

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

In the Matters of:	)	
	)	
Changes to the Board of	)	
Directors of the National Exchange	)	CC Docket No. 97-21
Carrier Association, Inc.	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

**REPORT and ORDER and  
SECOND ORDER on RECONSIDERATION**

Adopted: July 17, 1997

Released: July 18, 1997

By the Commission: Chairman Hundt and Commissioners Quello and Ness issuing separate statements; Commissioner Chong dissenting and issuing a separate statement.

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## I. INTRODUCTION

1. In the Universal Service Order released on May 8, 1997,<sup>1</sup> we determined that, subject to changes in its governance, the National Exchange Carrier Association (NECA) should serve as the temporary administrator of the universal service support mechanisms established pursuant to section 254 of the Communications Act of 1934, as amended.<sup>2</sup> In this Order, we direct NECA to create an independently functioning not-for-profit subsidiary through which it will administer temporarily certain portions of the federal universal service support mechanisms. We conclude that NECA's creation of an independently functioning subsidiary, in accordance with the directives set forth below, will assure significant industry-wide representation in the administration of the universal service support mechanisms.

2. In this Order, we also reconsider, on our own motion,<sup>3</sup> our determination in the Universal Service Order that the universal service administrator should select a subcontractor to manage the applications process for schools and libraries. In lieu of the selection of a subcontractor, we direct that NECA create an unaffiliated, not-for-profit corporation to manage

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<sup>1</sup> Federal-State Joint Board on Universal Service, *First Report and Order*, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1996) (hereinafter, Universal Service Order), at para. 866.

<sup>2</sup> For a history of NECA's governance structure, see Changes to the Board of Directors of the National Exchange Carrier Association, Inc., *Notice of Proposed Rulemaking and Notice of Inquiry*, CC Docket No. 97-21, FCC 97-11 (rel. Jan. 10, 1997), at paras. 3-5.

<sup>3</sup> See 47 C.F.R. § 1.108 ("The Commission may, on its own motion, set aside any action made or taken by it within 30 days from the date of the public notice of such action, as that date is defined in § 1.4(b) of these rules").

the application and other processes relating to administering the schools and libraries program. We further direct that NECA create another unaffiliated, not-for-profit corporation to manage specified portions of the rural health care program. We conclude that the establishment of these corporations will bring to the administration of the schools and libraries and rural health care programs the necessary expertise to ensure that the programs are administered efficiently and in the best interests of their intended beneficiaries. To ensure continuity in, and efficient administration of, the schools and libraries and rural health care programs, we also conclude that these corporations should continue to perform their designated functions even after the date on which the permanent administrator is appointed. In short, they will perform the same functions for the permanent administrator as they will for the temporary administrator. In making this determination, we reconsider the scope of the functions that will be performed by the temporary administrator and by the permanent administrator, which will be selected pursuant to the Federal Advisory Committee Act (FACA).<sup>4</sup> Specifically, in this Order we assign to the unaffiliated corporations all functions associated with administering the schools and libraries and rural health care programs, except those relating to billing and collecting universal service contributions and disbursing support. Furthermore, we assign to both NECA's independent subsidiary and the permanent administrator, selected under FACA, responsibility for administering the universal service support mechanisms for high cost areas and low-income consumers, as well as collection and disbursement functions associated with the schools and libraries and rural health care programs. We also direct NECA's independent subsidiary to create a special committee of that subsidiary's Board of Directors with the power and authority to make binding decisions on designated issues relating to the universal service support mechanisms for high cost areas and low-income consumers. We further direct NECA to submit to the Commission the independent subsidiary's and the unaffiliated corporations' articles of incorporation and bylaws for review to ensure, prior to their incorporation, compliance with Commission rules. The unaffiliated corporations, NECA's independent subsidiary, and the special committee shall be accountable to the Commission for their performance of all functions relating to the administration of the universal service support mechanisms. Thus, the Commission may take appropriate action including, for example, directing the removal of one or more directors or recommending the performance of an audit by an independent auditor, if the Commission finds that the independent subsidiary is not performing its functions in accordance with Commission rules or if it is determined that its administrative expenses are unreasonable. Finally, in this Order we establish requirements by which the temporary and permanent administrators will calculate, and the Commission will approve, the quarterly universal service contribution factors.

## II. BACKGROUND

### A. The Universal Service Proceeding

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<sup>4</sup> 5 U.S.C. App. § 4(a) and 3(2)(C).

3. The proceeding culminating in our May 8, 1997 Universal Service Order began on March 8, 1996 when the Commission initiated a rulemaking<sup>5</sup> to reform our system of universal service support, pursuant to section 254 of the Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996 (the 1996 Act).<sup>6</sup> In the 254 NPRM, the Commission sought comment on issues relating to the administration of the new universal service support mechanisms under section 254.<sup>7</sup> The Commission noted that the entity chosen to serve as administrator must operate in an efficient, fair, and competitively neutral manner and the Commission set forth tentative criteria for selecting the administrator.<sup>8</sup> The Commission further noted that the administrator would be required to process information, create and manage databases on a large scale, calculate the proper amount of each carrier's contribution, and apply eligibility criteria consistently, in order to ensure that only carriers eligible for support are compensated by the universal service support mechanisms.<sup>9</sup>

4. On November 8, 1996, the Federal-State Joint Board on Universal Service (Joint Board) released a Recommended Decision<sup>10</sup> recommending, *inter alia*, that the Commission appoint a universal service advisory committee pursuant to the Federal Advisory Committee Act (FACA)<sup>11</sup> to recommend a neutral, third-party permanent administrator, selected through competitive bidding.<sup>12</sup> The Joint Board recommended four criteria for selection of a permanent administrator of the universal service support mechanisms. The chosen administrator, including its Board of Directors, must: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in non-administration-related proceedings; (3) not be aligned or associated with any particular industry segment; and (4) not have a direct financial interest in the support mechanisms established by the Commission. In addition, the Joint Board recommended that the

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<sup>5</sup> Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing a Joint Board*, CC Docket No. 96-45, FCC 96-93 (rel. Mar. 8, 1996) (hereinafter, 254 NPRM).

<sup>6</sup> 47 U.S.C. § 254. *See also* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>7</sup> 254 NPRM at paras. 127-130.

<sup>8</sup> *Id.* at para. 128.

<sup>9</sup> *Id.*

<sup>10</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 96J-3 (rel. Nov. 8, 1996) (hereinafter, *Recommended Decision*). On November 18, 1996, the Commission's Common Carrier Bureau issued a public notice seeking comment on the Joint Board's recommendations. FCC Common Carrier Bureau Public Notice Seeking Comment on Universal Service Recommended Decision, DA 96-1891 (Nov. 18, 1996) (hereinafter, *Public Notice*).

<sup>11</sup> 5 U.S.C. App. § 4(a) and 3(2)(C).

<sup>12</sup> Recommended Decision, 12 FCC Rcd at 505.

permanent administrator also must have the ability to process large amounts of data and bill large numbers of carriers.<sup>13</sup> Finally, the Joint Board recommended that "the Commission and the advisory board require the administrator to implement the support mechanisms no later than six months after its appointment."<sup>14</sup>

5. Noting that parties in the record questioned NECA's ability to appear as a neutral arbiter among contributing carriers because of the composition of NECA's current membership and Board of Directors, as well as its advocacy positions in several Commission proceedings, the Joint Board declined to recommend the appointment of NECA as the permanent administrator of the universal service support mechanisms.<sup>15</sup> The Joint Board did recommend, however, that the Commission remove any regulatory barriers to NECA's rendering itself a neutral, third party and eliminating what the Joint Board described as NECA's current appearance of bias in favor of incumbent local exchange carriers (ILECs).<sup>16</sup> The Joint Board further recommended that NECA be eligible to compete in the advisory board's process for selecting a permanent administrator if changes to NECA's membership and governance, in fact, render NECA a neutral, third party.<sup>17</sup>

6. Regarding the appointment of a temporary administrator, the Joint Board recommended that NECA be appointed the temporary administrator of the new universal service support mechanisms in order to bring support for telecommunications services to eligible schools, libraries, and rural health care providers as quickly as possible.<sup>18</sup> The Joint Board also recommended that, prior to appointing NECA the temporary administrator, the Commission should "permit NECA to add significant, meaningful representation" of non-ILEC interests to the NECA Board of Directors.<sup>19</sup>

7. On May 8, 1997, the Commission released an order adopting, *inter alia*, the Joint Board's recommendations regarding the selection of both a permanent and temporary administrator. The Order requires the creation of a Federal Advisory Committee to recommend a permanent universal service administrator in accordance with the Joint Board's four recommended

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 506.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 506-507.

<sup>19</sup> *Id.* at 506.

criteria for the selection of a permanent administrator.<sup>20</sup> The Commission concluded that NECA, as currently structured, does not satisfy those criteria and, therefore, is not qualified to be the permanent administrator. The Commission concluded, however, that if changes to its Board of Directors or corporate structure enable it to satisfy the Joint Board's recommended criteria for the selection of a permanent administrator, NECA would be permitted to participate in the permanent administrator selection process. In the interest of speedy implementation of the universal service support mechanisms, the Commission also adopted the Joint Board's recommendation that NECA temporarily administer the universal service support mechanisms, subject to changes in NECA's governance that would render it more representative of non-ILEC interests. Finally, the Commission noted that the temporary administrator may not commit universal service support mechanism resources until it is appointed by the Commission.

## **B. The NECA Proceeding**

8. On October 18, 1996, NECA requested that the Commission modify the size and composition of NECA's Board of Directors to reflect the interests of competitive local exchange carriers (CLECs), interexchange carriers (IXCs), wireless carriers, and non-carriers such as schools, libraries, rural health care providers, and states.<sup>21</sup> NECA proposed adding to its current 15-member Board of Directors six directors from groups that would have a substantial stake in the new universal service support mechanisms. NECA explained that three directors would represent different segments of the telecommunications industry such as IXCs, wireless carriers, and CLECs, and three would represent non-carriers, such as schools, libraries, rural health care providers, and states. NECA further stated that the new Board members would participate in NECA's administration of the current universal service, Lifeline Assistance, and Long Term Support (LTS) programs (i.e., programs predating the Commission's Universal Service Order), as well as Board oversight of auditing, finance, and general corporate matters. Access tariffs and pool revenue distribution, however, would continue to be the responsibility of the access charge committees, consisting of current members of NECA's Board. Thus, 15 of the 21 directors would continue to be direct representatives of ILECs or outside directors chosen by ILECs. NECA argued that this proposal represented a reasonable step for an interim period until a permanent administrator is chosen because it would allow broader representation on universal service matters, while preserving the existing Board to direct NECA's other administrative functions.<sup>22</sup>

9. On January 10, 1997, the Commission issued a Notice of Proposed Rulemaking and Notice of Inquiry addressing NECA's October 18th proposal and the Joint Board's

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<sup>20</sup> Universal Service Order at para. 861.

<sup>21</sup> Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, October 18, 1996 (hereinafter, NECA October 18, 1996 Letter).

<sup>22</sup> NECA October 18, 1996 Letter.

recommendation that the Commission permit NECA to alter its governance structure.<sup>23</sup> The NECA NPRM sought comment on how the Commission should amend its rules to enable NECA to reform its Board of Directors in a manner that would enable it to become eligible to serve as the temporary administrator of the universal service support mechanisms. The NECA NPRM tentatively concluded that, in order for NECA to be eligible to serve as temporary administrator, NECA's Board must become more representative of the telecommunications industry as a whole. Accordingly, the NECA NPRM proposed to act upon the Joint Board's recommendations by amending section 69.602 of the Commission's rules<sup>24</sup> to permit NECA to modify the size and composition of its Board to make it more representative of the telecommunications industry. The NECA NPRM also sought comment on whether other sections of Part 69 should be modified in conjunction with the proposed changes to section 69.602. In the accompanying NECA NOI, the Commission sought comment on what additional rule changes the Commission should make to enable NECA to become a neutral, third party, and thus, eligible for consideration as the permanent universal service administrator.<sup>25</sup>

10. In the NECA NPRM, the Commission also sought comment on whether NECA's October 18th proposal would satisfy the Joint Board's recommended criteria for a temporary administrator, and particularly whether the proposal would assure "significant, meaningful representation" of non-ILEC interests, given that ILEC interests would account for more than 71 percent of the Board's total composition.<sup>26</sup> We asked commenters to address whether any legal limitations would preclude NECA from creating an advisory committee or, alternatively, a new subset of directors and confining the latter's responsibilities solely to matters relating to the administration of the universal service support mechanisms.<sup>27</sup> We asked commenters taking the position that NECA's proposal does not meet the Joint Board's recommended criteria to set forth a specific alternative that would satisfy the Joint Board's criteria.<sup>28</sup> Moreover, we asked commenting parties to identify other structural changes to NECA's Board or alternatives to NECA's proposal that would help ensure that NECA has added significant, meaningful

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<sup>23</sup> Changes to the Board of Directors of the National Exchange Carrier Association, Inc., *Notice of Proposed Rulemaking and Notice of Inquiry*, CC Docket No. 97-21, FCC 97-2 (rel. Jan. 10, 1997), *errata*, mimeo 71784, CC Docket No. 97-21, (rel. Jan. 15, 1997) (NECA NPRM and NOI).

<sup>24</sup> 47 C.F.R. § 69.602. Section 69.602 generally defines the composition of NECA's Board of Directors.

<sup>25</sup> NECA NOI at paras. 15, 16. We will address any rule or structural changes pertaining to NECA's eligibility to compete for the position of permanent administrator in a Further Notice of Proposed Rulemaking that will reflect comments received in response to the Joint Board's Recommended Decision and the NECA NOI.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

representation for non-ILEC interests.<sup>29</sup>

11. Also on January 10, 1997, NECA requested that the Commission consider a revised proposal in lieu of NECA's October 18th proposal, based on NECA's finding that it might not be possible to develop a satisfactory governance proposal within the context of a single administrative organization.<sup>30</sup> Under the January 10th proposal, NECA would not make changes to its current Board of Directors but would establish instead a separate subsidiary to administer the universal service support mechanisms.<sup>31</sup> NECA proposed that, once the Commission appointed NECA the temporary administrator and authorized it to commit resources to fulfill its administrative duties, NECA would create a wholly-owned subsidiary, designated as the Universal Service Administrative Company (USAC).<sup>32</sup> According to NECA, USAC would have a balanced, representative Board based on Commission recommendations and would include some representation from the current NECA Board.<sup>33</sup> Although USAC would have full control over the administration of the new universal service support mechanisms, certain NECA personnel would be dedicated to USAC functions on a full-time basis and other NECA employees would perform certain functions for USAC as needed.<sup>34</sup> Under NECA's proposal, USAC's labor costs would be recovered on a "chargeback" basis in accordance with the allocation procedures set forth in NECA's cost allocation manual.<sup>35</sup> Thus, as we understand the January 10th proposal, USAC's accounting structure would be a component of NECA's accounting system for all of NECA's operations.<sup>36</sup> NECA also noted that USAC would compete in any competitive bidding

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<sup>29</sup> *Id.*

<sup>30</sup> Letter from Bruce Baldwin, NECA, to Reed Hundt, Chairman, FCC, January 10, 1997 (hereinafter, NECA January 10, 1997 Letter).

