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

In the matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
	)	
National Exchange Carrier Association, Inc. Proposed 2002 Modification of Average Schedule Formulas	)	
	)	
	)	

PETITION FOR RECONSIDERATION

National Exchange Carrier
Association, Inc.
80 S. Jefferson Road
Whippany, NJ 07981

August 29, 2002

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SUMMARY

NECA respectfully requests reconsideration of the Bureau's July 30, 2002 Order insofar as it rejected NECA's proposed Expense Adjustment Per Loop (EAPL) formula for distributing High Cost Fund (HCF) Universal Service support to average schedule companies, and instead approved a Cost Per Loop (CPL) formula that NECA had included, but not proposed, in its filing.

NECA's October 1, 2001 filing proposed the EAPL formula as the best available means for simulating the HCF payments that average schedule companies would receive it they were to perform Part 36 cost studies. NECA included a cost per loop formula in this filing only as "documentation supporting a lower bound of increased support payments to average schedule companies." NECA stated that the CPL formula continued to represent a biased estimator of expense adjustments, causing the CPL formula to produce HCF payments that are systematically lower than those received by representative cost companies and, therefore, did not comply with section 69.606(a) of the Commission's rules.

In rejecting NECA's EAPL formula in favor of the CPL formula, the Bureau makes, for the first time, an unprecedented and wholly unsupported determination that section 69.606(a)'s "payment simulation" criteria applies only to access formulas and does not apply to the HCF formula. This finding represents a dramatic abandonment of long-settled average schedule policy, is contrary to common sense, and should be reconsidered. With the exception of the HCF formula at issue in this proceeding, the Commission has consistently evaluated average schedule access element and universal service fund formulas according to the same section 69.606(a) standard.

In addition, by rejecting NECA's proposed EAPL formulas in favor of the CPL formula, the Bureau has significantly harmed average schedule companies. The Bureau's decision to apply this erroneous standard to 2002 payments has cost average schedule companies almost $10 million.

The Bureau should reconsider its rejection of NECA's EAPL formula. The Bureau should affirm that the "payment simulation" standard of section 69.606(a) applies to all average schedule formulas, including the HCF formula. The Bureau should then complete its analysis of NECA's *October 1, 2001 Filing* by concluding, as the data clearly show, that the EAPL formula is an unbiased predictor of USF payments to average schedule companies and approve NECA's EAPL formula as filed.

If the CPL formula is retained, however, NECA requests that the Bureau adopt a supplemental payment mechanism similar to the "reduction limitation" approach adopted in prior orders. This is necessary to ensure that the per loop support level for 16 companies expected to see reductions in their support levels under the CPL formula does not fall below the per loop support amount received in 2001.

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PETITION FOR RECONSIDERATION

The National Exchange Carrier Association, Inc. (NECA) respectfully requests reconsideration of the Bureau's July 30, 2002 *Order* in the above-captioned proceeding.[1]

Specifically, NECA requests reconsideration of the *Order* insofar as it rejected NECA's proposed Expense Adjustment Per Loop (EAPL) formula for distributing High Cost Fund (HCF) Universal Service support to average schedule companies, and instead approved a Cost Per Loop (CPL) formula that NECA had included, but not proposed, in its filing.

In the event the CPL formula is retained, NECA requests that the Bureau approve a supplemental payment mechanism for companies that will experience reductions in 2002 HCF support. Although the CPL formula is expected to increase settlements for the majority of companies, a small number of companies (16) will see reductions compared

[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, National Exchange Carrier Association, Inc. Proposed 2002 Modification of Average Schedule Formulas, *Order,* DA 02-1769 (rel. July 30, 2002)(*July 30 Order*).

to 2001 levels under the CPL formula. A supplemental payment mechanism, as described below, will avoid these unexpected reductions and help assure continued provision of universal service in the rural areas served by the affected small companies.

