

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
Comprehensive Review of the Universal Service) WC Docket No. 05-195
Fund Management, Administration, and Oversight)

**REPLY COMMENTS OF THE
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

The National Exchange Carrier Association, Inc. (NECA) submits this Reply in response to comments filed on November 13, 2008 in the above-captioned proceeding.¹

In its initial comments, NECA suggested a number of ways to improve USF audit procedures so as to reduce unnecessary administrative costs, while preventing waste, fraud and abuse.² NECA also explained the importance of assuring the administrator maintains a high level of knowledge regarding the telecommunications industry, in particular, the circumstances faced by small telecommunications carriers providing service in rural areas.³ In addition, NECA provided suggestions for ways in which the Commission could make Universal Service decision-making processes more transparent, allowing for diverse input from affected companies.⁴

Comments filed in response to the NOI agree with the importance of maintaining expertise in USF administration.⁵ Commenters also support the need for improvements in USF

¹ *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Inquiry, 23 FCC Rcd 13583 (2008) (NOI).

² See NECA Comments, WC Docket No. 05-195 (Nov. 13, 2008), at 2-6 (NECA).

³ *Id.* at 9.

⁴ *Id.* at 10-12, citing NECA Reply Comments in WC Docket at 05-195 (Dec. 19, 2005), at 10 (suggesting, for example, the Commission consider requiring the Administrator to include in its periodic filings a section on pending issues so as to assist program participants identify potential problems, and enable interested parties to provide comments and suggestions for potential solutions before controversies arise.)

⁵ NECA at 10. See e.g., OPASTCO at 11; TCA at 4-5; NASUCA at 3; Qwest at 13; Alexicon at 5-6.

decision-making processes, including a greater degree of transparency with respect to administrative determinations.⁶

The commenters also demonstrate that existing structural separation requirements between NECA and USAC specified in Commission rules adequately assure NECA does not have any ability to influence the governance or operation of USAC.⁷ USAC's comments explain in this regard that current Commission rules "unambiguously" require USAC's independence from NECA, and assure that NECA has no management or operational control over USAC.⁸ USAC points to rules specifically requiring NECA and USAC to maintain separate books of account, as well as rules designating the FCC Chairman, not NECA, as responsible for selecting the members of USAC's Board of Directors and for approving the selection by the USAC Board of the USAC Chief Executive Officer.⁹ USAC further explains it is required to demonstrate compliance with these rules as part of its annual audit, and that these audits confirm the relationship is "arms-length and in compliance with the Commission's already strict rules designed to ensure USAC's neutrality."¹⁰

⁶ *E.g.*, OPASTCO at 2 (suggesting the Commission require USAC to publish its administrative rules and procedures with an invitation for industry stakeholders to provide input.). OPASTCO also correctly points out that, while NECA and USAC perform different functions, the two entities "must have the ability to work together, and to share data and any other information necessary to fulfill their respective missions." *Id* at 12. *See also* NECA at 11-13.

⁷ OPASTCO at 12-13. *See also* TCA at 5 ("the Commission's rules forbid the Administrator from making policy, interpreting unclear provisions of the statute or rules, or interpreting the intent of Congress. In the event of uncertainty, the Administrator is required to seek guidance from the Commission, not NECA.")

⁸ USAC at 78-79. NASUCA asserts the Commission should increase transparency by "striv[ing] to ensure that the data provided by NECA is subject to public scrutiny." NASUCA at 5. In fact, all high cost loop (HCL) data NECA submits to the Commission and USAC in compliance with Commission rules, *see* 47 C.F.R. § 36.613, is currently posted in the statistical reports section of the Commission's website. *See, e.g.*, <http://www.fcc.gov/wcb/iatd/neca.html>. In addition, all recipients of ICLS and LSS (including NECA acting as an agent for its member companies) submit data to USAC as required by Part 54 of the Commission's rules. *See*, 47 CFR §§ 54.301(b)&(e) and 54.903(a)(1)&(4). The degree to which this information is made publicly available, however, is at the discretion of USAC and the Commission, not NECA.

⁹ USAC at 79-80. *See also* 47 C.F.R. §§ 54.703 and 54.704.

¹⁰ *Id.* at 81. The American Library Association (at 8) suggests there may be a conflict of interest between NECA and USAC because "NECA works as a contractor for USAC, yet USAC is a subsidiary of NECA." NECA does not, however, perform any functions under contract to USAC.