<sup>31</sup> NECA January 10, 1997 Letter.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Letter from Kathryn Falk to William Caton, Acting Secretary, FCC, February 12, 1997, recording an *ex parte* meeting between NECA personnel and Commission staff.

<sup>35</sup> *Id.* NECA uses the term "chargeback" to mean the apportionment of costs among the specific revenue categories defined in the cost allocation manual that NECA files annually. In order to prevent cross-subsidization, NECA must submit and obtain Commission approval of a cost accounting and procedures manual prior to engaging in any of its authorized intrastate activities. *See* NECA's Request for Authority to Provide Intrastate Services to Exchange Carrier Members, 2 FCC Rcd 6853 (Com. Car. Bur. 1987).

<sup>36</sup> Letter from Kathryn Falk to William Caton, Acting Secretary, FCC, February 12, 1997, recording an *ex parte* meeting between NECA personnel and Commission staff.

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process to select a permanent administrator.<sup>37</sup>

12. In comments filed on January 27, 1997, NECA stated that it does not take any specific positions on the size or composition of the USAC Board, except to recommend that the Commission clearly establish, by rule or order, a reasonable size for the Board and clear criteria and methods for selecting representatives from a cross-section of the telecommunications industry.<sup>38</sup> NECA contended that including on the USAC Board representatives from the NECA Board, who have experience with NECA's administrative operations and the complexities of managing universal service support mechanisms, would assure operational continuity.<sup>39</sup> NECA indicated that USAC Board members could be appointed by the Commission, nominated by interested parties, or selected by NECA based on the recommendations of the Commission and interested parties.<sup>40</sup>

13. In a discussion paper filed on June 23, 1997, NECA proposed that the most effective method of administering the new universal service support mechanisms would be through a separate subsidiary as described in NECA's January 10th proposal.<sup>41</sup> NECA also proposed the creation of board committees that would have specific program responsibilities, including a committee for the high cost and low-income programs, a committee for the schools and libraries program, and a committee for the rural health care program.<sup>42</sup> As proposed by NECA, these committees would have final decision-making authority with respect to defined aspects of program administration. In its discussion paper, NECA indicated a preference for a single subsidiary approach as opposed to the formation of multiple subsidiary corporations for purposes of administering the universal service support mechanisms.<sup>43</sup> NECA supported a single subsidiary approach based on its belief that a single subsidiary corporation under NECA would result in more efficient administration of the universal service support mechanisms by avoiding duplication of functions, systems, and resources by each company and by saving resources required to coordinate activities among multiple companies. NECA indicated that a single NECA subsidiary could implement the support mechanisms more quickly than multiple companies; would

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<sup>37</sup> *Id.*

<sup>38</sup> NECA comments at 7.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Letter from Robert Haga to William Caton, Acting Secretary, FCC, June 23, 1997, recording an *ex parte* meeting between NECA personnel and Commissioner Quello and Commission staff.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

provide "one-stop shopping" for support beneficiaries; would be more accountable to the Commission than multiple companies; would result in better coordination and fewer disputes resulting from inconsistent operational practices; and would provide for better continuity to a permanent administrator because any groups currently responsible for temporary administration of the support mechanisms that may become responsible for permanent administration of the support mechanisms would have better overall knowledge of the universal service programs under a single corporate structure.<sup>44</sup>

14. Fifteen parties filed comments in response to the NECA NPRM and nine parties filed replies.<sup>45</sup> Because of the wide dissemination by NECA of its January 10th proposal to interested parties,<sup>46</sup> the majority of commenters to CC Docket 97-21 discussed both the October 18th and January 10th proposals.

### III. COMMENTS

15. Appointment of NECA as Temporary Administrator. Commenters generally agree that NECA's present Board of Directors is not sufficiently representative of the broad spectrum of participants in the telecommunications industry for NECA to serve as the temporary administrator of the new universal service support mechanisms.<sup>47</sup> Several parties question whether an organization composed primarily of small ILECs can administer in a neutral manner a program in which all telecommunications carriers have direct, and potentially conflicting, interests.<sup>48</sup> At the same time, many commenters agree with the Joint Board that NECA could be appointed temporary administrator if it adds "significant, meaningful representation" of non-ILEC interests to its Board of Directors.<sup>49</sup> In comments filed in response to the Recommended Decision, a few

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<sup>44</sup> *Id.*

<sup>45</sup> Bell Atlantic filed jointly with NYNEX, and their joint comments are referred to as "BA and NYNEX." The Rural Telephone Coalition also filed jointly with the United States Telephone Association, and their joint comments are referred to as "RTC and USTA." See Appendix A, Parties Filing Comments.

<sup>46</sup> NECA comments at 5, n.11. NECA states that copies of NECA's January 10, 1997 letter were served on all parties participating in CC Docket 96-45. All of the commenters responding to CC Docket 97-21 participated in CC Docket 96-45. In addition, a copy of NECA's letter was placed in the dockets of both proceedings.

<sup>47</sup> See, e.g., ALA comments at 4; Ameritech comments at 3; AT&T comments at 3; MCI comments at 2; NCTA comments at 5; PCIA comments at 2; Sprint comments at 2; WorldCom comments at 6.

<sup>48</sup> See LDDS 254 NPRM reply comments at 19-20; MCI 254 NPRM reply comments at 16-17; MFS 254 NPRM reply comments at 8; WinStar Communications, Inc. 254 NPRM reply comments at 6; Letter from Mary L. Brown, MCI, to Reed Hundt, Chairman, FCC, October 25, 1996.

<sup>49</sup> AT&T Recommended Decision comments at 26-27; Iowa UB Recommended Decision comments at 1-2; PacTel Recommended Decision comments at 60; RTC Recommended Decision comments at 52; TCA

parties opposed the Joint Board's recommendation that NECA be appointed temporary administrator notwithstanding the Joint Board's directive that NECA first add significant, meaningful representation of non-ILEC interests to its Board.<sup>50</sup> AT&T, for example, initially proposed alternatives to NECA,<sup>51</sup> but stated in subsequent comments that the creation of a separate subsidiary by NECA, in accordance with NECA's January 10, 1997 proposal, could satisfy the Joint Board's criteria for a temporary administrator.<sup>52</sup> WorldCom recommended the selection of an entity without any pecuniary or institutional interest in the universal service funds that it will collect and disburse, and without ties to any category of contributors or recipients.<sup>53</sup>

16. NECA's January 10th Proposal. The majority of commenters support adoption of NECA's January 10th proposal and consider it an appropriate provisional measure for ensuring neutral administration and timely implementation of the new universal service support mechanisms.<sup>54</sup> Several commenters favor the approach set forth in the January 10th proposal because USAC, through its parent company, NECA, would have access to the experience, resources, and background necessary to implement the new support mechanisms as quickly as possible.<sup>55</sup> Likewise, NECA asserts that because of its experience in administering the current universal service programs, it will be able to "hit the ground running," thereby assuring that the programs will be operational on schedule, despite the short implementation periods.<sup>56</sup>

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*Recommended Decision* comments at 9; *Teleport Recommended Decision* comments at 12.

<sup>50</sup> See, e.g., *AT&T Recommended Decision* comments at 26-27; *Teleport Recommended Decision* comments at 12.

<sup>51</sup> *AT&T Recommended Decision* comments at 26-27.

<sup>52</sup> AT&T reply comments at 5. Teleport opposed appointment of NECA as temporary administrator in comments filed in response to the *Recommended Decision*, but did not file comments responding to either the NECA Board NPRM or NECA's January 10, 1997 proposal.

<sup>53</sup> WorldCom comments at 4. See also MCI comments at 2.

<sup>54</sup> See, e.g., BA and NYNEX comments at 2; PacTel comments at 2; PCIA comments at 8; RTC and USTA comments at 5; Sprint comments at 2; U S West comments at 2; AT&T reply comments at 5; BellSouth reply comments at 2; SWBT reply comments at 2.

<sup>55</sup> See, e.g., U S West comments at 2-3; USTA comments at 5; BellSouth reply comments at 2; RTC reply comments; SWBT reply comments at 6.

<sup>56</sup> NECA comments at 9.

17. NECA further contends, and commenters generally agree,<sup>57</sup> that NECA's January 10th proposal would assure significant, meaningful, industry-wide representation in universal service administration processes.<sup>58</sup> Through balanced representation of affected parties, NECA asserts that USAC could take advantage of the industry expertise of the USAC Board members without being aligned with any particular industry segment.<sup>59</sup> NECA maintains that a Board composed of members with experience and expertise in telecommunications services, as well as representation from contributing companies and beneficiaries of the universal service support mechanisms, will provide better guidance to the administrator than a Board composed of individuals who lack such experience and involvement.<sup>60</sup>

18. Several parties comment favorably upon the fact that NECA's January 10th proposal would separate NECA's advocacy functions from its administration of the universal service support mechanisms, while permitting NECA's ILEC members to be represented by agents that they elect.<sup>61</sup> Commenters contend that establishing a wholly-owned subsidiary also avoids potential legal issues raised by the October 18th proposal because, according to commenters, NECA may be precluded legally from limiting the scope of its non-ILEC directors' authority to administration of the new universal service support mechanisms and general oversight of auditing and finance matters, as the October 18th proposal envisioned.<sup>62</sup> Problems associated with limiting the scope of certain NECA Board members' authority would be avoided under the January 10th proposal, according to these commenters, because the USAC Board's authority would be limited to overseeing the temporary administrator functions and the corporate governance of USAC.<sup>63</sup> SWBT asserts that USAC should maintain independent control of its own day-to-day operations to avoid any potential conflict concerning fiduciary obligations of USAC Board members.<sup>64</sup> BellSouth agrees with Sprint that any interested party should be allowed to nominate a representative to the USAC Board and also contends that LEC representation on the USAC

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<sup>57</sup> See, e.g., BA and NYNEX comments at 2; NCTA comments at 7; PacTel comments at 2; PCIA comments at 8; RTC and USTA comments at 5; Sprint comments at 2; U S West comments at 2; AT&T reply comments at 5; BellSouth reply comments at 2; GTE reply comments at 4; SWBT reply comments at 2.

<sup>58</sup> NECA comments at 7.

<sup>59</sup> NECA reply comments at 7.

<sup>60</sup> *Id.*

<sup>61</sup> See, e.g., BA and NYNEX comments at 3; PacTel comments at 3; RTC and USTA comments at 5; BellSouth reply comments at 4.

<sup>62</sup> See, e.g., PacTel comments at 3; RTC and USTA comments at 5; SWBT reply comments at 3.

<sup>63</sup> See, e.g., PacTel comments at 3; RTC and USTA comments at 5; SWBT reply comments at 3.

<sup>64</sup> SWBT reply comments at 4.

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Board should not be limited to members of the current NECA Board.<sup>65</sup>

19. MCI asserts that NECA should not be appointed the temporary administrator even under NECA's January 10th proposal.<sup>66</sup> MCI argues that the proposed structure of the separate subsidiary would prevent it from administering the support mechanisms in a neutral manner because, as a subsidiary of NECA, USAC would be under the control of the ILEC-dominated NECA Board and all USAC employees would continue to be NECA employees.<sup>67</sup> MCI further maintains that because NECA has no particular expertise in administering universal service programs for schools, libraries, and rural health care providers, there is no significant benefit in appointing NECA the temporary administrator.<sup>68</sup> MCI suggests that the functions necessary to administer universal service are not difficult and could be performed by many other firms.<sup>69</sup> MCI thus urges the Commission to reject both NECA proposals and immediately request neutral entities to submit proposals to be the temporary administrator.<sup>70</sup> Additionally, in its comments filed in response to the NECA Board NPRM, WorldCom maintained its position articulated in prior comments that NECA should not be appointed temporary administrator.<sup>71</sup>

20. NECA's October 18th Proposal. Several parties, some of which also support NECA's January 10th proposal, contend that NECA's October 18th proposal would offer meaningful and significant representation of non-ILEC interests.<sup>72</sup> If the Commission adopts the October 18th proposal, BA and NYNEX recommend that the Commission's Part 69 rules, which currently prescribe the structure of NECA's Board, be modified to require that the NECA Board represent the industry as a whole.<sup>73</sup> BA and NYNEX suggest that, rather than undertaking a rulemaking proceeding each time NECA wishes to modify its Board to reflect industry changes, NECA should be permitted to submit future changes to the Commission for approval under a

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<sup>65</sup> BellSouth reply comments at 3.

<sup>66</sup> MCI reply comments at 2.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 1.

<sup>69</sup> MCI comments at 2.

<sup>70</sup> *Id.* WorldCom, which previously had disapproved of NECA's appointment as temporary administrator, WorldCom comments at 3-6, did not comment on NECA's January 10, 1997 proposal.

<sup>71</sup> WorldCom comments at 3-6.

<sup>72</sup> See BA and NYNEX comments at 2; SWBT comments at 2. These three parties also express support for NECA's January 10, 1997 proposal. *See also* ALA comments at 4; Ameritech comments at 4.

<sup>73</sup> BA and NYNEX comments at 3.

public interest test.<sup>74</sup> If, after reforming its Board, NECA ceases to administer the universal service support mechanisms, SWBT suggests that NECA be permitted to reconstitute its Board to represent primarily ILEC interests.<sup>75</sup>

21. Parties opposing the adoption of NECA's October 18th proposal maintain that it would not permit meaningful representation of non-ILEC interests and therefore would not satisfy the Joint Board's criteria for selecting a temporary administrator.<sup>76</sup> WorldCom argues that the competitive environment created by the 1996 Act in which ILECs will soon compete outside their traditional markets with IXCs and other entities that will contribute to and receive universal service support requires appointment of an administrator that is even-handed in both appearance and fact.<sup>77</sup> WorldCom contends that NECA's lack of neutrality and independence was highlighted when NECA, after nominating itself to be temporary administrator, actively participated in a policymaking proceeding in which NECA recommended the adoption of specific policy proposals, such as maintenance of the existing universal service programs and use of a revenue-based payment methodology.<sup>78</sup>

22. Several commenters cite potential problems associated with NECA's October 18th proposal. For example, a few commenters suggest that NECA legally would be precluded from limiting the scope of the six non-ILEC directors' authority to administration of the new universal service support mechanisms and general Board oversight of auditing and finance matters.<sup>79</sup> Similarly, RTC and USTA note that because corporate law does not recognize the concept of a limited duty director, all directors on NECA's Board ultimately would share responsibility to NECA's members for all Board functions, including responsibility for proper management of the tariff and access charge pools.<sup>80</sup> Ameritech and PCIA contend that because NECA's membership would continue to consist solely of ILECs, non-ILEC and non-carrier directors may be

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<sup>74</sup> *Id.*

<sup>75</sup> SWBT comments at 3.

<sup>76</sup> See AT&T comments at 7; MCI comments at 2; NCTA comments at 6; PCIA comments at 2; WorldCom comments at 5. In its January 10, 1997 filing, NECA acknowledged that its October 18, 1996 proposal did not address to the satisfaction of several participants in the universal service proceeding the concern that ILEC members would still constitute a majority of NECA's Board. NECA itself now advocates adoption of its January 10, 1997 proposal. NECA comments at 5.

<sup>77</sup> WorldCom comments at 1, 4.

<sup>78</sup> *Id.* at 5.

<sup>79</sup> See, e.g., Ameritech comments at 5; PCIA comments at 7; RTC and USTA comments at 5; SWBT comments at 3.