I. BACKGROUND

On October 1, 2001, NECA filed its 2002 *Modification of Average Schedule Universal Service Formulas* for Commission approval.[2] NECA's filing proposed to pay HCF support to average schedule companies based on an "expense adjustment per loop" (EAPL) formula. First introduced in 1998 and approved by the Commission for use in that year,[3] the EAPL formula provides the best available means for simulating the HCF payments that average schedule companies would receive if they were to perform Part 36 cost studies. In NECA's view, this "payment simulation" approach is required by section 69.606 of the Commission's rules, which specifies that average schedule formulas must "be designed to produce disbursements to an average schedule company that simulate the disbursements that would be received [by a cost company] that is representative of average schedule companies."[4]

NECA filed similar EAPL formulas for 1999, 2000, and 2001. In each of those years, the Bureau rejected NECA's proposed EAPL formulas on the basis that the

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[2] 2002 NECA Modification of Average Schedule Universal Service Formulas, National Exchange Carrier Association, Inc., October 1, 2001 (*October 1, 2001 Filing*).

[3] National Exchange Carrier Association, Inc. Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas, *Order*, 13 FCC Rcd 17351 (1998) (*June Order*).

[4] 47 C.F.R. § 69.606(a).

formulas failed to simulate the *costs per loop* of average schedule companies.[5] In place of NECA's proposed EAPL formulas, the Bureau directed NECA to adjust prior-year formula payments based on the percentage increase in loops served by average schedule companies.[6]

Adjusting average schedule HCF payments in this manner for three consecutive years caused average schedule companies to receive payments that were substantially below those that would have been received if these companies had conducted cost studies. NECA therefore sought Commission review of each of the Bureau's EAPL decisions, explaining that the proposed formulas were designed to simulate HCF expense adjustments (*i.e.*, payments), not cost per loop amounts, and that the Bureau should not have evaluated the proposed formulas on how well they simulated the wrong amounts.[7] NECA further explained that it would have been possible in each of those years to create a formula that was designed to simulate cost per loop amounts, but that doing so would not have satisfied the "payment simulation" requirement of section 69.606(a).

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[5] *See* National Exchange Carrier Association, Inc. Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas, *Order*, 14 FCC Rcd 4049 (1999)(*1999 Order*) (*aff'd*, 15 FCC Rcd 1819 (2000)(*Commission Order*)); National Exchange Carrier Association Inc. Proposed 2000 Modifications of Average Schedule Universal Service Formulas, *Order*, 15 FCC Rcd 5065 (2000)(*2000 Order*); and National Exchange Carrier Association, Inc. Proposed 2001 Modifications of Average Schedule Universal Schedule Service Formulas, *Order*, 16 FCC Rcd 25 (2001) (*2001 Order*).

[6] *See 1999 Order* at ¶ 14, *2000 Order* at ¶ 7, and *2001 Order* at ¶ 8.

[7] *See* National Exchange Carrier Association, Inc., Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas, ASD 98-96, Application for Review (fil. April 16, 1999). The Commission affirmed the Bureau's findings. *See Commission Order*. NECA filed a Petition for Review of *1999 Order* with the U.S. Court of Appeals, D.C. Circuit, which upheld the *Commission Order* without reaching the merits of the "payment simulation" issue. *See National Exchange Carrier Association, Inc. v. FCC*, 253 F.3d 1 (D.C. Cir 2001).

NECA's filings explained that the CPL formula suffers from "threshold bias," a statistical phenomenon resulting from the fact that some companies have costs per loop below the 115% eligibility threshold for HCF payments established by section 36.631 of the Commission's rules.[8] Threshold bias causes the CPL formula to produce HCF payments that are systematically lower than those received by representative cost companies.

NECA also explained that the "threshold bias" problem was becoming less significant in recent years, as the actual costs of most average schedule study areas increase above the 115% threshold level.[9] In 1999, for example, the CPL formula would have paid the entire population of average schedule companies about $3 million in HCF support, even though the actual expense adjustment of only the 200 companies participating in the sample exceeded $20 million. In 2002, payments under the CPL approach were expected to total approximately $30.35 million, an amount much closer to the $42.86 million expected to be paid under NECA's EAPL formula.[10]

NECA included a cost per loop formula in its October 1, 2001 filing.[11] NECA's filing explained that the CPL formula was presented "as documentation supporting a

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[8] *See generally* NECA Filing at I-10 – I-12.

[9] *Id.* at I-11.

