leave NECA's pools on an annual basis.¹⁴ NECA typically obtains extensive cost data and forecasting information from companies participating in its access tariffs and pools, but information available from non-pooling companies is necessarily more limited.¹⁵ Thus data review and/or enforcement of Commission rules may not be the same for pooling and non-pooling companies.¹⁶

The Commission also proposes to create an exception to section 204(a)(3)'s "deemed lawful" treatment of effective tariffs if a carrier "incorrectly" certifies that its revenue requirements are compliant with applicable standards.¹⁷ Section 204(a)(3) provides:

A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful

¹⁴ Companies may also elect to detariff their wireline broadband transmission service (Digital Subscriber Line or DSL) offerings while continuing to offer other special access services under NECA's traffic sensitive tariff.

¹⁵ NECA does collect certain loop cost data for purposes of administering the high-cost support program from all ILECs, pursuant to section 54.1305 of the Commission's rules. *See* 47 C.F.R. § 54.1305.

¹⁶ The *Further Notice* elsewhere proposes that companies found to be in violation of the Commission's rules be required to exit the NECA pools. *Further Notice* ¶ 363. Such an approach could be effective in limiting the adverse impacts of incorrect rule interpretations on the NECA pools but might also inadvertently limit the extent to which NECA review processes can be relied upon to find and correct such errors.

¹⁷ *Id.* ¶ 362.

and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as is appropriate.

“Deemed lawful” status is a “conclusive presumption of lawfulness” when a tariff takes effect and not suspended or investigated. *ACS of Anchorage v. FCC*, 290 F.3d 403, 412 (D.C. Cir. 2002) (*ACS v. FCC*).¹⁸ The purpose of the subsection is to give certainty to carriers that their effective rates will be lawful, until challenged through complaint or otherwise, and then only after the Commission or a court rules that the rates are unlawful. The order finding unlawfulness may only be implemented on a going-forward basis, and no refunds are allowed.

The *Further Notice* notes, however, that under the *ACS v. FCC* case an exception to the statute might apply in the case of a carrier “that furtively employs improper accounting techniques in a tariff filing, thereby concealing potential rate of return violations.”¹⁹

The Commission’s proposal suggests the Commission will be able to revoke “deemed lawful” status even in the case of inadvertent error. This is very different from the *ACS v. FCC* court’s description of a carrier who “furtively” employs improper accounting techniques.²⁰ Moreover, for NECA pool participants a *post hoc* “opening up” of the tariff might impact not only the carrier involved in the rule violation, but possibly every member that provides service

¹⁸ See also *Sprint Communications Co. L.P. v. Northern Valley Communications, LLC*, EB-11-MD-003, Memorandum Opinion and Order, 26 FCC Rcd. 10780 (2011) ¶ 17, recon. den., 26 FCC Rcd. 16549 (2011).

¹⁹ *Further Notice* ¶ 362 (quoting *ACS v. FCC*, 290 F.3d 403, 413 (D.C. Cir. 2002))

²⁰ In *ACS*, a carrier had utilized a classification of traffic for accounting purposes that affected its actual rate-of-return calculations; a classification that the FCC eventually found to be improper, but only upon the filing of a complaint and after the tariff went into effect. *ACS* at 407-08. Although the accounting practice was not apparent on the face of the tariff, the court upheld the “deemed lawful” nature of the tariff filing and reversed the FCC decision on review. No “furtiveness” or “concealing” was alleged.

pursuant to the tariffed rate in question. This would leave NECA's tariff in "almost endlessly suspended animation."²¹

For these reasons, NECA suggests the Commission should not proceed with implementing a general exception to "deemed lawful" status for incorrect certifications of company data, but should at most consider implementing an exception applicable only to individual carriers that have been found to have willfully or deliberately misrepresented data to gain financial or other advantages.