<sup>80</sup> RTC and USTA comments at 5.

confronted with conflicts involving their fiduciary duties to NECA members.<sup>81</sup> SWBT further notes that distinguishing between a tariff and pooling matter or a matter of general corporate, financial, or employee governance may be administratively complicated.<sup>82</sup>

23. Other Proposals. Commenters offer general proposals for ensuring NECA's neutrality as well as specific proposals to modify NECA's October 18th and January 10th proposals.<sup>83</sup> Several commenters state that a balanced Board should include a cross-section of providers and beneficiaries of supported services and that ILEC directors should not constitute a majority.<sup>84</sup> ALA asserts that NECA should be required to restructure its Board so that one-third of its members represent consumers, libraries, and schools, and one-third represent non-ILEC industry members.<sup>85</sup> AT&T and Sprint contend that achieving balanced representation requires a 21-member board, although each party would define the board's composition differently.<sup>86</sup> If NECA is appointed the temporary administrator, MCI asks that NECA be barred from advocating positions on universal service issues in any regulatory proceeding.<sup>87</sup> MCI also argues that, because the Commission previously has been forced to conduct audits of NECA, the Commission should require NECA to initiate an independent audit of the temporary administration of the universal service support mechanisms and pay for the audit with its own funds.<sup>88</sup>

24. Arguing that the selection of a temporary administrator should be analyzed in the context of the criteria for selecting a permanent administrator, Ameritech questions whether the appointment of directors with industry or beneficiary involvement in the universal service support mechanisms is necessary to promote the Commission's goals of cost-efficient and neutral administration of universal service support.<sup>89</sup> Although it supports NECA's appointment as

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<sup>81</sup> Ameritech comments at 5; PCIA comments at 7.

<sup>82</sup> SWBT comments at 3.

<sup>83</sup> See ALA comments at 4-6; Ameritech comments at 3, 5; AT&T comments at 6; MCI comments at 3; NCTA comments at 2, 6; PCIA comments at 7; WorldCom comments at 6.

<sup>84</sup> See, e.g., ALA comments at 5; ATA comments at 6; MCI comments at 3; NCTA comments at 6; WorldCom comments at 6.

<sup>85</sup> ALA *Recommended Decision* comments at 15. See also EDLINC *Recommended Decision* comments at 19-20.

<sup>86</sup> AT&T reply comments at 6-7; Sprint comments at 2.

<sup>87</sup> MCI comments at 3.

<sup>88</sup> *Id.*

<sup>89</sup> Ameritech comments at 2, 4.

temporary administrator, Ameritech contends that the Commission should use the experience it gains during this interim period to evaluate whether the permanent universal service administrator need have on its board of directors any representation from the industry or beneficiaries of the fund.<sup>90</sup>

## IV. DISCUSSION

### A. Overview

25. In this Order, we direct NECA to create an independently functioning, not-for-profit subsidiary, to be designated the Universal Service Administrative Company (USAC) that will administer temporarily the universal service support mechanisms for high cost areas and low-income consumers, as well as perform billing and collection functions associated with the universal service support mechanisms for schools and libraries and rural health care providers. We require that USAC's Board of Directors, which will be representative of both contributors to and beneficiaries of the universal service support mechanisms, consist of 17 members. Following review of the nominations submitted to the Commission by interested industry and non-industry groups, the Chairman of the Federal Communications Commission will select the members of the USAC Board. We further direct that the bylaws adopted by the USAC Board provide for the creation of a High Cost and Low Income Committee with the power and authority to bind the USAC Board on specified matters relating to the administration of the support mechanisms for high cost areas and low-income consumers.

26. We also reconsider, on our own motion,<sup>91</sup> our determination in the Universal Service Order that a subcontractor should manage the application process for schools and libraries.<sup>92</sup> We instead direct that, as soon as possible, NECA create two unaffiliated, not-for-profit corporations, to be designated, for the purposes of this Order, the Schools and Libraries Corporation and Rural Health Care Corporation (collectively referred to as the Corporations), to administer portions of the schools and libraries and rural health care programs. The establishment of the Corporations will bring to the administration of the schools and libraries and rural health care programs valuable expertise that is needed to ensure that the schools and libraries and rural health care programs are administered efficiently and in the best interests of their intended beneficiaries. We also conclude that the Corporations should continue to perform their designated functions even after the date on which the permanent administrator is appointed. In making this determination, we reconsider the scope of the functions that will be performed by the temporary administrator and by the permanent administrator, which will be selected after

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<sup>90</sup> Ameritech comments at 4.

<sup>91</sup> See 47 C.F.R. § 1.108.

<sup>92</sup> See Universal Service Order at para. 571. See also 47 C.F.R. § 54.504(b)(1); (b)(3).

recommendation by a federal advisory committee. Finally, in this Order we establish requirements that will govern the administrator or temporary administrator's calculation, and the Commission's approval of the quarterly universal service contribution factors.

## B. Appointment of NECA as Temporary Administrator

27. Appointment of NECA as Temporary Administrator. In the Universal Service Order, we adopted the Joint Board's recommendation to appoint NECA the temporary administrator of the universal service support mechanisms, subject to the condition that NECA make certain changes to its governance that would make it more representative of non-ILEC interests.<sup>93</sup> We adopted this recommendation in the interest of speedy implementation of the universal service support mechanisms.<sup>94</sup> Because appointment of the permanent administrator based on the recommendations to the Commission by a Federal Advisory Committee will take time (possibly up to two years before the permanent administrator is fully operational),<sup>95</sup> our appointment of a temporary administrator is critical to ensuring timely implementation of the new universal service support mechanisms.

28. Our decision to appoint NECA the temporary administrator, subject to the guidelines set forth below, is not changed by MCI's suggestion that we solicit proposals from other "neutral" entities interested in serving as temporary administrator.<sup>96</sup> MCI reasons that NECA has no particular expertise in administering universal service programs for schools, libraries, and rural health care providers and therefore offers no significant benefit over other

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<sup>93</sup> Universal Service Order at para. 866.

<sup>94</sup> *Id.*

<sup>95</sup> The Joint Board recommended the creation of a universal service advisory committee, created pursuant to FACA, 5 U.S.C., App. § 4(a) and 3(2)(C), whose function will be to recommend to the Commission, based on the results of a competitive bidding process, a permanent administrator of the universal service support mechanisms. The Commission adopted this recommendation in the Universal Service Order. *See* Universal Service Order at para. 861. Based on the Commission's experience with the North American Numbering Council, the creation and appointment of the advisory committee could take several months. *See* Administration of the North American Numbering Plan, *Report and Order*, 11 FCC Rcd 2588 (1995), at para. 54. Moreover, although the Joint Board recommended that a competitive bidding process be used to select the entity the committee would recommend to become a permanent administrator and that this process take no more than six months, Recommended Decision, 12 FCC Rcd at 505, Lockheed Martin has suggested that the process of creating a requirements document, soliciting bids, and evaluating the bids could take as long as a year. *See* Letter from Cheryl A. Tritt, Counsel for Lockheed Martin IMS, to William F. Caton, Acting Secretary, FCC, February 13, 1997. Finally, after its appointment, the administrator must develop systems to implement the support mechanisms. At a minimum, an administrator would need several months in which to prepare to begin its operations. Consequently, we estimate that it could take two to three years before a permanent administrator is fully operational.

<sup>96</sup> MCI comments at 2.

potential candidates.<sup>97</sup> Central to our determination to appoint NECA the temporary administrator, and overlooked by MCI's argument, however, is the Joint Board's recommendation that NECA continue to administer the existing high cost and low-income support mechanisms until the permanent administrator is prepared to implement the new high cost and low-income support mechanisms.<sup>98</sup> We conclude that NECA's substantial experience in administering the existing high cost and low-income support mechanisms provides a clear benefit in terms of assuring the operational continuity of these programs. Additionally, we conclude that MCI's concern that NECA lacks experience in administering programs for schools, libraries, and rural health care providers is addressed by the creation of the Schools and Libraries and Rural Health Care Corporations, which will manage significant portions of those programs.<sup>99</sup> We anticipate that these Corporations will be managed and staffed by individuals with substantial expertise in education, rural health care, and telecommunications issues.<sup>100</sup>

29. We are unpersuaded by MCI's additional assertion that USAC will not be impartial because the USAC Board will be dominated by NECA's Board and because USAC employees will continue to be NECA employees.<sup>101</sup> USAC's Board will be comprised of diverse participants representing a wide variety of industry and beneficiary interests and, therefore can be expected to ensure that USAC will be operated in a competitively neutral and unbiased manner.<sup>102</sup> Furthermore, it is within the authority of the USAC Board to limit the discretion of USAC's operations personnel as the USAC Board deems appropriate.<sup>103</sup>

30. Adoption of the January 10th Proposal. We conclude that, as modified below, NECA's January 10th proposal to establish a subsidiary with a separate board of directors will satisfy the condition established in the Universal Service Order that NECA must comply with the Joint Board's directive to provide "significant, meaningful representation" for non-ILEC interests

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<sup>97</sup> MCI reply comments at 1.

<sup>98</sup> Recommended Decision, 12 FCC Rcd at 506.

<sup>99</sup> MCI reply comments at 2.

<sup>100</sup> The creation and functions of the Schools and Libraries and Rural Health Care Corporations are discussed below in sections IV.E-G.

<sup>101</sup> MCI reply comments at 2.

<sup>102</sup> See paras. 32-36, *infra*.

<sup>103</sup> USAC, however, may not intervene in the operations of the Schools and Libraries and Rural Health Care Corporations, except as specifically provided herein. See para. 61 *infra*.

in the temporary administration of the new universal service support mechanisms.<sup>104</sup> Specifically, we agree with the majority of commenters that balanced participation on the USAC Board by a wide range of industry interests as well as various beneficiaries of the support mechanisms will assure significant, meaningful representation of non-ILEC interests.<sup>105</sup> We also agree with MCI that there should be a separation of NECA's advocacy activities from the administration of the universal service support mechanisms. Therefore, we direct NECA to establish USAC in such a way that USAC will be permitted to advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms. We conclude that this restriction on USAC's advocacy activities will enhance the likelihood that the support mechanisms will be administered in a competitively neutral manner. We further conclude that, until January 1, 1998, NECA will continue to administer the current universal service, Lifeline Assistance, and LTS programs. USAC shall prepare for and administer the revised low-income and high cost programs.<sup>106</sup> We therefore direct NECA to establish USAC, in accordance with the January 10 proposal as modified by the specific requirements of this Order, to administer temporarily the universal service support mechanisms for high cost areas and low-income consumers, as well as to perform certain designated functions pertaining to the universal service support mechanisms for schools and libraries and rural health care providers.<sup>107</sup> We direct that USAC be incorporated under the laws of Delaware, as an independent, not-for-profit subsidiary corporation of NECA. We further direct NECA to submit to the Commission for approval proposed articles of incorporation, bylaws, and any documents necessary to incorporate USAC, by August 1, 1997, in order to ensure prior to USAC's incorporation that all requirements of this Order have been satisfied. The Commission will approve or modify the proposed documents in a Public Notice.

31. The October 18th Proposal and Related Proposals. We conclude that expanding NECA's current Board, as NECA's October 18, 1996 proposal suggests, would not achieve the Joint Board's goal of ensuring significant and meaningful representation of non-ILEC interests. Despite the proposed addition of six non-ILEC directors, the 15 directors elected by NECA's ILEC membership would continue to constitute more than two-thirds of NECA's Board. We agree with NCTA and PCIA that because NECA's Board would continue to be controlled by ILEC interests, the minority non-ILEC directors would lack the voting strength to affect the

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<sup>104</sup> See Universal Service Order at para. 866.

<sup>105</sup> We agree, however, with MCI and Ameritech, that prior to our appointment of a permanent administrator, we should re-evaluate the efficacy of including industry and support beneficiaries on the administrator's Board of Directors.

<sup>106</sup> We note that NECA will continue to administer the common line and traffic sensitive access tariff pools and the TRS fund.

<sup>107</sup> USAC's functions are discussed more fully below in section IV.D.

Board's decisionmaking.<sup>108</sup> Moreover, because of the wide range of industry contributors and beneficiaries as well as the number of non-industry beneficiaries that will be affected by the new support mechanisms, we conclude that the addition of six non-ILEC directors to NECA's Board is insufficient to guarantee meaningful representation of this broad spectrum of potential participants. We also share the concern of commenters that suggest that legal limitations may preclude NECA from confining the authority of the newly added non-ILEC directors to matters relating solely to the administration of the universal service support mechanisms.<sup>109</sup> The alternative, permitting the newly added directors to participate in matters relating to NECA's management of the access tariff and pool revenue distribution processes in addition to NECA's administration of the support mechanisms, raises equally troubling questions concerning the scope and nature of the duty owed by non-ILEC and non-carrier directors to NECA's membership on matters unrelated to administering the universal service support mechanisms. Thus, we decline to adopt NECA's October 18th proposal.

32. For similar reasons, we decline to adopt proposed modifications to NECA's October 18th proposal that would expand NECA's current Board.<sup>110</sup> For the reasons stated above, and as recognized by NECA, we conclude that it is unlikely that a single organization can achieve the goals of neutral administration and balanced industry-wide representation in matters relating to administering the universal service support mechanisms, while at the same time ensuring diligent representation of ILEC interests in access tariff and pooling matters.<sup>111</sup>

### C. USAC Board of Directors

33. Size and Composition of USAC Board. We direct NECA to establish the USAC Board with 17 directors that will represent a cross-section of industry and beneficiary interests.<sup>112</sup> The USAC Board shall be comprised of: three directors representing ILECs; two directors representing IXCs; one director representing commercial mobile radio service (CMRS) providers, which includes cellular, Personal Communications Services (PCS), paging, and Specialized Mobile Radio (SMR) companies; one director representing CLECs; one director representing

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<sup>108</sup> NCTA comments at 6; PCIA comments at 2.

<sup>109</sup> *See, e.g.*, Ameritech comments at 5; PCIA comments at 7; RTC and USTA comments at 5; SWBT comments at 3.

<sup>110</sup> *See, e.g.*, ALA comments at 4-6; Ameritech comments at 3, 5; AT&T comments at 6; MCI comments at 3; NCTA comments at 2, 6; PCIA comments at 7; WorldCom comments at 6. We note that several of the commenters supporting modifications to the October 18th proposal also support NECA's January 10th proposal.

<sup>111</sup> *See* NECA January 10, 1997 Letter.

<sup>112</sup> Because the TRS fund also draws contributions from a broad range of telecommunications carriers, we will consider at a later time if USAC should also administer the TRS fund.

cable operators; one director representing information service providers; three directors representing eligible schools;<sup>113</sup> one director representing eligible libraries;<sup>114</sup> one director representing eligible rural health care providers;<sup>115</sup> one director representing low-income consumers; one director representing state telecommunications regulators; and one director representing state consumer advocates. The directors representing ILECs, IXCs, CMRS providers, CLECs, low-income consumers, state consumer advocates, and state telecommunications regulators also will serve on the High Cost and Low Income Committee of the USAC Board, as described in section IV.E below.

34. Our objective is to enable USAC's Board to achieve a balance of broad industry and beneficiary representation and administrative efficiency so that the Board can implement the new support mechanisms in a neutral and efficient manner. We conclude that the Board must have at least 17 members, as delineated above, to assure balanced representation of both industry and beneficiary interests. The Board should not be so large, however, that it is unable to give USAC the prompt and effective guidance USAC will need as it undertakes its new responsibilities.