[10] *Id.* at I-17. These are payment levels based on the capped national average cost per loop (NACPL) calculated at the time of NECA's average schedule filing. Subsequent adjustments to data by cost companies, which have caused an increase in the capped NACPL and conversions of average schedule companies to cost-based payments, reduced average schedule payments based on the approved formula to $24.6 million. Payments similarly calculated based on NECA's EAPL formula would have been $34.4 million.

[11] *See October 1, 2001 Filing* at III-34-37.

lower bound of increased support payments to average schedule companies" and that this presentation was "without prejudice to positions taken in NECA's Application for Review of the Bureau's *2000 Order* and *2001 Order*.[12] The CPL model was offered, rather, "as evidence of the increase in average schedule CPLs [*i.e.*, costs per loop]" and to "support the need for increases in payment levels."[13] NECA stated that the CPL formula continued to represent a biased estimator of expense adjustments and, therefore, did not comply with section 69.606(a) of the Commission's rules.[14]

Beginning in January 2002 and continuing for the next seven months, the Bureau conducted an extensive investigation of the differences between the EAPL formula and the CPL formula.[15] That investigation culminated in the release of the *July 30 Order,* which again rejected NECA's EAPL formula on the basis that it did not accurately predict cost per loop data of average schedule companies. In place of the proposed EAPL formula, the Bureau approved the CPL formula set forth in NECA's filing, finding that the CPL formula is, for average schedule carriers as a whole, "a more accurate predictor of costs per loop than NECA's proposed EAPL formula."

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[12] *Id.* at I-17.

[13] *Id.* at III-34.

[14] *Id.*

[15] *See e.g.,* Notice of *Ex Parte* Letters from Regina McNeil, Senior Attorney, NECA to William Caton, Secretary, FCC (February 25, 2002, February 26, 2002, and March 29, 2002) and Notice of *Ex Parte* Letters from Regina McNeil, Senior Attorney, NECA to Marlene H. Dortch, Secretary, FCC (April 2, 2002, April 3, 2002, April 5, 2002, April 12, 2002, April 26, 2002, and May 15, 2002).

In response to NECA's concerns that the CPL formula failed to satisfy the "payment simulation" standard set forth in section 69.606(a) of the Commission's rules, the *July 30 Order* found, for the first time, *that section 69.606 does not apply to average schedule HCF payments*. According to the Bureau:

> We reject NECA's claim that the Commission must adopt an EAPL formula because section 69.606(a) of the Commission's rules require that the approved formula accurately simulate "disbursements" to average schedule carriers. . . . Section 69.606(a), however, relates only to access settlements distributed to cost companies pursuant to section 69.607, not to universal service support provided pursuant to Part 36 of the Commission's rules. We therefore find that we are not required to adopt a formula based on its ability to predict expense adjustments per loop, *i.e.*, "disbursements," compared to a formula's ability to predict costs per loop.[16]

The *July 30 Order* goes on to direct the Universal Service Administrative Company (USAC), as administrator of the high-cost loop support mechanism, to provide support to average schedule carriers pursuant to the approved CPL formula retroactive to January 1, 2002. The *July 30 Order* also approves NECA's proposals for implementing the "Safety Net" and "Safety Valve" HCF support additives prescribed under the Commission's *RTF Order*,[17] and further approves

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[16] *July 30 Order* at ¶ 10 [internal citations omitted].

[17] Federal-State Joint Board on Universal Service, Multi Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, 96-45, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No 00-256*, 16 FCC Rcd 11244 (2001)(*RTF Order*).

NECA's proposed method for updating loop counts in average schedule areas served by competitive local exchange carriers.[18]

II. SECTION 69.606(a)'s "PAYMENT SIMULATION" STANDARD APPLIES TO *ALL* AVERAGE SCHEDULE FORMULAS, INCLUDING THE HCF FORMULA.

During the course of its investigation into NECA's proposal, the Bureau reviewed extensive information demonstrating that the EAPL formula does, in fact, model USF payments correctly. But rather than reach a conclusion it did not want to face, the *July 30 Order* makes an unprecedented and wholly unsupported determination that section 69.606(a)'s "payment simulation" criteria does not apply to the HCF formula. This finding represents a dramatic abandonment of long-settled average schedule policy and is contrary to common sense.