IV. COMPETITIVE OVERLAP

Section II.B of the Commission's *Report and Order* concludes that CAF BLS should not be available where an unsubsidized competitor is offering qualifying services in an area, and provides several methods of disaggregating support within partially-competitive areas.²² The *Further Notice* invites parties to propose other methods of disaggregation that could be implemented with minimal administrative burden for affected carriers and USAC. The Commission also requests comment on how costs of serving non-supported areas can be recovered.²³

One possible approach suggested by the *Further Notice* would be to treat non-supported expenses as being outside the tariffed, regulated revenue requirement and to allow carriers to

²¹ *Virgin Islands Tel. Co. v. FCC*, 443 F.3d 666, 673 (D.C. Cir. 2006) (*Virgin Islands*) (quoting *ACS v. FCC* at 413). In *Virgin Islands* the Bureau suspended the carrier's tariff, but then later reconsidered the suspension and declined to investigate. The Commission posited that once suspended, the Bureau could not reinstate the tariff provision's "deemed lawful" status. The court of appeals disagreed, concluding that reversal of the suspension order restored the tariff to its previous "deemed lawful" status. *Virgin Islands* at 673.

²² *Report and Order* ¶ 116.

²³ *Further Notice* ¶¶ 364-367.

assess a detariffed, but regulated, rate to recover such costs. The *Further Notice* notes that this approach would remove such costs from the NECA pooling process.²⁴ An alternative would be to raise Subscriber Line Charge (SLC) caps for particular study areas to permit recovery of unsupported costs.²⁵ The *Further Notice* questions whether any SLC increases should be allowed only in competitive areas or whether they should apply to the entire study area, and asks parties to address the effects of such de-averaging on the NECA pooling and tariffing processes.²⁶

The *Further Notice* correctly notes that carriers should have a reasonable opportunity to recover costs of serving areas considered competitive. If the Commission were to find, based on submitted comments, that adjustments to SLC caps would be an appropriate option for carriers to recover such costs, NECA's pooling processes can readily be adapted to permit different SLC rates within given geographic areas, provided those areas are defined clearly and can be delineated in tariffs and/or cross-referenced in public documents.²⁷

V. OTHER MEASURES TO IMPROVE THE OPERATION OF THE CURRENT RATE-OF-RETURN SYSTEM

Noting that some carriers have expressed concerns about their ability to deploy broadband under existing mechanisms, the Commission states that it intends to monitor the impact of its various USF reforms on broadband deployment.²⁸ It also asks commenters to

²⁴ *Id.* ¶ 366.

²⁵ *Id.* ¶ 367.

²⁶ *Id.*

²⁷ For example, NECA's Tariff F.C.C. No. 5 currently lists Access Recovery Charge (ARC) rates for individual company study areas that differ by exchange/rate zone within a company study area. This current ARC tariff approach could easily be extended to deaveraged SLC rates without adverse effects on NECA tariff and pooling processes.

²⁸ *Further Notice* ¶ 385.

submit proposals or ideas for additional steps the Commission might take to facilitate broadband deployment to unserved areas, working within the framework of the existing USF budget for rate-of-return areas.²⁹ The *Further Notice* also asks parties to comment on NECA's administration of the current RoR system, and whether and how subpart G of the Commission's Part 69 rules, which govern NECA processes, might be amended to reflect various changes in the industry over the past few decades.³⁰

NECA welcomes Commission review of the various Part 69 rules governing NECA's administrative responsibilities. The *Further Notice* correctly notes in this regard that there have been significant changes in the telecommunications marketplace since NECA was established.³¹ These changes have previously been reflected in updates to Commission rules governing administration of the access charge plan and universal service mechanisms.³² Prior to implementation of the Telecommunications Act of 1996, the Commission's various universal service programs were primarily focused on support mechanisms for incumbent local exchange carriers. With the advent of new programs for competitive providers, as well as schools, libraries, and rural health care providers, the Commission, among other things, directed NECA to establish USAC as a subsidiary corporation with responsibility for administering all universal

²⁹ *Id.*

³⁰ *Id.* ¶ 386.