35. We conclude that the allocation of three positions for ILEC interests is necessary in order to maintain a balance of competing interests because of the large, non-ILEC majority among the participants. The group of three ILEC directors will consist of one director representing the BOCs and GTE, one director representing other ILECs having annual operating revenues in excess of \$40 million, and one director representing small ILECs having annual operating revenues of \$40 million or less to ensure fair representation of the diversity of ILEC interests. We agree with BellSouth that ILEC representation on the USAC Board should not be limited to members of the current NECA Board. Rather, we conclude that any individual, including a current member of NECA's Board of Directors, who is nominated and appointed in accordance with the procedures set forth below, should be entitled to serve on the USAC Board. Although we agree with AT&T that IXCs will make a substantial percentage of the universal service support contribution, we cannot permit IXCs or any other industry group to dominate the administration of the support mechanisms. Thus, we allocate two seats on the USAC Board to representatives of IXCs. Of the two IXC directors, one director will represent IXCs with more than \$3 billion in annual operating revenues, and one director will represent IXCs with annual operating revenues of \$3 billion or less. Because we expect that contributions to the support

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<sup>113</sup> See 47 C.F.R. § 54.501 for a description of schools that are eligible to receive discounts on telecommunications and other supported services.

<sup>114</sup> See 47 C.F.R. § 54.501 for a description of libraries that are eligible to receive discounts on telecommunications and other supported services.

<sup>115</sup> See 47 C.F.R. § 54.601 for a description of rural health care providers that are eligible to receive discounts on supported services.

mechanisms by CMRS providers and CLECs will be smaller than contributions by IXCs or LECs, we allocate one seat each on the Board to representatives of CMRS providers and CLECs. Because discounts for information and advanced services will be given to schools and libraries, we allocate one seat each on the Board to a representative of cable operators and information service providers.

36. We conclude that allocating three positions to schools representatives and one position to a libraries representative sufficiently represents the interests of schools and libraries, which will receive services at discounts covered by approximately \$2.25 billion per year in universal service support.<sup>116</sup> We further conclude that one director representing rural health care providers will be sufficient based on the size of the funding mechanism for rural health care providers, which is capped at \$400 million.<sup>117</sup> We conclude that one director will represent low-income beneficiaries' concerns because of the explicit reference to low-income individuals in section 254(b)(3) of the Act<sup>118</sup> and because of the newly expanded low-income programs.<sup>119</sup> We include a representative of consumer interests because a major goal of universal service is that "[q]uality services should be available at just, reasonable, and affordable rates" to all Americans.<sup>120</sup> We also include a representative of state telecommunications regulators in light of the critical role that will be performed by the states in ensuring the effective implementation of the universal service support mechanisms.

37. We conclude that the establishment of a 17-member Board, as delineated above, will assure both fair representation of the diverse participants and competitively neutral administration of the universal service support mechanisms. To achieve a balanced board that is not so large that it is unable to provide USAC prompt and effective guidance, we limit Board membership to representatives of telecommunications carriers that, pursuant to section 254, are

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<sup>116</sup> See Universal Service Order at para. 529.

<sup>117</sup> See Universal Service Order at para. 704.

<sup>118</sup> Section 254(b)(3) provides that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 U.S.C. § 254(b)(3).

<sup>119</sup> Pursuant to our new universal service rules, Lifeline has been revised to make it available in every state and to increase federal support to reduce charges on qualifying consumers' bills for telecommunications services. The revised Lifeline program also offers qualifying low-income consumers certain services and prohibits carriers from disconnecting Lifeline service for non-payment of toll charges and from charging service deposits for Lifeline consumers who receive toll blocking. 47 C.F.R. §§ 54.400-54.417.

<sup>120</sup> 47 U.S.C. § 254(b)(1). See also 47 U.S.C. § 254(i) ("[t]he Commission should ensure that universal service is available at rates that are just, reasonable, and affordable").

required to contribute to the support mechanisms, entities or persons that benefit from universal service support mechanisms, and state telecommunications regulators, who are vital to the effective implementation of the new universal service support mechanisms. In this way, parties directly affected by the support mechanisms and with an important role in their implementation will have a role in their administration.

38. Selection and Appointment of USAC Board Members. Members of the industry or non-industry groups that will be represented on the Board are directed to submit their nominees selected by consensus for USAC directors to the Chairman of the Federal Communications Commission<sup>121</sup> within 14 calendar days of the publication of this Order in the Federal Register. In order for us to be able to confirm the identity and credentials of the board member nominees, each nomination should be accompanied by professional and biographical information, such as the nominee's resume or professional biography. Only members of the industry or non-industry groups that a Board member will represent may submit a nomination for that position (e.g., only CMRS providers may submit nominations for the CMRS position on the Board and only IXCs with more than \$3 billion in annual operating revenues may submit nominations for the IXC Board member who will represent IXCs of that size). In order to minimize controversy surrounding the selection and appointment of Board members and to expedite the appointment process, we strongly urge members of the industry and other groups represented on the Board (e.g., IXCs, CMRS providers, schools) to nominate, by consensus, a candidate for each position on the Board who possesses substantial experience in, and knowledge of, telecommunications issues.

39. The Chairman of the Federal Communications Commission will review the nominations submitted to the Commission by industry and non-industry groups and select the members of the USAC Board of Directors.<sup>122</sup> Because we conclude that each group to be represented on the USAC Board is best suited to nominate a qualified individual or individuals to represent that group's interests, we reject parties' recommendation that the Commission, in the first instance, select all of the USAC Board members.<sup>123</sup> If a group fails to reach consensus on a candidate to serve on the USAC Board, however, and instead submits the names of more than one nominee for a single Board member position, the Chairman of the Federal Communications Commission will, in the interest of establishing USAC as quickly as possible, select an individual or individuals who will serve on the USAC Board. Similarly, if an industry or beneficiary group

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<sup>121</sup> Nominations should be filed with both the Secretary and the Chairman of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

<sup>122</sup> As discussed in section F below, individuals appointed to the USAC Board to represent eligible schools, libraries and rural health care providers also will serve as directors on either the Board of the Schools and Libraries Corporation or the Rural Health Care Corporation.

<sup>123</sup> See e.g., NECA comments at 7-8; GTE reply comments at 4.

fails to submit even a single nomination for a USAC Board member position, the Chairman of the Federal Communications Commission will select an individual from the appropriate industry or non-industry group to serve on the USAC Board for the duration of the board member's term. We conclude that delegating to the Chairman of the Federal Communications Commission the authority to select USAC Board members will aid in establishing the full Board as quickly as possible.

40. We direct that, within 14 calendar days of the Chairman's selection of USAC Board members, all USAC Board members be appointed to the USAC Board, and the USAC Board hold its first meeting. Members of the USAC Board will be appointed for two-year terms. Board members may be re-appointed for subsequent terms pursuant to the initial nomination and appointment process described above. In the event that a Board member vacates his or her seat prior to the completion of his or her term, USAC will notify the Chief, Common Carrier Bureau (Bureau) of such vacancy and a successor will be chosen pursuant to the initial nomination and appointment process described above.

#### **D. Functions of USAC**

41. In General. In connection with the temporary administration of the universal service support mechanisms for schools and libraries and rural health care providers, USAC<sup>124</sup> will be directly responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds. USAC also will be responsible for administering the universal service support mechanisms for high cost areas and low-income consumers. In addition, as discussed below, the High Cost and Low Income Committee of the USAC Board will be responsible for implementing and overseeing designated aspects of the support mechanisms for high cost areas and low-income consumers.<sup>125</sup> USAC, including members of the High Cost and Low Income Committee, will be directly accountable to the Commission for the performance of their respective responsibilities. Thus, the Commission may take appropriate action including, for example, directing the removal of one or more directors or recommending the performance of an audit by an independent auditor, if the Commission finds that USAC or the High Cost and Low Income Committee is not performing its functions in accordance with Commission rules or if it is determined that USAC's administrative expenses are unreasonable.

42. Billing and Collection. The billing and collection process, for which USAC will be solely responsible, involves several steps: (1) collection of information regarding contributing entities' end-user telecommunications revenues; (2) calculation of quarterly universal service

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<sup>124</sup> USAC's duties as the temporary administrator shall also apply to the permanent administrator.

<sup>125</sup> See section E, *infra*.

contribution factors; (3) calculation of individual entities' contributions; (4) billing of contributors; and (5) receipt of universal service contributions. USAC will perform these functions for all of the universal service support programs (i.e., high cost, low-income, schools and libraries, and rural health care providers).

43. For purposes of collecting information regarding contributing entities' end-user telecommunications revenues, USAC will distribute, receive, and process the Universal Service Worksheet (Worksheet), which directs each contributing carrier or entity to provide identification information and information regarding end-user telecommunications revenues on a semi-annual basis. A draft copy of the Worksheet appears in Appendix C hereto. Following receipt of the Worksheets, USAC will calculate the total of all of contributing entities' interstate, intrastate, and international end-user telecommunications revenues. This sum will represent the total universal service contribution base and will be used to calculate the quarterly contribution factors.

44. In the Universal Service Order, the Commission directed the universal service administrator to collect \$100 million per month for the first three months of 1998 and to adjust future contribution assessments quarterly based on its evaluation of school and library demand for funds, within the limits of the spending caps established in the Universal Service Order.<sup>126</sup> The Commission directed the administrator to report to the Commission on a quarterly basis, on both the total amount of payments made to entities providing services to schools, libraries, and library consortia to finance universal service support discounts, and its determination regarding contribution assessments for the next quarter.<sup>127</sup> Similarly, the Commission concluded that funds for assistance to health care providers should be collected on an as-needed basis in order to meet anticipated actual expenditures over time.<sup>128</sup> Therefore, the Commission directed the administrator to collect \$100 million for the first three months of 1998 and to adjust future contribution assessments quarterly based on its evaluation of health care provider demand for funds, within the limits of the spending cap established in the Universal Service Order.<sup>129</sup> We instructed the administrator to report to the Commission, on a quarterly basis, both the total amount of payments made to entities providing services to health care providers to finance universal service support and its determination regarding contribution assessments for the next quarter.<sup>130</sup> These obligations will apply to USAC to the extent described below.

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<sup>126</sup> Universal Service Order at para. 532.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

45. Consistent with our determinations in the Universal Service Order, we conclude that during each funding year, there will be four quarterly sets of universal service contribution factors.<sup>131</sup> Universal service contribution factors shall be based on the ratio of quarterly projected costs of the support mechanisms, including administrative expenses, to the applicable revenue base. USAC will adjust the contribution factors for each quarter based on quarterly demand for services and administrative costs, subject to any funding caps established in the Universal Service Order.

46. Based on historic demand,<sup>132</sup> the High Cost and Low Income Committee will determine quarterly projected demand for support for the high cost and low-income programs and submit those projections, as well as the underlying data used to calculate the projections, to the Commission for review at least 60 days before the start of each quarter. Once these figures are approved by the Commission,<sup>133</sup> USAC shall use these projections to calculate the interstate and international end-user telecommunications revenues contribution factor. Similarly, the Schools and Libraries and Rural Health Care Corporations shall submit all quarterly projections of demand for their respective programs, including the underlying data used to calculate the projections, to the Commission for review at least 60 days before the start of each quarter.<sup>134</sup> Once these figures are approved by the Commission, USAC shall use these projections to calculate the quarterly interstate, intrastate, and international end-user telecommunications revenues contribution factor.

47. At least 60 days before the start of each quarter, USAC also will project its administrative costs and submit those projected costs to the Commission for review for reasonableness. USAC shall not allocate all of its administrative costs to the high cost and low-income programs' quarterly cost projections. USAC's costs that can be directly attributed to the schools and libraries or rural health care programs should be identified so that they can be included in the projected administrative expenses of the relevant programs. USAC's joint and common costs associated with billing and collection of contributions or disbursement of funds also should be identified. One-fourth of USAC's joint and common costs should be included in

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<sup>131</sup> Because contributors will have differing ratios of interstate to intrastate revenues, two contribution factors are needed. One factor will be applied to subject interstate end-user telecommunications revenues, and one factor to subject interstate and intrastate end-user telecommunications revenues.

<sup>132</sup> USAC shall base demand for high cost support on historic data or on demand from a previous quarter until a forward-looking economic cost model is implemented. We will provide USAC or the permanent administrator further instructions when we adopt a forward-looking economic cost model.

<sup>133</sup> Projected quarterly demand will be deemed approved by the Commission if the Commission does not act within 14 days following publication of the projections along with the projections of administrative expenses in a Public Notice.

<sup>134</sup> As discussed below in section IV.G, the Schools and Libraries and Rural Health Care Corporations will submit to the Commission their demand projections.

the projected administrative expenses of the high cost, low-income, schools and libraries, and rural health care programs, respectively. Once these figures are approved by the Commission,<sup>135</sup> USAC shall use the projections of its costs to administer the high cost and low-income programs along with the approved High Cost and Low Income Committee's projections of demand to calculate the interstate and international end-user telecommunications revenues contribution factor. Similarly, at least 60 days before the start of each quarter, the Schools and Libraries and Rural Health Care Corporations will project their quarterly administrative costs for the respective Corporations and submit those projected costs to the Commission for review.<sup>136</sup> Once these figures are approved by the Commission, USAC shall use these projections, USAC's projected administrative costs allocated to the schools and libraries and to rural health care programs, and the Corporations' approved projections of demand to calculate the quarterly interstate, intrastate, and international end-user telecommunications revenues contribution factor for the schools and libraries and rural health care support programs. In addition to the actual projections of administrative expenses, USAC and the Corporations must submit to the Commission and the Common Carrier Bureau the underlying data used to calculate their projections. By receiving USAC's and the Corporations' projections of administrative expenses and the data supporting those projections, the Commission will be able to determine whether USAC's and the Corporations' administrative expenses are reasonable and take appropriate action if it is determined that their projected expenses are unreasonable. In addition, USAC will submit the latest total revenue base information that it has collected from the Worksheets to the Commission at least 60 days before the start of each quarter.

48. USAC must obtain Commission approval of all projections of demand and administrative expenses before using them to calculate the contribution factors and before applying the factors to calculate individual contributions. The quarterly projections of demand and administrative expenses, total revenue base information submitted by USAC, the Committee, and the Corporations, and the proposed quarterly contribution factors will be announced by the Commission in a Public Notice and will be made available on the Commission's website. If the Commission takes no action within 14 days of the date of the Public Notice announcing the projections of demand and administrative expenses and the contribution factors, then the projections and contribution factors will be deemed approved by the Commission. The Commission reserves the right to set projections of demand or administrative expenses at amounts that the Commission determines will serve the public interest at any time within the 14-day period following release of the Commission's Public Notice.

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<sup>135</sup> Projected quarterly administrative expenses will be deemed approved by the Commission if the Commission does not act within 14 days following publication of the projections along with the projections of demand in a Public Notice.

<sup>136</sup> As discussed below in section IV.G, the Schools and Libraries and Rural Health Care Corporations will submit to the Commission their projected administrative expenses.