Section 69.606(a) reads, in its entirety:

> **§ 69.606 Computation of average schedule company payments**
>
> (a) Payments shall be made in accordance with a formula approved or modified by the Commission. Such formula shall be designed to produce disbursements to an average schedule company that simulate the disbursements that would be received pursuant to § 69.607 by a company that is representative of average schedule companies.

This rule was promulgated in 1983 as part of the Commission's original *Access Charge Order,* and has remained unchanged since.[19] It incorporated within the

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[18] NECA again requests that the Bureau resolve the correct rebasing of the HCF in July 2001 by allowing average schedule payment changes authorized by the Commission to be included in the rebasing calculation, as described in NECA's October 1, 2001 filing at page I-21.

[19] *See* MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, *Third Report and* Order, 93 FCC 2d 241 (1983). In contrast, subsection (b) of the rule, governing

Commission's access charge plan longstanding industry practice that allowed small telephone companies to receive compensation for the costs of originating and terminating long distance telephone calls on the basis of statistical formulas, or "average schedules," without the need to perform expensive and time-consuming jurisdictional cost allocation studies pursuant to Parts 36 and 69 of the Commission's rules.

In nearly every year since 1984, NECA has prepared modifications to *all* of its average schedule formulas – including the various "access" element formulas[20] and universal service fund formulas – according to the "payment simulation" standard set forth in section 69.606(a). With the exception of the HCF formula at issue in this proceeding, the Commission has consistently evaluated these formulas according to the same standard.

Nearly 20 years after the rule was promulgated, the *July 30 Order* now makes the unprecedented assertion that section 69.606(a) applies only to "access" formulas and not to universal service support provided pursuant to Part 36 of the Commission's rules.[21] In support of this novel proposition, the *Order* points only to the language of the rule, which on its face does not mention universal service fund disbursements. But that should hardly be surprising because *the universal service fund did not exist when section 69.606(a) was*

procedures for submission of average schedule formulas, has been revised in ways not relevant to this proceeding.

[20] *E.g.*, formulas governing settlements for the common line and various traffic sensitive access charge rate elements specified in Part 69 of the Commission's rules. *See* 47 C.F.R. §§ 69.101 – 69.131.

[21] *July 30 Order* at ¶ 10.

written. HCF payments to cost companies only became available in 1986.[22] Yet, the Commission has continuously permitted average schedule companies to receive HCF support amounts without ever suggesting that the language of section 69.606 did not govern those payments.[23] In fact from 1986 until April 1989, HCF payments were included as part of the common line access revenue payments since HCF amounts were included in the carrier common line access rate elements.[24] In April 1989, when recovery of the HCF was moved from CCL rates to direct IXC billing based on presubscribed line counts, the Commission did not change average schedule rules.[25]

The rule, admittedly, is out of date. Its reference to disbursements "pursuant to section 69.607," for example, reflects an early version of NECA pool distribution mechanics that was determined to be unworkable even before the pool became operational in 1984. NECA has previously explained to the Bureau that section 69.607, as well as all of the other Part 69 rules governing "hypothetical net balance"

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[22] *See* Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, 96 FCC 2d 781 (1984).

[23] In fact, the Commission itself determined that NECA's proposed revision to the USF formula for 1998 should be "proposed and considered as part of NECA's December 31 average schedule filing pursuant to Section 69.606." *See* NECA Proposed Modifications to the 1997 Interstate Average Schedule Formulas and Proposed Further Modifications to the 1997-98 Interstate Average Schedule Formulas, *Order on Reconsideration and Order*, 13 FCC Rcd 10116 at 10133, n. 81 (1997).

[24] *See* 47 C.F.R. 69.501(a) as established in MTS and WATS Market Structure, CC Docket No. 78-72, *Third Report and Order*, 93 FCC 2d 241 (1983).

[25] *See* MTS and WATS Market Structure, CC Docket No. 78-72, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, *Report and Order*, 2 FCC Rcd 2953 (1987). Effective April 1, 1989. Effective rule language for billing IXCs on PSL basis was 69.116 and 69.117.

disbursements, was waived by the Commission in the early 1980's and never became effective.[26]

Indeed, the Bureau's effort to bifurcate payment policies because a payment simulation rule is in Part 69 rather than Part 36 would render its rule 69.606(a) completely meaningless. This rule is the standard for all average schedule payments that are based on costs calculated consistent with Part 36 rules. If the mere placement of the rule in Part 69 is a reason for it not to apply to costs defined in Part 36, then the rule has no effect whatsoever. This cannot be a rational reading of the rule.