³¹ *Id.*

³² For example, specific rules in subpart G have been revised over time to reflect changing industry participation in NECA's pools, including revisions to the numbers of NECA board members representing various "subsets" of NECA members and the inclusion of "outside" directors representing all subsets of NECA membership. *See, e.g., Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes*, CC Docket No. 93-6, RM 7736, *Consideration of NECA's Incentive Compensation Plan*, AAD 95-34, Report and Order and Order to Show Cause, 10 FCC Rcd. 6243 (1995) (*1995 Safeguards Order*).

service programs.³³ NECA, however, retains responsibility for collecting certain loop cost data from its member companies pursuant to subpart M of the Commission's Part 54 rules. These rules require all RLECs to submit certain loop data to NECA on an annual basis, with provisions for quarterly updates.³⁴

Over the years, NECA has developed sophisticated methods for reviewing and validating the various tariff, pooling and HCLS data submitted by member companies. These processes include cost study validations (data reviews and process reviews), focused cost study reviews, USF loop reviews, and a cost issues resolution process. NECA also routinely reconciles all cost studies and loop data with financial data compiled by member companies under the Commission's Part 32 rules, and reviews data submitted by member average schedule companies relating to billed revenues and other settlement submissions. NECA's review processes have been thoroughly documented in prior Commission proceedings, most recently in response to the Commission's 2005 rulemaking proceeding on the management, administration and oversight of its USF programs.³⁵ At that time, NECA provided the Commission with detailed information regarding its methods for reviewing and validating HCL data in combination with tariff and

³³ See *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, Report and Order and Second Order on Reconsideration, 12 FCC Rcd. 18400 (1997) (1997 R&O and Second Order on Recon.). While USAC operates as a subsidiary of NECA incorporated under Delaware law, its board members are nominated by industry segments and approved solely by the Chairman of the FCC. 47 C.F.R. 54.703(b) and (c). Indeed, the Commission's rules specifically prohibit NECA's board from participating in the functions of the administrator. 47 C.F.R. § 54.703(a).

³⁴ 47 C.F.R. §§ 54.1305 and 54.1307.

³⁵ See *Comprehensive Review of Universal Service Fund Management, Administration and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 11308 (2005).

pooling data, and explained how its consolidated review functions helped assure successful and accurate implementation of the USF and ICC reforms adopted in the Commission's 2001 *MAG Order*.³⁶

Changes to the Commission's access charge rules and high-cost universal service support programs resulting from the 2011 *ICC/USF Transformation Order*³⁷ and the instant Rate of Return Reform *Report & Order* have presented extraordinary additional complexities for carriers, NECA, and USAC. Following release of the *ICC/USF Transformation Order*, NECA worked extensively with the Commission, member companies, and USAC to assure the ongoing success of the planned transition from cost recovery via per-minute terminating end office switched access charges to a combination of new flat-rated end user ARCs and CAF-ICC funding. This process entails careful and extensive coordination between the Commission, carriers NECA and USAC to assure useful and accurate data is obtained for tariff forecasting purposes, for subsequent initial support payments and pool distributions, and for later true-ups.³⁸

³⁶ Comments of the National Exchange Carrier Association, Inc., WC Docket No. 05-195 (filed Oct. 18, 2005). *See also Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00 256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd. 19613 (2001) (*MAG Order*).