Both NECA and USAC agree, however, the Commission should consider divestiture of USAC as a way of removing any appearance of potential influence as well as to simplify business arrangements for USAC.¹¹ The Commission should consider this recommendation in further proceedings on USF administrative issues.¹²

A number of commenters expressed concern regarding financial and administrative burdens placed on companies in connection with audits conducted by USAC and the Commission's Office of Inspector General (OIG).¹³ In this regard, two commenters ask the Commission to alleviate these burdens at least to some extent by permitting carriers to assign these costs directly to the interstate jurisdiction.¹⁴ These commenters reference a June 4, 2008 letter sent by NECA to its member companies, which among other things, explained NECA's view that expenses associated with USF audit compliance must be booked to Account 6720 and allocated between the jurisdictions in accordance with applicable Part 36 procedures.¹⁵

NECA recognizes the extreme financial burden the USAC/OIG audits have on affected parties, and for this reason stressed the need for changes to the current auditing process/structure

¹¹ NECA at 13; USAC at 82-83. As USAC's comments explain, the parent-subsidiary relationship between NECA and USAC restricts to some extent USAC's ability to obtain insurance policies on its own and to make changes in its accounting practices, including conformance of its fiscal year to match the Commission's. USAC at 81.

¹² The Commission should not, however, adopt GCI's suggestion that the Commission require publication of additional individual company line-item data supporting high cost support calculations. GCI at 34. Expanding current universal service data filing requirements to encompass revenue requirements for all RoR carriers would involve a massive increase in submissions and impose substantial administrative burdens on small companies. In contrast, the Commission has recently granted forbearance from such requirements for larger companies. *See, e.g., Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204, *Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273, Memorandum Opinion and Order, FCC 08-271 (rel. Dec. 12, 2008).

¹³ NECA at 5. *See e.g., Texas Statewide Telephone Coop.* at 2-3; TCA at 2-3.

¹⁴ NTCA at 12; Alexicon at 3-4. *See also* National Telecommunications Cooperative Association, Jurisdictional Separations and Referral to the Federal-State Joint Board, *Petition for Expedited Clarification and/or Limited Waiver of the Commission's Part 36 Rules*, CC Docket 80-286 (Aug. 29, 2008) (*NTCA Petition*).

¹⁵ *See* Letter from Carol Brennan and Richard Snopkowski, NECA, to Cost Company Pool Participants (June 4, 2008) (NECA June 4 Letter). *See also, Clarification of the Role of Direct Assignments in the Jurisdictional Separations Process*, AAD 91-48, *Letter of Interpretation*, 6 FCC Rcd 5068 (1991).

in our initial comments.¹⁶ Of course, should the Commission clarify that direct assignment of these expenses is permitted (*e.g.*, by granting NTCA’s petition for a limited waiver of Part 36 rules or by addressing the direct assignment issue through other means), NECA will comply with Commission directives.¹⁷

In another point related to the USAC/OIG audits, NECA explained the need for accurate information on the extent to which USF payments are erroneous.¹⁸ Since initial comments have been filed, the OIG released preliminary data for the second round of USAC/OIG audits estimating a 23.3% rate of erroneous payments in the High Cost Fund, which translates to an estimated \$970.3 million in improper payments.¹⁹

A layperson reading the OIG’s report, without the benefit of understanding the Office of Management and Budget’s (OMB) definition of “erroneous payment”,²⁰ is left to believe that 23.3% of High Cost Funds have in fact been paid out improperly. However, it appears a large portion of payments have been identified as erroneous due to documentation issues or audit disclaimers, of these, a significant portion are likely to be found legitimate on further review.²¹

¹⁶ NECA at 5.

¹⁷ *See NTCA Petition.*

¹⁸ NECA at 6-7.

¹⁹ Office of the Inspector General, Federal Communications Commission, *The High Cost Program Initial Statistical Analysis of Data from the 2007/2008 Compliances Attestation Examinations* (Nov. 26, 2008).

²⁰ The OMB in 2006 defined “erroneous payments” as “any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments and underpayments (including inappropriate denials of payment or service). An improper payment includes any payment that was made to an ineligible recipient or for an ineligible service, duplicate payments, payments for services not received, and payments that are for the incorrect amount. In addition, when an agency’s review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an error.” *See* Memorandum for the Heads of Executive Departments and Agencies, from Rob Portman, OMB, M—06-23 (Aug. 10, 2006), Appendix C, at 2.

²¹ *See* Joan Engebretson, *What the FCC Didn’t Tell Us About the USF Audit*, Telephony Online (Dec. 8, 2008), <http://telephonyonline.com/regulatory/commentary/universal-service-fund-audit-1208/index.html>.

Reporting these as “erroneous” appears to materially overstate the extent of actual incorrect or improper high cost disbursements.²²

NECA’s member companies are anxious the Commission recognize they are complying with FCC rules and USF procedures.²³ Rather than portray high cost funding mechanisms as having unacceptably high levels of erroneous payments, the Commission should instead implement suggestions to improve audit processes, as described in comments by NECA and others.²⁴ This would be a positive step in assuring that payments are, in fact, distributed properly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard A. Askoff", is centered on the page. The signature is fluid and cursive.

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December 15, 2008

²² *Id.*

²³ NECA at 7.

²⁴ *See e.g.*, Texas Statewide Telephone Coop. at 2-3; TCA at 2-4; NTCA at 5-6; USTelecom at 2-4; Verizon at 3; Qwest at 6-7.

CERTIFICATE OF SERVICE

I hereby certify that a copy of NECA's Reply was served this 15th day of December 2008, by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
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