49. After the Commission approves the projections of demand by the Schools and Libraries and Rural Health Care Corporations and the High Cost and Low Income Committee and the projected administrative expenses of the Schools and Libraries and Rural Health Care Corporations and USAC, USAC will calculate and apply the quarterly contribution factors to determine each entity's contribution and bill and collect contributions from contributors. To calculate an individual entity's quarterly contribution, USAC will multiply the entity's universal service contribution base (i.e., its interstate, intrastate, and international end-user telecommunications revenues or its interstate and international end-user telecommunications revenues) by the relevant universal service contribution factor. USAC then will bill each contributor for the amount of its contribution. Contributors must remit all contributions to USAC by the contribution due date. USAC will file with the Commission and the Bureau periodic reports regarding the status of contributors' payments and failure to make payments.

50. If, in any quarter, contributions exceed universal service support payments and administrative costs, contributions for the following quarter will be reduced by an amount that takes into account the unused funds from the previous quarter. Similar to our rules governing NECA's administration of the TRS fund, if contributions in one quarter are inadequate to meet demand, USAC may request authority from the Commission to borrow funds commercially subject to any spending or collection caps, with such debt secured by future universal service contributions.<sup>137</sup> In such event, contributions for subsequent quarters will be increased by an amount to cover the added costs associated with borrowing funds.

51. Disbursements. In disbursing universal service support in connection with the support mechanisms for high cost areas and low-income consumers, USAC will review and process data submitted by service providers and disburse payments to eligible service providers, as directed by the High Cost and Low Income Committee. In disbursing universal service support in connection with the support mechanisms for schools, libraries, and rural health care providers, USAC will be directed by the Schools and Libraries and Rural Health Care Corporations to disburse payments to service providers. Eligible schools, libraries, and rural health care providers will be instructed to provide to USAC and the Schools and Libraries Corporation or Rural Health Care Corporation copies of a form designating the services provided to the school, library or health care provider and the support amount due to the service provider. We direct the Schools and Libraries and Rural Health Care Corporations to authorize USAC to disburse the appropriate payment amounts as quickly as possible, but no later than 20 days following receipt of the forms. We direct USAC to distribute universal service support to eligible service providers as quickly as possible, but no later than 20 days following receipt by USAC of the Corporations' authorization to disburse funds under the schools, libraries and rural health care programs.

## **E. Creation and Functions of High Cost and Low Income Committee**

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<sup>137</sup> See 47 C.F.R. § 64.604(c)(ii)(B).

52. Consistent with Delaware law, we direct the USAC Board to adopt bylaws providing for the creation of a special committee of its Board to be designated the High Cost and Low Income Committee, which will have the power and authority to bind the USAC Board on issues relating specifically to the universal service support mechanisms for high cost areas and low-income consumers. The Universal Service Order significantly reformed these programs to make them consistent with the mandates of the Act, including making universal service support available to all eligible telecommunications carriers rather than solely to ILECs. In light of the substantial modifications that have been made to the high cost and low-income programs, we conclude that the creation and operation of the Committee are necessary to ensure the successful implementation of and transition to the new high cost and low-income programs. Because, in contrast to the new schools, libraries and rural health care programs, some form of high cost and low-income support mechanisms has been in place for several years, we do not find that creation of an unaffiliated corporation for the high cost and low-income programs is necessary at this time.

53. Our decision to employ a committee rather than a separate corporation for the high cost and low-income programs is not intended to suggest that these programs are any more -- or any less -- important than those for schools and libraries and for rural health care. At a later date, we may well conclude that the same structure is appropriate for each of the programs contemplated by section 254. But it is in the area of section 254(h) that we are establishing a completely new universal service program, as to which NECA has no prior expertise and for which the necessary processes must be operational by January 1, 1998. The changes to the high cost and low-income programs pose fewer new administrative challenges than the new schools and libraries and rural health care programs. Furthermore, the most far-reaching, significant changes to the high cost support program will not be implemented until January 1, 1999. Thus, the differing treatment given here to schools, libraries, and health care, on the one hand, and to low-income and high-cost support, on the other, is possibly temporary and in any event fully justified by our desire that the former programs be launched with speed, independence, efficiency, and accountability.

54. The Committee will consist of 10 USAC Board members, including seven service provider representatives (i.e., the three representatives of ILECs, two representatives of IXCs, one representative of CMRS providers, and one representative of CLECs) and the low-income, state consumer advocate, and state telecommunications regulator representatives described above. We conclude that the creation of a committee comprised of Board members with expertise on the issues associated with the support mechanisms for high cost areas and low-income consumers will facilitate efficient and responsive decision making on these issues. We conclude that the cable operator, information service provider, schools, libraries, and rural health care representatives should not serve on the Committee because we anticipate that these representatives will have relatively less interest and expertise in matters affecting the administration of the high cost and low-income support mechanisms. These board members do not represent entities that are eligible

to receive universal service support from the high cost and low-income universal service support mechanisms and that directly benefit from these programs.<sup>138</sup> In addition, including on the Committee only those USAC Board members with expertise in issues relating to the universal service support mechanisms for high cost areas and low-income consumers will relieve the remaining USAC Board members of the responsibility to make decisions concerning issues that may be outside the scope of their knowledge and that do not directly affect their constituent interests. This also will allow the members to focus on the issues that more directly impact their constituencies.

55. The High Cost and Low Income Committee will have the power and authority to make binding decisions on issues related to the administration of the high cost and low-income support mechanisms, as specifically delineated in USAC's bylaws, except on issues related to USAC's billing, collection, and disbursement functions discussed above. For example, the Committee will have binding authority to make decisions related to how USAC projects demand for the high cost and low-income programs, any forms needed for the programs, and processing of such forms. The Committee also will have binding authority to set the amounts of high cost and low-income support that USAC will disburse to eligible telecommunications carriers.

56. Based on the authority granted to the administrator under Commission universal service rules to audit contributors and carriers that report data to the administrator,<sup>139</sup> we conclude that the Committee should have the authority to recommend the performance of such audits of telecommunications carriers receiving universal service support, when its members find it necessary to do so. We conclude that the Committee, the majority of which will represent service providers, likely will recognize when there is the need for an audit of such entities and how such an audit can be structured in order to obtain the relevant information in an efficient manner. We note that the Commission independently may direct the performance of audits of telecommunications carriers receiving high cost or low-income universal service support. In the event that a majority of the members of the Committee is unable to reach a decision, the Chairman of the Committee is authorized to cast an additional vote to resolve the deadlock.

## **F. Creation of Schools and Libraries and Rural Health Care Corporations**

57. As noted above, we reconsider, on our own motion, our decision to require the administrator to select a subcontractor to manage the application process for eligible schools and libraries and instead direct NECA to incorporate two not-for-profit, unaffiliated corporations that will be responsible for administering the schools and libraries and rural health care programs,

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<sup>138</sup> We note that cable operators, in their capacity as telecommunications providers, will be represented on the High Cost and Low Income Committee by the CLEC representative.

<sup>139</sup> See 47 C.F.R. § 54.707.

except with regard to those matters directly related to billing, collection, and disbursement of funds.<sup>140</sup> Specifically, we conclude that the structure and carefully delineated responsibilities of the Corporations, as set forth herein, will provide for greater accountability and more efficient administration of the schools and libraries and rural health care programs than would the approach adopted earlier because a subcontractor, unlike the Corporations, would not be directly accountable to the Commission. Accordingly, as soon as possible following release of this Order, NECA shall incorporate the Corporations as unaffiliated, not-for-profit corporations under the laws of Delaware. The Corporations shall be designated the Schools and Libraries Corporation and Rural Health Care Corporation. NECA initially shall establish the Schools and Libraries and Rural Health Care Corporations and then take such steps as are necessary and appropriate under Delaware and federal law to make the Corporations independent of, and unaffiliated with, NECA and USAC. We direct NECA to submit to the Commission for approval the proposed articles of incorporation, bylaws, and any documents necessary to incorporate the Corporations, by August 1, 1997, in order to permit us to determine prior to NECA's establishing the Corporations whether the requirements of this Order have been satisfied.

58. We conclude that the creation and operation of the Corporations are critical to the successful implementation of the schools and libraries and rural health care support mechanisms.<sup>141</sup> The schools and libraries and rural health care support mechanisms are, as MCI points out,<sup>142</sup> new programs involving new categories, and potentially large numbers, of participants and beneficiaries. Because of the complexity and unique issues related to the schools and libraries and rural health care provider support mechanisms, in addition to the significance of these programs under the 1996 Act, we conclude that decisions concerning their implementation may require special expertise. Not only is such expertise outside the competence of NECA's Board and existing staff, as MCI asserts,<sup>143</sup> but we conclude that it is also outside the competence of the USAC Board. We conclude that establishing separate corporations to administer the schools and libraries and rural health care programs, as set forth in section IV.G below, will help ensure that these programs are administered by individuals with expertise and, of equal importance, with a direct stake in the success of the programs.

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<sup>140</sup> For a discussion of the Corporations' functions, *see* section IV.H below.

<sup>141</sup> Section 254(c)(3) states that "[i]n addition to the services included in the definition of universal service under paragraph [c](1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection [254](h)." 47 U.S.C. § 254(c)(3). Section 254(h)(2) states that "[t]he Commission shall establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries." 47 U.S.C. § 254(h)(2).

<sup>142</sup> MCI reply comments at 2.

<sup>143</sup> MCI reply comments at 2.

59. To ensure continuity in, and efficient administration of, the schools and libraries and rural health care programs, we conclude that the Corporations should continue to perform their designated functions even after the date on which the permanent administrator is appointed. In making this determination, we reconsider the scope of the functions that will be performed by the temporary administrator and by the permanent administrator, which will be selected pursuant to the FACA. Specifically, we provide that both USAC and, subsequently, the permanent administrator will share responsibility with the Corporations for administering the schools and libraries and rural health care programs as detailed in sections IV.D and IV.H herein. As reflected in those sections, we assign to the Corporations responsibility for administering significant portions of the schools and libraries and rural health care programs, respectively, and assign to both USAC and the permanent administrator responsibility for collection and disbursement functions associated with the schools and libraries and rural health care programs. We conclude that it is critical to the success of the schools and libraries and rural health care programs and, specifically, to the ability of the Corporations to attract and develop qualified personnel, that significant portions of the schools and libraries and rural health care programs be implemented by entities that will have an ongoing role in the administration of those programs, notwithstanding the identity of the permanent administrator. Moreover, we conclude that it would be disruptive and wasteful of the resources invested in the creation of the Corporations and in their start-up operations if we were to dissolve them upon the appointment of a permanent administrator.

60. To the extent that we are modifying the scope of the functions to be performed by the temporary and permanent administrators in connection with the administration of the schools and libraries and rural health care programs in a manner that differs from the scope defined in our Universal Service Order, we also modify our charge to the federal advisory committee that will be recommending to the Commission a permanent administrator. Its task will now be to identify and recommend as permanent administrator the candidate that is best suited to perform the functions that we have set out in section IV.D above. As a condition of the appointment of a permanent administrator, we also require that the entity selected as the permanent administrator take whatever steps as are necessary or ordered by the Commission to maintain the relationship and division of responsibilities with the Corporations as described in section IV of this Order.

#### **G. Boards of Directors of Schools and Libraries and Rural Health Care Corporations**

61. The Board of Directors of the Schools and Libraries Corporation will consist of seven members, including three schools representatives, one libraries representative, one service provider representative, one independent director, and the CEO of the corporation. The three directors representing schools and one director representing libraries will be the same directors as those representing schools and libraries on the USAC Board. The Chairman of the Federal Communications Commission will select, simultaneously with selection of the USAC Board members, an individual not affiliated with schools, libraries, or service providers to serve as an

independent director of the Schools and Libraries Corporation Board.<sup>144</sup> The USAC Board will select the service provider representative who will serve on the Schools and Libraries Corporation Board from among the service provider representatives on the USAC Board within seven calendar days of the USAC Board's first meeting. Once the service provider representative has been appointed to the Schools and Libraries Corporation Board, those six Board members (including the independent director and the schools and libraries representatives) will submit a CEO candidate to the Chairman for approval. The chosen CEO also will serve on the Board of the Schools and Libraries Corporation. We note that, unlike the other directors on the Schools and Libraries Corporation's Board, the independent director and CEO will not serve on the USAC Board.

62. The Board of Directors of the Rural Health Care Corporation will consist of five members, including two rural health care representatives, one service provider representative, one independent director, and a CEO. One of the rural health care provider representatives also will be the director representing rural health care providers on the USAC Board. In a forthcoming public notice soliciting nominations for the USAC Board of Directors, interested parties also will be instructed to nominate a second rural health care provider representative to serve only on the Board of Directors of the Rural Health Care Corporation. The Chairman of the Federal Communications Commission will select the second representative of rural health care providers who will serve only on the Board of the Rural Health Care Corporation simultaneously with the selection of the members of the USAC Board. The Chairman of the Federal Communications Commission also will select, simultaneously with the selection of the USAC Board members, an individual not affiliated with rural health care providers or service providers to serve as an independent director of the Rural Health Care Corporation Board.<sup>145</sup> The USAC Board will select a service provider representative to serve on the Rural Health Care Corporation's Board from among the service provider representatives on the USAC Board within seven calendar days of the USAC Board's first meeting. Once the service provider representative has been appointed to the Rural Health Care Corporation Board, the four Board members (including the independent director and the rural health care provider representatives) will submit a CEO candidate to the Chairman for approval. The chosen CEO also will serve on the Board of the Rural Health Care Corporation. We note that the independent director, CEO, and one rural health care provider representative will not serve on the USAC Board.

63. We conclude that, with the exceptions discussed above, the Corporations' directors

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<sup>144</sup> An individual not affiliated with schools, libraries, or service providers is one who, for example, do not have a direct financial interest in schools, libraries, or service providers and/or who is not employed by one of these entities.

<sup>145</sup> An individual not affiliated with rural health care providers or service providers is one who, for example, does not have a direct financial interest in rural health care providers or service providers and/or who is not employed by one of these entities.

representing schools, libraries, health care providers, and telecommunications service providers should be the same directors as those on the USAC Board representing schools, libraries, rural health care providers, and telecommunications service providers. We reach this conclusion based on our expectation that the Corporations' Board members will be required to work closely with USAC operations staff because of the shared responsibility of USAC and the Corporations for administering the schools and libraries and rural health care programs. We also conclude that including a service provider representative on each of the Corporation's Boards will help to ensure that the viewpoint of those providing eligible services to schools, libraries, and rural health care providers and those contributing to the universal service support mechanisms will be represented. Therefore, the four USAC Board members representing schools and libraries and the one USAC Board member representing rural health care providers will be appointed to the Boards of Directors of the Schools and Libraries and Rural Health Care Corporation, respectively, contemporaneously with their appointment to the USAC Board.

64. Like the members of the USAC Board, all of the Corporations' Board members shall be appointed for two-year terms. Board members may be reappointed for subsequent terms pursuant to the appointment process used initially to select the Corporations' Board members, as discussed above. In the event that a Corporation's Board member vacates his or her seat prior to the completion of his or her term, the Corporations will notify the Bureau of such vacancy and a successor will be chosen pursuant to the process used initially to select the Corporation's Board members. Removal of members of the Corporations' Board must be consistent with Delaware law and may only occur with the approval of the Chairman of the Federal Communications Commission.