³⁷ *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (*ICC/USF Transformation Order*), *aff'd sub nom*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

³⁸ For example, the switched access frozen baseline (reduced by 5% per year) is recovered from a combination of tariffed switched access charges, tariffed ARC rates and CAF ICC funding. *Id.* ¶¶ 39, 851, 894. The complex interrelationships between these cost recovery mechanisms sometimes produce anomalous results, which NECA is in a unique position to spot. *See, e.g., Connect America Fund*, WC Docket No. 10-90, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Order, 30 FCC Rcd. 1887 (2015). (Clarifying

Implementation of the new A-CAM-based support and CAF BLS mechanism has increased these complexities, requiring even more extensive coordination between the Commission, NECA, USAC, and carriers.³⁹ Recognizing this, the Commission's *Report and Order* directed NECA to undertake a number of specific actions to implement the new programs.⁴⁰ These requirements are in the process of being accomplished on the timetables specified by the Commission.

The process of managing these transitions is daunting for most RLECs, particularly smaller carriers. Nearly all NECA pool members have, therefore, elected to designate NECA as their agent for filing data with the FCC and USAC and to receive and manage high-cost USF support payments on their behalf.⁴¹ These arrangements permit NECA to coordinate HCLS, CAF BLS, CAF-ICC, and cost recovery via access tariffs on behalf of participating companies,

rules relating to implementation of the ICC transition for RLECs to address “unanticipated results” of the CAF ICC true-up process identified by NECA in the course of preparing its 2014 annual access tariff filing.)

³⁹ Under the new CAF BLS rules, the consumer broadband loop rate incorporates CAF BLS funding into the rate development as well as the recovery of consumer broadband-only loop costs.

⁴⁰ For example, the *Report and Order* required NECA to submit a schedule of companies subject to limits under the Commission's newly-adopted OpEx limitation formulas OPEX formula, as well as data relating to the new CapEx limit by June 24, 2016 (*Report and Order* ¶ 104); to rebase the cap on HCLS reflecting the election of model-based support by individual companies (*Id.* ¶ 154); to prepare five-year projections of CAF BLS support based on prescribed buildout obligations (*Id.* ¶ 167, n. 373); and to incorporate reductions in the prescribed interstate rate-of-return into access rates and HCLS amounts (*See id.* ¶ 326).

⁴¹ FCC Form 498 permits ETCs to designate third party agents to act on their behalf with respect to receipt of USF support payments. *See* https://apps.fcc.gov/edocs_public/attachmatch/DOC-326796A1.pdf. In addition, NECA submits Line Count data (Form 507), ICLS Project Data (Form 508) and ICLS True-up (Form 509) to USAC on behalf of companies that participate in its CL pool. CAF-ICC data is filed with the Commission and USAC for companies that participate in NECA's TS pool. NECA also files Local Rate Floor data for CL pool companies that enter data into NECA's website for this purpose.

which significantly enhances overall efficiencies. NECA is able to apply consistent review procedures to the data used for both USF and pooling, which in turn increases accuracy and reduces the potential for “double recovery” of costs. Consolidating payment processing also helps smooth out variations in cash flow from month to month – a significant benefit for small companies who might otherwise encounter difficulties if unexpected shortfalls in revenues occur in particular months. These benefits continue to apply even for RLECs electing the model-based approach for receipt of CAF funding, as these companies will still continue to recover costs of providing service in high-cost areas via a combination of payments under the model, end user charges, and tariffed access rates.⁴²

As it considers further reform in this proceeding, the Commission should carefully consider the value of these existing coordinated review and payment processes in terms of reduced overall burdens on the Commission, USAC and RLECs. In-place procedures enable the Commission and USAC to receive carefully-reviewed data representing over 1,000 companies in a unified, consistent format, and in a timely manner.⁴³ Absent these procedures, the various data filings would need to be replicated by member companies individually or through various other agents, increasing potential inconsistencies and errors.

NECA and USAC have been able to implement these procedures within the context of the Commission’s existing administrative rules. While it does not appear at first blush that any

⁴² For a company who elects A-CAM, NECA will potentially tariff the \$42 broadband-only rate and the SLCs in the CL tariff and may also continue to tariff TS Special Access and Switched Access rates. This means NECA will continue to review cost study data to assure compliance with Commission rules including provisions relating to double recovery of revenue requirements, imputation of ARCs for loops that convert from voice to broadband-only in the calculation of their CAF ICC, and other relevant provisions.