But rather than adopt a literal – and senseless – reading of the rule, the Commission has, for nearly 20 years, observed its intent, repeatedly approving average schedule formulas on the basis of whether they simulate interstate payments received by representative cost companies, regardless of whether the rules that determine costs that make up the payment amount are in Part 36, Part 69, or Part 54. In so doing, the Commission has continuously recognized that the "disbursement simulation" standard of

[26] *See* MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, *Order Granting Waiver,* 98 FCC 2d 327 (1984); MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, *Order Granting Waiver,* CC 2718 (rel. Feb. 22, 1985); MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, *Order Granting Waiver,* CC 4710 (rel. May 23, 1986). NECA provided Commission staff with information regarding the history of section 69.607 at an *ex parte* meeting that took place on January 28, 1999. *See also* Letter from Richard A. Askoff, Deputy General Counsel, NECA, to JoAnn Lucanik, Assistant Division Chief of the Division (Feb. 12 1999) (*February 12 Letter*). NECA explained that the disbursement simulation standard set forth in section 69.606(a) referenced only common line settlements because the Commission's original access rules contemplated that settlements for *all* access elements would flow to NECA pool members via that element. Before the access charge rules became effective, however, NECA determined that section 69.607 and related rules were unworkable, and accordingly NECA requested, and was granted, a continuing waiver of these rules. NECA also explained to the Commission that, under the original USF rules, carriers were to recover USF revenue requirements via the common line element, a fact that further supports the historical application of section 69.606(a) to NECA's USF formulas.

section 69.606(a) is flexible enough to encompass the myriad changes in cost company settlements that have occurred since the rule was promulgated. In fact, NECA's average schedule settlements are now based on formulas for common line, local switching, line haul distance sensitive, line haul non-distance sensitive, intertoll switching, special access, rate-of-return formulas, SS7 signaling, universal service contributions, common line line port shifts, common line transport interconnection charge (TIC) shifts, equal access, network administration, local switching support (LSS), and high cost loop (HCF) support. Of these, only the first seven formulas reflected access settlements available to cost companies when section 69.606(a) was promulgated.[27]

The *July 30 Order's* finding that section 69.606(a) only applies to "access" settlements is contrary to nearly 20 years of Commission precedent and industry practice, and should, therefore, be reconsidered. Section 69.606(a) was intended to assure that average schedule companies receive interstate settlements that are comparable in amount to those received by representative cost companies, regardless of whether those settlements are based on Part 69 rules or Part 36 rules. The Bureau should not abandon the "payment simulation" standard simply because it does not like the results that occur when that standard is followed.

III. FAILURE TO APPLY THE "PAYMENT SIMULATION" STANDARD TO HCF SETTLEMENTS HARMS AVERAGE SCHEDULE COMPANIES.

The Bureau has made clear its preference for a formula that simulates costs per loop of average schedule companies rather than expense adjustments or payments. The

[27] The remaining formulas were added since the initial set of formulas was approved.

July 30 Order explains that the Commission has consistently rejected NECA's proposed EAPL formula proposals since 1999 because those formulas did not accurately simulate cost per loop data of sample average schedule companies.[28]

The Bureau's preference for a cost per loop formula is based on the theory that, since a cost company's cost per loop is compared to the 115% and 150% "thresholds" established in the Commission's Part 36 rules to determine its universal service payments for cost companies, the average schedule formula should be a cost per loop formula as well.

As explained above, however, the CPL formula approach suffers from the problem of "threshold bias", which systematically causes the formula to underestimate average schedule company payments. To avoid this bias, NECA developed the EAPL formula approach. [29]

The EAPL formula has been shown to be an unbiased predictor of average schedule payments. Extensive data submitted to the Bureau during the course of its ten-month investigation of the proposed formulas shows, unequivocally, the extent to which the EAPL formula accurately predicts HCF payments for average schedule companies.