## **H. Functions of Schools and Libraries and Rural Health Care Corporations**

65. The Schools and Libraries and Rural Health Care Corporations will perform all functions relating to administering the support mechanisms for eligible schools and libraries and rural health care providers, except those directly related to billing and collecting contributions and disbursing support, as discussed above. In administering the support mechanisms for eligible schools and libraries and rural health care providers, the Corporations must comply with all Commission rules. The Corporations' functions will include, but will not be limited to: (1) administering the application process for eligible schools, libraries, and rural health care providers, including the dissemination, processing, and review of applications for service from schools, libraries, and rural health care providers; (2) creating and maintaining a website on which applications for services will be posted on behalf of schools, libraries, and rural health care providers seeking to attract the competitive bids of service providers; (3) performing outreach and public education functions, by, for example, communicating with interested parties about the availability of, and requirements for receiving, universal service support for schools, libraries, and rural health care providers; (4) reviewing bills for services that are submitted by schools, libraries, and rural health care providers on which service providers designate the amount of universal

service support they should receive for services rendered and on which schools, libraries, and rural health care providers confirm that they have received such services; (5) submitting all quarterly projections of demand and their own administrative expenses to the Commission; (6) informing USAC, based on the information contained in the bills for services provided, of the amount of universal service support to be disbursed to service providers; (7) authorizing the performance of audits of schools and libraries and rural health care provider beneficiaries of universal service support; (8) and any other function relating to the administration of the schools and libraries and rural health care programs that is not specifically assigned to USAC.<sup>146</sup> With regard to authorizing the performance of audits of schools and libraries, we clarify our decision in the Universal Service Order that the Commission, in consultation with the Department of Education, should engage and direct an independent auditor to conduct audits of schools and libraries.<sup>147</sup> Because it will assume many of the functions related to the administration of schools and libraries program and will work closely with eligible schools and libraries, we conclude that the Schools and Libraries Corporation, rather than the Commission in consultation with Department of Education, is better suited to determine when the performance of audits of schools and libraries should occur.<sup>148</sup> For this reason, we conclude that the Schools and Libraries Corporation, rather than the Department of Education, should be authorized, in consultation with us, to engage and direct the individual audit of schools and libraries.

66. Furthermore, we clarify our provision in the Universal Service Order that the administrator should project school, library, and rural health care provider demand for funds for the purpose of calculating the universal service contribution factors, and monitor such demand for the purpose of determining when, in the case of the schools and libraries program, the \$2 billion trigger has been reached,<sup>149</sup> and when, in the case of the rural health care program, the \$400

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<sup>146</sup> Schools, libraries, and rural health care providers, as well as service providers, are subject to compliance review and must maintain records necessary to assist in audits, as provided in our Universal Service rules. These entities are required to produce their records at the request of the appointed auditor whether the auditor suspects fraud or other illegal conduct or is merely conducting a routine, random audit. *See* 47 C.F.R. §§ 54.516 & 54.619. *See also* Universal Service Order at paras. 581 and 728.

<sup>147</sup> Universal Service Order at para. 581.

<sup>148</sup> We note, however, that the Commission retains independent authority to authorize the performance of audits of schools and libraries.

<sup>149</sup> As established in the Universal Service rules, once there is only \$250 million available to be committed in a given funding year to schools and libraries, only those schools and libraries that are most economically disadvantaged and have not yet received discounts from the universal service mechanism in the previous year would be granted guaranteed funds, until the cap is reached. *See* 47 C.F.R. § 54.507(f).

million annual cap has been reached.<sup>150</sup> We specify that the Corporations, rather than USAC or the permanent administrator, will monitor demand for the purpose of determining when the \$2 billion trigger has been reached in the case of the schools and libraries program and when the \$400 million cap has been reached in the case of the rural health care providers program. Once the \$2 billion trigger has been reached, the Schools and Libraries Corporation will be responsible for implementing the rules of priority under which it will determine, consistent with our Universal Service rules, the procedures by which the remaining funds will be disbursed under the schools and libraries program.<sup>151</sup> We conclude that the Corporations are best suited to project and monitor demand for funds for purposes of calculating the quarterly contribution factors because the Corporations will be responsible for reviewing the bills for services on which service providers will designate the amount of universal service funds to which they are entitled and on which schools, libraries, and rural health care providers will confirm the receipt of such services. In addition, we clarify that the Schools and Libraries and Rural Health Care Corporations' administrative expenses shall be applied to their respective programs' annual funding caps.

67. We also conclude that the Schools and Libraries Corporation may review and certify schools' and libraries' technology plans<sup>152</sup> when a state agency has indicated that it will be unable to review such plans within a reasonable time. We anticipate that consistent with the Universal Service Order, the Department of Education and the Institute for Museum and Library Services will recommend to the Commission alternative review measures.<sup>153</sup> Upon receipt of such recommendations, the Commission will determine whether to adopt alternative review measures. Furthermore, we clarify our statement in the Universal Service Order that the administrator should classify schools and libraries as urban or rural and use the discount matrix adopted in the Universal Service Order to set the discount rate that will be applied to eligible interstate services purchased by schools and libraries.<sup>154</sup> We conclude that the Schools and Libraries Corporation is best suited to classify schools and libraries as urban or rural and to use the discount matrix to set the discount rate because, as discussed above, the Schools and Libraries Corporation will be responsible for reviewing and processing applications for services in which schools and libraries provide the information that will be used in setting the discount rate.

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<sup>150</sup> The Universal Service rules provide for a \$400 million annual cap on universal service support for rural health care providers. *See* 47 C.F.R. § 54.623(a).

<sup>151</sup> As provided in 47 C.F.R. § 54.507(f), certain rules of priority will apply to the disbursement of funds when expenditures in any funding year reach the level where only \$250 million remains before the cap will be reached.

<sup>152</sup> The Universal Service rules require schools and libraries to submit technology plans as part of their application for service. *See* 47 C.F.R. § 54.504(b)(2)(vii).

<sup>153</sup> *See* Universal Service Order at para. 574.

<sup>154</sup> *See* 47 C.F.R. § 54.505.

68. In a discussion paper filed on June 23, 1997, NECA indicated a preference for the creation of a single subsidiary corporation as opposed to the formation of multiple corporations for purposes of administering the universal service support mechanisms.<sup>155</sup> We are unpersuaded by NECA's arguments that a single corporation would provide a more efficient or effective method of administering the universal service support mechanisms than the administrative structure prescribed by this Order. First, we do not concur in the view that structuring all administrative functions within a single corporate structure would result in greater efficiency, avoid duplication of functions, or produce greater cost savings than would the structure described above. Rather, we anticipate that unique administrative functions will be performed by appropriate personnel whether those personnel serve as officers or employees under particular committees of a single corporation or perform those same functions within separate corporations. Because the schools and libraries program and the rural health care program will serve discrete categories of beneficiaries, we anticipate that the administrative functions associated with those programs will be performed by individuals with expertise and knowledge in the areas of education, library programs, or health care. Therefore, we reject the assertion that the creation of separate corporations will result in duplication of functions as NECA suggests. Moreover, in monitoring the quarterly projected administrative expenses of both USAC and the Corporations, as discussed in section IV.D, and in directing NECA, USAC, and the Corporations to share personnel and other resources whenever doing so would minimize expenses, as discussed in section IV.I, we conclude that the risk of unnecessary duplication of functions, systems, and resources is not significant.

69. We find no evidence to suggest, as asserted by NECA, that the new universal service support programs could be implemented more quickly under a single corporate structure. As a threshold matter, we do not anticipate that the time required to incorporate the Corporations will be significantly greater than that required to incorporate USAC alone. In addition, because of the distinct nature of the schools and libraries and rural health care programs, we expect that the process of hiring and training staff to administer those programs will not be more time consuming merely because staff are employed by particular corporations as opposed to reporting to particular committees within a corporation. To the extent that there may be overlapping functions, the Corporations will be encouraged, as both a cost and time saving measure, to enter into contracts with NECA or USAC for the performance of such functions. Finally, we anticipate that individuals within a smaller corporate structure may be able to make decisions more rapidly than could the same individuals within a larger corporate structure.

70. Given that an independent auditor will perform an annual audit of each corporation and that the performance and projected administrative expenses of each corporation will be closely monitored by the Commission, we reject the assertion that a single corporate

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<sup>155</sup> Letter from Robert Haga to William Caton, Acting Secretary, FCC, June 23, 1997, recording an *ex parte* meeting between NECA personnel and Commissioner Quello and Commission staff.

structure ensures greater accountability of program administrators. In addition, we conclude that several of NECA's remaining concerns are addressed by the fact that the Corporations will continue to perform the same functions for the permanent administrator as they will for USAC, notwithstanding the identity of the permanent administrator. Specifically, we conclude that the permanent nature of the Corporations will make them more "user friendly" to program participants because they will be permanent, easily recognizable entities as opposed to transitional entities. For this reason, we also reject the assertion that a single corporate structure will better facilitate the transition to a permanent administrator, since the entities whose creation we require in this Order will continue to perform the same functions for the permanent administrator. For all of these reasons, we conclude that the potential disadvantages that NECA maintains are associated with the administrative structure set forth herein are outweighed by the benefits that we anticipate will be realized by this structure.

## **I. Implementation Issues**

71. Creation and Scope of Authority of USAC. As noted above, we direct NECA to establish USAC as a separate subsidiary. This separate subsidiary will have separate directors, pursuant to the requirements set forth above, and will maintain separate books of account from those of NECA's other operations. We direct that the appointment of NECA as the temporary administrator will become effective coincident with NECA's incorporation of the USAC subsidiary and the Corporations. We direct USAC to develop the necessary database systems, hire and train personnel, and discuss with contributors the assessment of universal service support requirements. We emphasize that, in its role as the temporary administrator, USAC may engage only in activities directly related to administration of the universal service support mechanisms. We further find that USAC Board and High Cost and Low Income Committee meetings shall be open to the public and shall be held in Washington, D.C., because this city is easily accessible and also may be particularly convenient for the many interested parties that have offices or representatives in the Washington, D.C. area. We also conclude that USAC Board members shall be entitled to receive reimbursement for expenses directly incurred as a result of their participation on the USAC Board.

72. Creation and Scope of Authority of Schools and Libraries and Rural Health Care Corporations. We direct NECA to incorporate the Schools and Libraries and Rural Health Care Corporations and to take such steps as are necessary to ensure that the Corporations are unaffiliated with either NECA or USAC once the Corporations begin to perform their universal service functions. We assign to the Schools and Libraries Corporation and the Rural Health Care Corporation the authority to perform the functions designated in section IV.H. above. We anticipate that the Corporations may need to engage in transactions with either NECA or USAC to enable them to begin operations as quickly as possible. Such transactions may include contracts for services of NECA and/or USAC employees, loans for the administration of the universal service support mechanisms, and transfers of assets. Start-up funds for the

Corporations may not come from the TRS Fund or from TRS administrative accounts. We expect, however, that the Corporations will hire individuals other than NECA or USAC employees to perform functions unrelated to USAC's functions as described in section IV.H., such as reviewing schools' and libraries' technology plans. We also anticipate that the Corporations may seek to borrow start-up funds directly from commercial lenders.

73. We emphasize that, in administering the schools and libraries and rural health care programs, the Corporations may engage only in activities directly related to administration of the program for which each was created. We further find that the Corporations' Board meetings shall be open to the public and shall be held in Washington, D.C., because this city is easily accessible and also may be particularly convenient for the many interested parties that have offices or representatives in the Washington, D.C. area. We also conclude that the Corporations' Board members shall be entitled to receive reimbursement for expenses directly incurred as a result of their participation on that Corporation's Board.

74. Intercorporate Transactions. As noted above, we anticipate that USAC and the Corporations may engage in transactions with NECA. We expect that NECA, USAC, and the Corporations will engage in such transactions whenever doing so would minimize expenses. We direct NECA and USAC to provide such services, including loaning start-up funds, upon the request of the Corporations on reasonable terms. As with the Corporations' start-up funds, mentioned above, start-up funds for USAC may not come from the TRS fund or from TRS administrative expense accounts.<sup>156</sup> All transactions that occur between NECA and USAC must be conducted on an arm's length basis. For transactions between NECA and USAC, NECA will be subject to the Commission's affiliate transaction rules.<sup>157</sup> We also direct NECA to revise its cost allocation manual (CAM) to reflect the formation of USAC.<sup>158</sup>

75. Accounting and Auditing Requirements. Concerns about fraud, waste, and abuse occurring in universal service support programs lead us to impose specific accounting and auditing requirements for USAC and the Schools and Libraries and Rural Health Care Corporations. Thus, USAC will maintain books of account in accordance with generally accepted accounting principles (GAAP) that are separate from NECA's books of account. Similarly, the Corporations will maintain books of account in accordance with GAAP that are separate from USAC's books of account and separate from each other. We direct that an audit be performed of USAC's and the Corporations' books on an annual basis by an independent auditor. In our

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<sup>156</sup> See 47 C.F.R. § 64.604(c)(4)(iii)(H).

<sup>157</sup> See 47 C.F.R. § 32.27. See also Joint Cost Order, Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298 (1987), *modified on recon.* 2 FCC Rcd 6283 (1987); Implementation of the Telecommunications Act of 1996; *1996 Safeguards Order*.

<sup>158</sup> See 47 C.F.R. § 64.903.

*Accounting Safeguards Order*, we established specific audit procedures applicable to separate subsidiaries of the BOCs under section 272(d) of the Act.<sup>159</sup> Because we conclude that oversight of the administration of the universal service support mechanisms is necessary to ensure the integrity of the support mechanisms, we apply to USAC and the Corporations audit requirements similar to those contained in section 53.209 *et seq.* of our rules.<sup>160</sup> Before selecting the independent auditor, USAC and the Corporations shall submit to the staff of the Bureau preliminary audit requirements, including the proposed scope of the audit and the extent of the compliance and substantive testing. The Bureau will review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. The Bureau will make any modifications that it deems necessary to the audit requirements. After the audit requirements have been approved by the Bureau, USAC and the Corporations each shall engage an independent auditor to conduct an agreed-upon procedures audit<sup>161</sup> following the procedures determined by the Bureau. In making its selection, neither USAC nor the Corporations shall engage an independent auditor that has been involved in designing the accounting or reporting systems under review in the audit. In addition, USAC and the Corporations each shall require the independent auditor selected to develop a detailed audit program based on the final audit requirements and submit such audit program to the Bureau staff, which will determine whether any modifications are necessary for purposes of incorporating the proposed audit program into the final audit program.

76. Because the audit program is an agreed-upon procedures audit that will be conducted to assure that USAC's and the Corporations' administration of the support mechanisms serves the public interest, USAC and the Corporations each shall require the independent auditor it selects to inform the Bureau, during the course of an audit, of any revisions the auditor makes to the final audit program or scope of the audit. USAC shall require the independent auditor to notify the Bureau of any meetings with USAC or NECA in which audit findings are discussed, so that the Bureau can be kept apprised of audit results and can ensure that the audit program is conducted in accordance with Commission rules. Similarly, the Corporations shall require the independent auditor to notify the Bureau of any meetings with the Corporations in which audit findings are discussed. In addition, USAC and the Corporations each shall require the independent auditor selected to submit to the Bureau any accounting or rule interpretations that

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<sup>159</sup> See Implementation of the Telecommunications Act of 1996; Accounting Safeguards under the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 17539 (1996) (*1996 Safeguards Order*).