⁴³ This process also provides a single point of contact for the Commission and USAC to resolve questions related to the filings.

substantive changes are needed to the Part 54 or 69 program administration rules to assure successful implementation of the Commission's new CAF BLS mechanism,⁴⁴ NECA looks forward to working with Commission staff and USAC in evaluating potential updates as needed.

The *Further Notice* also seeks comment on whether the Commission should adopt measures “to facilitate transparency into and evaluation of whether NECA’s functions are accomplished in an efficient, cost effective, and neutral manner.”⁴⁵ NECA currently provides information regarding its administration of the interstate access charge system in the context of its annual access tariff filings, which are subject to examination and potential investigation by the Commission pursuant to section 204 of the Act.⁴⁶ These include, among other things: an annual third-party Service Organization Controls Report;⁴⁷ annual reports on revisions to NECA’s Cost Accounting Manual (CAM);⁴⁸ and annual reports on NECA’s cost study review

⁴⁴ The *Report and Order* did make minor revisions to section 69.603(g), governing allocation and recovery of NECA administrative costs, to remove outdated language, but did not otherwise change the rule. *Report and Order*, App. B, at 169.

⁴⁵ *Further Notice* ¶ 386.

⁴⁶ 47 U.S.C. § 204. The Commission previously considered alternative proposals for documenting NECA administrative expenses, but determined that including this information should be reviewed in the context of NECA’s annual access filings. *Amendment and Clarification of Part 69 Rules Governing the National Exchange Carrier Association*, CC Docket No. 87-2, Report and Order, 3 FCC Rcd. 6885 (1988) ¶ 20.

⁴⁷ NECA engages external independent auditors to conduct an annual Third Party Review (TPR) of internal controls conforming to guidelines set forth in the American Institute of Certified Public Accountants’ (AICPA) Statement on Standards for Attestation Engagements Number 16 (SSAE 16): Reporting on Controls at a Service Organization. NECA’s obtains a “Type II” Service Organization Controls Report each year, which reviews NECA’s internal controls and tests their application in practice.

⁴⁸ See *NECA’s Request for Authority to Provide Intrastate Services to Exchange Carrier Members*, Memorandum Opinion and Order, 2 FCC Rcd. 6853 (1987); *National Exchange Carrier Association, Inc.’s Cost Accounting and Procedures Manual*, Memorandum Opinion and Order, 3 FCC Rcd. 5827 (1988).

processes.⁴⁹ NECA also submits numerous annual and quarterly reports on behalf of exchange carriers each year, including: USF data submissions as required under Part 54 of the Commission's rules;⁵⁰ Form 492 earnings reports submitted on behalf of carriers participating in NECA's tariffs;⁵¹ and quarterly filings providing information on minutes of use, pooling results, and other information.⁵² NECA has also cooperated extensively to provide the Bureau with exhaustive analyses and data in support of reform initiatives, most recently in connection with the development of the Commission's CAF BLS mechanism in this proceeding,⁵³ and looks forward to continuing to provide assistance as needed with these efforts.

The *Further Notice* also requests comment on methods of assuring that NECA's operations are conducted in a "neutral" manner. The Commission has previously stated that NECA has a responsibility to manage the interstate access charge revenue pools in an even-handed manner in strict accordance with Commission rules.⁵⁴ The Commission has also made clear, however, that NECA is required to play a significantly different role in the industry than USAC. Whereas USAC was established to serve as a neutral administrator of the Commission's universal service programs, the Commission has affirmatively stated it expects NECA to act in

⁴⁹ 47 C.F.R. § 69.605(e).

⁵⁰ 47 C.F.R. § 54.1307.

⁵¹ 47 C.F.R. § 65.600.