[28] *See July 30 Order* at ¶ 4. NECA has consistently sought review of each Commission decision applying the "cost per loop" simulation standard to NECA's proposed EAPL formula since 1999. The Bureau also applied this standard to NECA's 1998 EAPL formula, but in that case approved NECA's proposed formula. *See June Order*. Since the error was harmless in that case, NECA did not seek review of the Bureau's 1998 decision.

[29] NECA's filing contains a detailed description of the differences between the two methodologies, including an explanation of how the EAPL formula is derived from the cost per loop data of sample average schedule companies. In fact, NECA's EAPL formula is based on the same data used to produce the CPL formula – only the last steps of the process differ between methodologies. *See generally October 1, 2001 Filing* at III.

Documentation presented to the Bureau also shows that while the CPL formula is an unbiased predictor of cost per loop data, it is a biased predictor of expense adjustments (payments).[30] These symmetrical performance characteristics simply reflect the fact that each formula is good at doing the job it is designed to do, and not necessarily good at doing other jobs.

The Bureau's *July 30 Order* focuses unfairly on only half of this analysis. The Order states that "NECA agrees that the CPL formula is an unbiased predictor of costs per loop, and that its EAPL formula is a biased predictor of costs per loop."[31] While true, this conveniently ignores the voluminous data NECA presented showing that the opposite is also true – namely, that, while the EAPL formula may be a biased predictor of costs per loop, it is an accurate predictor of expense adjustments (payments) per loop.

By rejecting NECA's proposed EAPL formulas based on incomplete analyses and application of an *ad hoc* "cost per loop" simulation standard, the Bureau has significantly harmed average schedule companies. As noted above, payments under the CPL formula in 2002 were estimated to fall almost $10 million below levels that companies would have received if they conducted cost studies.[32]

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[30] Put another way, if the CPL formula is good at predicting cost per loop and bad at predicting expense adjustments, the EAPL formula is likewise good at predicting expense adjustments, but bad at predicting cost per loop.

[31] *July 30 Order* at ¶ 8.

[32] Since the Commission's rejection of NECA's EAPL formula in 1999, 63 average schedule companies have converted to cost. These companies have received a cumulative total of $35M more in universal service funding than if they had remained as average schedule.

The Bureau must, therefore reconsider its rejection of NECA's EAPL formula. It should do so by first, affirming that the "payment simulation" standard of section 69.606(a) applies to all average schedule formulas, including the HCF loop cost formula. Second, the Bureau should complete its analysis of NECA's *October 1, 2001 Filing* by concluding, as the data clearly show, that the EAPL formula is an unbiased predictor of USF payments to average schedule companies. Having completed that analysis under the proper standard, the Bureau should approve NECA's EAPL formula as filed.

IV. IN THE EVENT THE COST PER LOOP FORMULA IS RETAINED, THE BUREAU SHOULD APPROVE A SUPPLEMENTAL PAYMENT MECHANISM FOR COMPANIES EXPERIENCING SUPPORT REDUCTIONS.

If the Bureau does not revise its decision to reject NECA's EAPL formula in favor of the CPL formula, it should at a minimum approve a supplemental payment mechanism for a small number of companies that will experience per-line reductions in 2002 payments under the CPL formula compared to settlements they were receiving in 2001.

Average schedule companies HCF settlements in 2001 were based on an EAPL formula that NECA introduced in 1998, adjusted in 1999, 2000, and 2001 by Bureau orders, to reflect overall increases in loops served by average schedule companies in each of those years.[33] Some companies that would have experienced per line settlement

[33] *See 1999 Order* at ¶ 14, *2000 Order* at ¶ 7, and *2001 Order* at ¶ 8. An additional upward adjustment to average schedule HCF payments was made in 2001 as a consequence of the Commission's *RTF Order*, which significantly increased HCF payments to all companies by re-basing the USF "cap" imposed under section 36.631(c) of the Commission's rules. *See Letter* from Kenneth P. Moran, Chief, ASD, FCC to Richard A. Askoff, Deputy General Counsel, NECA (Dec. 7, 2001). *See also RTF Order*.

reductions under the Bureau's loop growth adjustment mechanism were allowed to receive "reduction limitation" settlements intended to avoid undue support reductions in those years.[34]

Changing settlement methods from existing methods to the new CPL formula produces shifts in settlement distributions among companies. Even though most companies benefit under the CPL formula compared to prior settlement methods, some companies are expected to experience reductions in support as a result of the Bureau's Order.