<sup>160</sup> See 47 C.F.R. § 53.209 *et seq.*

<sup>161</sup> According to generally accepted auditing standards, an agreed-upon procedures audit is one in which the parties involved (i.e., the accountant and the client) determine the nature and scope of the audit. See *Statement on Standards for Attestation Engagements No. 1*, at 100.56-.61, 100.47-.48 (March 1986). Here, although USAC and the Corporations will be clients, the Commission, through its rulemaking authority, will set forth the nature and scope of the audit to be agreed upon by both USAC and the auditor and the Corporations and the auditor.

either USAC or the Corporations find necessary to make to complete the audit. By receiving the above information, the Bureau will be able to ensure that the auditor examines areas the Bureau has determined require review and that the Commission's rules are being followed.

77. USAC and the Corporations each shall require the independent auditor selected, within 60 days after the end of the audit period, but prior to discussing the audit findings with USAC, NECA, or the Corporations, to submit a draft of the audit report to the Bureau. We conclude that submission of the audit report to the Bureau in this time period will permit an orderly release of the report while also allowing the Bureau to assess the validity of the report's findings and the adequacy of the work product. The independent auditor may request additional time to perform additional audit work as recommended by the Bureau staff. USAC and the Corporations each shall require the independent auditor selected to submit the audit to USAC and the Corporations, respectively, for their response to the audit findings. Within 30 days after receiving the audit report, USAC and the Corporations each shall respond to the audit findings and send a copy of their response to the Bureau staff. USAC and the Corporations also shall submit to the Bureau staff any reply that the independent auditor may provide relating to USAC's and the Corporations' response. In addition to the annual audit, we direct that a close-out audit of USAC's and the Corporations' operations should be performed within six months of the permanent administrator's beginning operations.

78. Recovery of Administrative Expenses. The permanent administrator's, USAC's, Schools and Libraries Corporation's, and Rural Health Care Corporation's annual administrative expenses, which may include, but are not limited to, salaries, equipment costs, costs associated with borrowing funds, operating expenses, directors' reimbursement for expenses, and costs associated with auditing contributors or support recipients, should be commensurate with the administrative expenses of programs of similar size. Once projections of the next quarter's administrative expenses have been approved by the Commission,<sup>162</sup> USAC shall disburse funds to the Schools and Libraries and Rural Health Care Corporations for administrative expenses for the next quarter. The Corporations shall submit to the Commission projected quarterly budgets at least 60 days prior to the start of every quarter. The Corporations' first projected budgets will include administrative expenses, including any interest, incurred prior to the first budget filing deadline. USAC will disburse payments to the Corporations on a quarterly basis. Each of the Corporations will receive such payments from the permanent administrator under the same terms as payments will be received from USAC pursuant to this Order.

79. Nondisclosure of Information. The Commission will have full access to all data received by the permanent administrator, USAC, and the Corporations. Requests for Commission

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<sup>162</sup> Projected quarterly administrative expenses will be deemed approved by the Commission if the Commission does not act within 14 days following publication of the projections along with the projections of demand in a Public Notice.

nondisclosure can be made under section 0.459 of the Commission's rules at the time that the subject data is submitted to USAC or the Corporations.<sup>163</sup> As required by our rules, such requests for nondisclosure must contain a statement of the reasons for withholding the materials from disclosure (e.g., competitive harm) and the facts supporting that statement. In any event, all decisions regarding disclosure of company-specific information will be made by the Commission. Therefore, we will require the administrator, USAC, and the Corporations to keep confidential all data obtained from universal service contributors, not to use such data except for purposes of administering the universal service support mechanisms, and not to disclose such data in company-specific form unless directed to do so by the Commission.

80. Universal Service Worksheet. The Universal Service Worksheet, which directs each contributing carrier or entity to provide, on a semi-annual basis, identification information and information regarding end-user telecommunications revenues, is attached hereto as Appendix C. After the Worksheet has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995,<sup>164</sup> copies of the Worksheet may be obtained from USAC or the FCC website. Carriers and contributing entities are required to provide on the Worksheet gross, end-user interstate, intrastate, and international telecommunications revenues information. An officer of the contributing carrier or entity must certify to the truth and accuracy of the Worksheet. The Worksheet will be subject to verification by the Commission, the permanent administrator, or USAC at the discretion of the Commission. Failure to file the Worksheet or to submit required contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law.<sup>165</sup> The permanent administrator or USAC will advise the Commission of any enforcement issues that arise and provide any suggested response.

81. Bureau Authority to Modify Reporting Requirements. Because it is difficult to determine in advance precisely the information that will be needed to administer the new universal service programs, the Bureau will have delegated authority to waive, reduce, or eliminate contributor reporting requirements that may prove unnecessary. The Bureau also will have delegated authority to require any additional contributor reporting requirements necessary to the sound and efficient administration of the universal service programs.

82. Transition to Permanent Administrator. We emphasize that our appointment of NECA as the temporary administrator of the universal service support mechanisms subject to its establishment of USAC and the Corporations does not suggest that NECA or USAC will be selected as the permanent administrator, nor does it suggest that NECA or USAC will receive special consideration in the selection of a permanent administrator. We condition NECA's

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<sup>163</sup> 47 C.F.R. § 0.459.

<sup>164</sup> 44 U.S.C. §§ 3501, *et seq.*

<sup>165</sup> *See, e.g.*, 47 U.S.C. §§ 206-209, 312, 403, 503.

appointment as temporary administrator on NECA's and USAC's agreeing to the requirements of this Order, including making available, if NECA is not appointed permanent administrator, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its performance as temporary administrator, to whomever the Commission directs, free of charge.<sup>166</sup> Similarly, although the Corporations will continue to have the same role in administering the schools and libraries and rural health care programs once a permanent administrator has been appointed as they will have with the temporary administrator, we nevertheless require the Corporations, as a condition of their role in the administration process, to make available to whomever the Commission may direct, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from their role in administering the universal service support mechanisms if their participation in administering the schools and libraries and rural health care programs should discontinue at any time. NECA, USAC, and the Corporations must specify any property they propose to exclude from the foregoing category of property based on the existence of such property prior to NECA's assumption of duties pursuant to this Order. We note that a federal advisory committee will be established to recommend to the Commission a permanent administrator of the universal service support mechanisms. Under the circumstances just described, we also direct NECA, USAC, and the Corporations to cooperate fully with the permanent administrator's efforts to assume its duties.

## V. PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Analyses

83. This Order achieves two main goals. First, we amend our rules to direct NECA to establish an independently functioning subsidiary (USAC) so that, as required by the Universal Service Order,<sup>167</sup> non-ILEC interests are represented in the administration of the universal service support mechanisms.<sup>168</sup> We further direct NECA to create two unaffiliated corporations to administer specific aspects of the universal service support mechanisms for schools and libraries and rural health care providers, respectively. For purposes of the Regulatory Flexibility Act (RFA), we certify, pursuant to 5 U.S.C. § 605 that these actions will not have a significant impact on a substantial number of small entities. Second, in this Order, we set forth the procedures that the permanent administrator and temporary administrator will follow to determine the amount of required universal service contributions and to collect such contributions from carriers and other

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<sup>166</sup> Such property includes, for example, databases, processing systems, computer software programs, lists, records, information, or equipment created or purchased and used in the temporary administration of the universal service support mechanisms.

<sup>167</sup> See Universal Service Order at para. 866.

<sup>168</sup> See Universal Service Order at para. 866.

affected entities. For this part of the Order, we have prepared a Final Regulatory Flexibility Analysis (FRFA), as required by 5 U.S.C. § 603.

## 1. Certification

84. In the NECA NPRM, the Commission tentatively certified that the rules it proposed to adopt in this proceeding would not have a significant economic impact on a substantial number of small entities because the proposed rules did not pertain to small entities.<sup>169</sup> We did not receive any comments concerning our proposed certification. For the reasons stated below, we certify that the rules directing NECA to create USAC to administer temporarily certain aspects of the universal service support mechanisms and directing NECA to establish two unaffiliated corporations to administer specific aspects of the schools and libraries and rural health care programs, will not have a significant economic impact on a substantial number of small entities.<sup>170</sup> This certification conforms to the RFA, as amended by the Small Business Regulatory Fairness Act of 1996 (SBREFA).<sup>171</sup>

85. The NECA NPRM certified that no regulatory flexibility analysis was required because the proposed rule changes applied only to NECA, and NECA is not a small organization within the meaning of the RFA. NECA is a non-profit, quasi-governmental association created to administer the Commission's interstate access tariff and revenue distributions processes and is not dominant in its field.<sup>172</sup> Furthermore, we found that the amendments to our rules proposed in the NECA NPRM did not apply to other "small business concerns" because they proposed to modify the composition of NECA's Board of Directors.

86. In the NECA NPRM, we tentatively concluded that NECA's governance structure needed to become more representative of the industry as whole in order for NECA to be appointed the temporary administrator. In the Universal Service Order, we appointed NECA temporary administrator on the condition that NECA make changes in its governance that would render it more representative of non-ILEC interests. This Order adopts rules directing NECA to create an independently functioning subsidiary (i.e., USAC) to temporarily administer certain

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<sup>169</sup> NECA NPRM at paras 19-21.

<sup>170</sup> 5 U.S.C. § 605(b).

<sup>171</sup> 5 U.S.C. §§ 601-611. The Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, was amended by the "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), Subtitle II of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA).

<sup>172</sup> See 47 C.F.R. §§ 69.601, 69.603. NECA subsequently assumed responsibility for administering the existing universal service fund (47 C.F.R. §§ 69.116, 69.603), the Lifeline Assistance program (47 C.F.R. §§ 69.117, 69.603), the LTS program (47 C.F.R. §§ 69.2(y), 69.612), and TRS fund (47 C.F.R. § 64.604(c)(4)(iii)).

aspects of the universal service support mechanisms and directing NECA to create two unaffiliated corporations to administer certain aspects of the schools and libraries and rural health care programs. We have not received any comments requesting that we modify our initial certification that this rule change will not have a significant economic impact on a substantial number of small entities. We therefore certify pursuant to section 605(b) of the RFA that the rules adopted in this Order directing NECA to create an independent subsidiary to administer temporarily certain aspects of the universal service support mechanisms and directing NECA to create two unaffiliated corporations to administer certain aspects of the schools and libraries and rural health care programs, will not have a significant impact on a substantial number of small entities.

## **2. Final Regulatory Flexibility Analysis**

87. As required by section 603 of the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 254 NPRM.<sup>173</sup> The Commission also prepared an IRFA in conjunction with the Recommended Decision, seeking written public comment on the proposals in the 254 NPRM and Recommended Decision and included a FRFA in the Universal Service Order.<sup>174</sup> In our NECA NPRM, we tentatively certified that the rule amendments under consideration would not have a significant economic impact on a substantial number of small entities. We did not receive any comments concerning the proposed certification. The Commission's FRFA in this Order conforms to the RFA, as amended.

### **a. Need for and Objectives of this Order and the Rules Adopted Herein.**

88. The Commission is required by sections 254(a)(2) and 410(c) of the Act, as amended by the 1996 Act, to promulgate these rules to implement promptly the universal service provisions of section 254. In the Universal Service Order, we adopted rules whose principal goal is to reform our system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. The rules adopted in this Order clarify the structure and responsibilities of the temporary administrator and unaffiliated corporations and describe the steps these three entities must undertake in administering the universal service support mechanisms adopted in the Commission's Universal Service Order.

### **b. Summary and Analysis of the Significant Issues Raised by Public Comments in Response to the IRFA.**

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<sup>173</sup> 254 NPRM at paras. 135-142.

<sup>174</sup> 61 Fed. Reg. 63,778, 63,796 (1996).

89. No comments in response to the IRFA in addition to those described in the Universal Service Order<sup>175</sup> were filed.

**c. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order will Apply.**

90. In the FRFA to the Universal Service Order, we described and estimated the number of small entities that would be affected by the new universal service rules, including the rule requiring telecommunications carriers and other entities to contribute to the universal service support mechanisms. The rules adopted here, which set forth the procedures by which contributions will be made to the universal service support mechanisms, will apply to the same telecommunications carriers and entities affected by the universal service rules. We therefore incorporate by reference paragraphs 890-922 of the Universal Service Order, which describe and estimate the number of affected telecommunications carriers and entities.<sup>176</sup>

**d. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Significant Alternatives and Steps Taken to Minimize the Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.**

Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.

91. Section 254(d) states "that all telecommunications carriers that provide interstate telecommunications services shall make equitable and nondiscriminatory contributions" toward the preservation and advancement of universal service. The Universal Service Order FRFA<sup>177</sup> describes the obligation of telecommunications carriers and other providers of telecommunications services to contribute to the universal service support mechanisms and the concomitant requirement that they provide information regarding their end-user telecommunications revenues. This Order establishes the specific procedures that telecommunications carriers and other providers of telecommunications services will follow in providing such information to the administrator and temporary administrator. To compute carrier contributions, contributors must submit a semi-annual universal service Worksheet. The Worksheet will require all contributors to submit information relating to revenues derived from end users for telecommunications or telecommunications services to the administrator and

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<sup>175</sup> Universal Service Order at paras. 874-881.

<sup>176</sup> See Universal Service Order at paras. 890-922.

<sup>177</sup> See Universal Service Order at para. 980.

temporary administrator of the support mechanisms. Contributors also will be required to submit a quarterly payment to the administrator or temporary administrator of the support mechanisms. Contributors that provide services to schools, libraries, and rural health care providers may be eligible to receive a credit against their contributions. Contributors seeking a credit must submit to the administrator or temporary administrator additional information regarding the services provided at less than their pre-discount price to receive the credit. Approximately 5,000 telecommunications carriers and providers will be required to submit revenue information and payments. We sought to limit the information requirements to the minimum necessary for evaluating and processing the application and to deter possible abuse of process. These tasks may require some legal and accounting skills.

Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.

92. Pursuant to section 254(d), we concluded in the Universal Service Order that carriers with annual contributions of less than \$100 will be exempt from universal service contribution and reporting requirements. Nothing in this proceeding leads us to alter our conclusion in the FRFA of the Universal Service Order<sup>178</sup> that the *de minimis* exception in section 254(d) may not properly be interpreted to except, on the basis of their size, small carriers and other telecommunications providers from the obligation to contribute to the universal service support mechanisms or to decrease the relative amount that they must contribute.

**e. Report to Congress**

93. The Commission shall send a copy of the FRFA and certification, along with the Report and Order, in a report to Congress pursuant to the SBREFA, 5 U.S.C. § 801(a)(1)(A). A copy of the certification also will be sent to the Chief Counsel for Advocacy of the SBA. Finally, a copy or a summary of this FRFA and certification also will be published in the Federal Register.

**B. Effective Date**

94. With respect to the rules adopted herein that are not subject to the PRA, we find good cause to depart from the general requirement of 5 U.S.C. § 553(d) that final rules take effect not less than 30 days after their publication in the Federal Register. We find good cause to make the rules effective upon publication in the Federal Register for the reasons described below.

95. First, the speedy establishment of both the USAC subsidiary and the Corporations, is crucial to the Commission's effort to implement promptly and effectively the new universal service program mandated by section 254 of the Act. The Commission's Universal Service Order

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<sup>178</sup> See para. 982.

requires that the program begin by January 1, 1998. To initiate the program, and most notably the schools and libraries program by that date, the USAC subsidiary and the Corporations must complete quickly a number of administrative functions. USAC and the Corporations may not begin to perform these functions until certain preliminary tasks, some of which may require substantial, time-consuming deliberations among interested parties, are completed. Such preliminary tasks include the incorporation of both USAC and the Corporations and the appointment of these entities' Boards of Directors.