⁵² See *Revision of Filing Requirements*, CC Docket No. 96-23, Report and Order, 11 FCC Rcd. 16326 (1996).

⁵³ See, e.g., Letters from Regina McNeil, NECA, to Marlene H. Dortch, Secretary – Federal Communications Commission, Rodger Woock and Suzanne Yelen, Industry Analysis and Technology Division, Connect America Fund, WC Docket No. 10-90 (filed Nov. 17 and 19, Dec. 2 and 15, 2015); *Report and Order* ¶ 167, n.373.

⁵⁴ See, e.g., *1995 Safeguards Order* ¶¶ 14, 64.

an advocacy role on behalf of ILECs participating in its access charge tariffs and pools.⁵⁵ Similarly, while the Commission has prohibited USAC from taking actions to interpret Commission rules,⁵⁶ it has made clear that where “grey areas” exist NECA is required to exercise its independent interpretative judgment (subject, of course, to Commission review).⁵⁷ Indeed, given traditional prohibitions against retroactive ratemaking, NECA is required to make such judgments in “real time” in order to meet its tariff filing obligations.⁵⁸

NECA strives, however, to assure that its tariffs and revenue pools are administered in full compliance with Commission rules; devotes significant resources to reviewing member company data for compliance with the rules; and seeks to be transparent and effective in its daily operations. NECA also provides the Commission and the industry with timely, accurate, and

⁵⁵ *Amendment and Clarification of Part 69 Rules Governing the National Exchange Carrier Association*, CC Docket No. 87-2, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 2 FCC Rcd. 381 (1987) ¶¶ 8-9 (*1987 MO&O and NPRM*). In establishing NECA the Commission considered but rejected as “unwise” suggestions by some parties that the NECA board should include representatives from Commission staff, stating this could create an appearance of a conflict of interest in proceedings reviewing NECA’s filed tariffs. *1983 Third Report and Order* ¶ 345. The Commission also decided not to accept suggestions that state commissions, interexchange carriers or consumers be represented on NECA’s board, noting that the Act “already provides safeguards adequate to protect the interests of these groups in the fair, evenhanded implementation of any access charge plan we might adopt.” *Id.*

⁵⁶ See 47 C.F.R. § 54.702(c) (“The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.”)

⁵⁷ See e.g., *1995 Safeguards Order* ¶ 44.

⁵⁸ The Commission has also previously rejected suggestions that NECA be prohibited from commenting on “policy” matters in FCC proceedings. See, e.g., *1987 MO&O and NPRM* ¶ 9. In the Commission’s view, NECA as administrator of the Commission’s access charge plan NECA is “uniquely positioned to provide data, analysis and perspectives on national telecommunications policy issues that affect the exchange and interexchange carrier industries. . . . NECA may freely express its views before this Commission whenever it chooses to do so.” *Id.* ¶ 8. See also *1997 R&O and Second Order on Recon.* ¶¶ 7, 13-22 (reaffirming that NECA, unlike USAC, was not expected to act as a neutral party but instead to advocate on behalf of ILECs).

useful analyses of data in support of regulatory reform efforts. NECA is committed to working with Commission staff to explore additional ways to assist with the Commission's ongoing reform and administrative efforts.

VI. CONCLUSION

NECA hopes the information provided above will be helpful to the Commission in evaluating matters raised in the *Further Notice* in the proceeding. As discussed above, NECA believes there will be a need for Commission clarification as to impermissible expenses going forward, and that changes should apply on a prospective basis. For maximum effectiveness, such rules should be clear and simple for carriers, NECA, and USAC to administer. As discussed above, NECA's tariff and pooling processes can be adapted to implement differing SLC charges that may be used to recover costs in areas where support is disaggregated as a result of

competitive overlaps. In closing, NECA supports the Commission in its efforts to improve the administration of existing rate-of-return mechanisms, and looks forward to working with Commission staff to develop ways to improve these processes.

Respectfully submitted,

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May 12, 2016