Most reductions in settlement amounts will not be significant. In a few cases, however, companies are expected to lose substantial HCF settlements on a per-line basis, potentially jeopardizing provision of universal service in the areas they serve. Sixteen (16) companies experience losses ranging from $394 per year to $11,226 per year or $.30 per loop per year to $111.13 per loop per year.

If the Bureau revises its decision to reject NECA's EAPL formula, these supplemental payments would not be necessary because these companies would receive payments reflecting their correct expense adjustments. If the CPL formula adopted in the *July 30 Order* is retained, however, NECA requests that the Bureau adopt a supplemental payment mechanism, as in recent years. Specifically, NECA recommends that the Commission approve NECA's calculation of a supplemental support amount for these companies to ensure that their support levels do not fall below the support amount they received in 2001. These calculations would be done on an uncapped basis, then adjusted

[34] National Exchange Carrier Association, Inc. Proposed Modifications to the 1998-99 Interstate Average Schedule Formulas, *Order*, 13 FCC Rcd at 17357 (1998).

downward to reflect the capped NACPL. A schedule of proposed supplemental payment amounts is provided as Attachment 1.

V. CONCLUSION

NECA respectfully requests that the Bureau reconsider its rejection of NECA's EAPL formula. NECA requests that the Bureau reverse its finding that section 69.606(a) applies only to access settlements and not universal support, instead affirming that the "payment simulation" standard of section 69.606(a) applies to all average schedule formulas, including the HCF loop cost formula. In addition, the Bureau should reconsider the EAPL formula, concluding, as the data clearly show, that the EAPL formula is an unbiased predictor of USF payments to average schedule companies and, accordingly, approve NECA's EAPL formula as filed.

In the event that the CPL formula is retained, the Bureau should approve a supplemental payment mechanism for companies experiencing support reductions.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: /s/ Richard A. Askoff
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August 29, 2002

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Attachment 1

Schedule of Proposed Annual Supplemental Payments

	Study Area	USF Loops	2001 Payments Capped	2002 CPL Model Payments Capped	2002 Proposed Supplement Capped	2002 Proposed Supplement Capped per Loop	2002 Total Proposed Capped Payments
1	170277	46	$10,331	$6,835	$3,338	$72.57	$10,173
2	320756	1314	$16,042	$13,891	$394	$0.30	$14,285
3	330848	212	$33,028	$28,797	$4,047	$19.09	$32,844
4	341021	114	$16,336	$15,291	$775	$6.80	$16,066
5	341041	110	$16,636	$14,848	$1,679	$15.26	$16,527
6	341092	102	$16,288	$13,942	$2,243	$21.99	$16,185
7	351126	219	$33,531	$29,585	$3,846	$17.56	$33,431
8	351243	109	$16,636	$14,736	$1,806	$16.57	$16,542
9	361348	69	$13,977	$9,915	$3,977	$57.64	$13,892
10	361500	40	$10,492	$5,995	$4,445	$111.13	$10,440
11	371590	99	$16,087	$13,595	$2,376	$24.00	$15,971
12	381601	52	$11,106	$7,660	$3,271	$62.90	$10,931
13	382247	246	$46,013	$34,671	$11,226	$45.63	$45,897
14	462206	77	$15,000	$10,934	$4,035	$52.40	$14,969
15	462210	68	$13,683	$9,786	$3,785	$55.66	$13,571
16	613005	38	$9,654	$5,711	$3,848	$101.26	$9,559
	Total:		$294,840	$236,192	$55,091		$291,283

NOTE:

1. Payments shown reflect the current capped NACPL of 256.76, which is subject to change with USF data updates.
2. The sum of Supplemental Capped Payments and 2002 CPL Model Capped payments do not equal to 2001 Capped Payments although, on an uncapped basis they are equal.
3. Some other companies, who would have increases in uncapped expanse adjustment based on the 2002 CPL model, will also experience decreases because the 2002 capped NACPL exceeds the 2001 capped NACPL.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Reconsideration was served on this 29th day of August 2002 by electronic delivery and by first-class mail to the persons listed below.

By : /s/ Shawn O'Brien
Shawn O'Brien

The following parties were served:

Marlene H. Dortch
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