96. We also find good cause to make the rules governing establishment of the USAC subsidiary and the Corporations and appointment of these entities' Boards of Directors effective upon publication in the Federal Register. We make this determination because the rules adopted here are based, at least in part, on the reform proposal that NECA filed with the Commission on January 10, 1997, in which NECA expressed willingness to immediately begin establishing a subsidiary corporation to administer temporarily the universal service support mechanisms.<sup>179</sup> Furthermore, NECA has had notice of its appointment as temporary administrator since the release of the Universal Service Order on May 8, 1997, designating NECA as the temporary administrator.<sup>180</sup> Under these circumstances, the purpose of 5 U.S.C. § 553(d), to ensure an adequate period in which regulated entities may prepare to comply with new rules, can be met without affording the usual 30-day period prior to the rules' effective date. For this and the other reasons described above, we find good cause to make the rules regarding the establishment of the USAC subsidiary and the appointment of its Board members effective upon publication in the Federal Register.

## VI. ORDERING CLAUSES

97. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 218-220, 254 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-05, 218-20, 254 and 403, that Parts 54 and 69 of the Commission's Rules, 47 C.F.R. Parts 54 and 69, are amended, as specified in this ORDER and attached as Appendix B hereto. The collections of information contained within are contingent upon approval by the Office of Management and Budget. Notice of that approval and availability of the Worksheet will be published in the Federal Register.

98. IT IS FURTHER ORDERED that, pursuant to section 553(d)(3) of the Administrative Procedures Act, 5 U.S.C. § 553(d)(3), except for the rules subject to the Paperwork Reduction Act (PRA), the rules adopted in this ORDER shall, for good cause shown,

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<sup>179</sup> See NECA January 10, 1997 Letter.

<sup>180</sup> See Universal Service Order at para. 866.

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become effective upon publication in the Federal Register.<sup>181</sup>

99. IT IS FURTHER ORDERED that, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chairman of the Commission to perform the following functions: (1) to review nominations to the USAC Board and select USAC Board members; (2) to review the nomination for the rural health care representative and select the representative who will serve only on the Rural Health Care Board; (3) to select the independent directors who will serve on the Schools and Libraries and Rural Health Care Corporation's Boards; and (4) to review and approve candidates for Corporation CEO positions.

100. IT IS FURTHER ORDERED that, pursuant to section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(1), authority is delegated to the Chief, Common Carrier Bureau to perform the following functions: (1) to waive, reduce, or eliminate any contributor reporting requirements that prove to be unnecessary or to require contributors to submit any additional reporting requirements that the Bureau deems necessary to the efficient administration of the universal service support mechanisms; and (2) to oversee and to modify, as necessary, the annual audit of USAC and the Schools and Libraries and Rural Health Care Corporations.

101. IT IS FURTHER ORDERED that, pursuant to sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), the members of the industry or non-industry groups that will be represented on the Board are directed to submit their nominees selected by consensus for USAC directors to the Chairman of the Federal Communications Commission within 14 calendar days of the publication of this Order in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

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<sup>181</sup> See para. 42 for the rules subject to the Paperwork Reduction Act.

July 17th, 1997

**Statement of Chairman Reed E. Hundt**  
**Re: Administration of Universal Service**

On May 8th of this year we voted unanimously to transform the universal service system of support as required by Congress in Section 254 of the 1996 Telecommunications Act. The new universal service system continues to ensure low rates for basic phone service across the country, while providing for a more efficient and competitively neutral collection and compensation scheme.

Fulfilling Congress' mandate, we also voted unanimously to commit up to \$2.25 billion a year in universal service funds to bring telecommunications services to our nation's classrooms and libraries and up to \$400 million a year in support for the provision of telecommunications services to rural public and non-for-profit health care facilities at rates comparable to those in urban areas. The \$2.25 billion annual fund for schools and libraries represents the largest investment this country has made on a national level in the infrastructure of our public school system in this century. Made wisely and well, this investment can truly be a transforming force that will put a world of resources at the disposal of even the poorest schools and libraries -- opening up new worlds of learning for every single child in the country -- regardless of income or location.

With this Order we establish a framework for universal service administration and implementation that recognizes the many significant changes in the system. The new framework paves the way for the effective, efficient and accountable administration of the fund to low income consumers, residents of high cost areas as well as to schools, libraries and rural health care facilities.

As the Joint Board recommended, in order to get the system up and running quickly, we appoint NECA as the interim administrator, subject to certain changes in its governance and structure that will render it more representative of a broad range of interests. Specifically, we direct NECA to create a separate, not-for profit, subsidiary (USAC) that will administer the support mechanisms for high cost areas and low income consumers as well as perform all billing and collection functions. We direct that the USAC board be comprised of a balanced and fair representation of all contributing and recipient carriers, state regulators and representatives of each of the intended beneficiaries.

We are altering, however, from our earlier determination that the universal service administrator should select a subcontractor to administer the fund temporarily with respect to schools, libraries and rural health care providers. Instead, we direct NECA to create two independent, non-profit corporations to manage most all aspects of the administration of the

universal service fund with respect to schools, libraries and rural health care providers. These corporations will be solely responsible for administering the application process for schools and libraries and rural health care providers, respectively, including disseminating, processing and reviewing applications for service, approving technology plans, creating and maintaining databases and websites on which applications for services will be posted for competitive bid, performing outreach and public education functions, making and submitting quarterly projections of demand for funding and conducting or authorizing the performance of audits. The establishment of these separate corporations will provide a management structure and expertise that is needed to ensure the effective administration of the universal service program for schools, libraries and rural health care facilities.

A majority of the Commission decided that this structure would better serve the goals of effective, efficient and accountable management and administration with respect to schools, libraries and rural health care facilities than the subcontractor approach we earlier adopted. I believe that this approach will also better serve those goals than the subcommittee approach suggested by Commissioner Chong in her dissenting statement.

Our decision to adopt this approach was based on thorough consideration of the merits of various operational structures including board committees, separate corporations, partnerships, associations and subcontractors. Our consideration was guided by the shared goals of establishing a system for rapid implementation and cost-effective, efficient and accountable administration of the program to meet the specialized needs of schools, libraries, rural health care providers, low income consumers and residents of high cost areas. I believe that the separate corporate structures outlined in the order will best achieve these goals for the reasons set forth below.

I. Separate Corporations will be more effective, accountable, and efficient than establishing a series of subcommittees of USAC.

A separate corporate structure will permit the continued existence of legally- cognizable and independent entities with sole responsibility and accountability for efficiently and effectively managing the administration of universal service funds to schools, libraries and rural health care facilities. Corporations are a desirable organizational structure generally because they provide limited liability for their shareholders and are treated as independent legal entities with the power to sue, to purchase or lease property, to lend or borrow money, to enter into contracts, and to make or alter by-laws. The corporate structure also provides an effective, established model for governing the complex relationships among the shareholders (or other beneficiaries), directors, officers, managers, creditors and others participating in the business of the corporation. The entities administering the universal service fund for schools, libraries and rural health care facilities must be able to exercise these powers if they are to operate effectively.

The separate corporate structure will also ensure greater clarity, simplicity and efficiency of decision making. The lines of authority in a corporation are clear and direct; reporting runs from managers to a CEO to the Board of Directors. Accountability is clear and more direct. In a committee or subcontractor structure, the lines of authority are more convoluted and accountability is more diffuse. Under the committee approach it is unclear who the schools, libraries and health care staffs would report to -- directly to the board committee or through the CEO of USAC (who would also be answerable to the full USAC board).

In order to ensure that the universal service funds are invested wisely and efficiently, the entities responsible for administering funds for schools, libraries and rural health care facilities must be vested with clear management authority and responsibility to carry out all aspects of administration of the funds to these entities. Decisions about projected funding, prioritization of expenditures, approval of applications and long range planning must be made quickly, effectively and with accountability without being subjected to a burdensome bureaucratic process. In addition, given the broad representation of different groups on the USAC board, the entities charged with administering these aspects of the fund must have the unimpaired ability to vigorously defend themselves against legal challenges.

The continued existence of these separate corporations is also important to ensure continuity and efficiency in the administration of funds for schools, libraries and rural health care facilities. In order to ensure that the new funding mechanism is in place as quickly as possible, we have appointed NECA to serve as the temporary administrator. No decision has been made with respect to the permanent administrator. Because the schools/ libraries and health care corporations are separate legal entities, they will survive the dissolution of USAC in the event that NECA is not selected to serve as the permanent administrator. Under these circumstances, the schools/libraries and health care corporations could quickly and easily contract with the permanent administrator to continue administering the program for these entities. This would ensure the continued smooth operation of universal service support and eliminate the need to spend additional funds on redundant start up costs. The continuing role of the schools and health care corporations will also help to attract qualified personnel with the expertise necessary to effectively implement the program with respect to schools, libraries and rural health care providers. The continued involvement of these corporations will also provide incentives for better management in the early phases of the program and will provide incentives for more strategic, long-range planning and better use of resources.

II. Administration of funds to schools/libraries and rural health care providers through a sub-committee or division of the USAC Board would be administratively cumbersome and could undermine the effective administration of the program.

The USAC Board will have substantial representation from telecommunications carriers some of which have argued against or challenged the funding for schools and libraries and rural health care facilities. The USAC CEO will serve at the pleasure of that Board. Therefore, if we

were to adopt a subcommittee structure, we would necessarily have to devise a complicated and indirect reporting structure to preserve and protect the autonomy of the directors of the schools and health care subcommittees. Moreover, such management by a board committee is awkward and inefficient. Boards generally monitor rather than manage the day-to-day operations of most corporations. Thus, management by committee in this instance, would likely lead to less effective, efficient or accountable administration of funds.

Finally, I do not believe that the administration of universal service funds to schools, libraries or rural health care facilities through two separate corporations rather than through two separate USAC committees will result in either substantial delays or increased administrative costs. Differences in the way funds will be administered to and used by schools, libraries and rural health care providers will result in the need to establish separate processes and procedures and to hire specialized staffs with relevant expertise regardless of whether a committee or corporation structure is used. In any event, we direct that the separate corporations should contract with USAC or NECA to the extent necessary to maximize the efficient use of resources and to avoid overlapping expenses.

For the above stated reasons, I am confident that the administrative structure we establish today will help to attract highly qualified, appropriately reimbursed and competent management staff that will ensure accountable, cost-effective and efficient management of the significant resources at issue. Such a structure will thus ensure that universal service funds are invested wisely and effectively to bring the benefits of the information age to classrooms, libraries and rural health care facilities across the country.

July 18, 1997

**Separate Statement of  
Commissioner James Quello**

*Re: Changes to the Board of Directors of the National Exchange Carrier Association, Inc.;*  
*Federal-State Joint Board on Universal Service. CC Docket Nos. 96-45, 97-21.*

I support today's action by the Commission to designate the National Exchange Carrier Association as the temporary administrator of the universal service support mechanisms. I believe that the work of the Commission, especially the effort of the Common Carrier Bureau, and the Joint Board has been commendable. It is clear to me that the real effort in realizing the goals of the universal service program still lies ahead for the Commission, states, both temporary and permanent fund administrators, school districts, libraries, health care facilities, and particularly for telecommunications companies who seek to provide new services and enter new markets.

It is far from clear, however, that the corporate structure created by today's order is the only reasonable mechanism for performing these functions. For example, it is conceivable that administering the funds through committees may be superior to the approach contained in this order. The late date at which I was asked to consider this order complicated my opportunity to consider this option. Consequently, I support today's order with less enthusiasm and less confidence than I would like.

In the Universal Service Order, the Commission stated that the schools and libraries program would become operational on January 1, 1998. In reaching the decision to support the corporations model in this order, I placed considerable emphasis on appointing a temporary administrator in a timeframe that would permit us to meet this deadline. Further delays in appointing the temporary administrator would undermine the critical policy goal of getting the universal service program running on January 1, 1998.

I expect that the temporary administrator will perform, in an effective and thorough manner, the duties necessary to publicize the various programs and to estimate, collect, and distribute funding according to the rules we have adopted. The functioning of the temporary administrator in the coming months and years may demonstrate the wisdom of establishing separate corporations. I sincerely hope that it will.

July 17, 1997

**Separate Statement  
of  
Commissioner Susan Ness  
Regarding Administration of Universal Service Mechanisms**

Today's order is another important step in our effort to ensure the fulfillment of the universal service objectives established by Congress. With major changes in the universal service system scheduled to become operational January 1, 1998, it is vital that we clear the way for implementation to begin.

Our order appoints NECA as the universal service administrator and provides for the creation of new organizations and procedures that are intended to ensure that the collection and distribution of universal service support is accomplished with efficiency and accountability. While we all have independent views on the structures and processes that would best serve these goals, what matters most at this critical time is to get the process underway. Unnecessary controversy or delay does not serve the interests of low-income consumers, consumers in high-cost areas, students, library users, or rural health care patients.

In my judgment, successful administration of the universal service programs has less to do with the precise structures and processes employed than with the quality of the people involved. Finding the people with the right skills and the necessary dedication to perform functions specific to the schools and libraries program, for example, is obviously essential, but I am at a loss to understand why this task will be more difficult, or time-consuming, as a result of our decision to assign these tasks to a separate corporation rather than a special subcommittee of the Universal Service Administrative Company (as our dissenting colleague now advocates) or a subcontractor to USAC (as the Joint Board had earlier recommended). But having carefully considered all three options, I have come to believe that in this respect we are making the choice that best serves our shared goals.

Use of separate corporations will ensure that the appropriate expertise is targeted to discrete and defined tasks. Decisionmaking will be streamlined, and bureaucracy reduced. This approach will also facilitate direct oversight by and accountability to this Commission, which in turn must account to the Congress and to the American people for the effective administration of the universal service programs. Efficient and cost-effective operations can be ensured by enabling the universal service entities to concentrate on what they do best, and to share resources whenever doing so will be consistent with efficient, responsible, and cost-effective operations.

I would make no claim of perfection about the structure and processes and plans reflected in this order, even if my own preferences had been, or could be, accommodated at every turn. The plain fact, however, is that universal service administration, like the universal service rules, will necessarily evolve over time. We don't have all the answers today. We will know more later, but only if we get the process underway now.

We can and should adjust our plans as we -- along with industry and beneficiary groups -- learn from experience. For today, our task is to move forward constructively to get workable administrative mechanisms up and running.

July 18, 1997

**Dissenting Statement****of Commissioner Rachelle B. Chong**

*Re: In the Matters of Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Report and Order and Order on Reconsideration, CC Docket Nos. 97-21, 96-45*

I respectfully dissent to today's Report and Order and Order on Reconsideration involving changes to the Board of Directors of the National Exchange Carrier Association, Inc. (NECA). While I remain fully committed to the success of the universal service support mechanisms and specialized programs contained in our May 7, 1997 Universal Service Report and Order (Universal Service Order), I object to this order because the majority casts aside the Joint Board's November 1996 decision to entrust NECA as the temporary administrator of the universal service program.<sup>182</sup> Instead, the majority adopts a cumbersome new structure that will likely result in slower decision making and impose higher administrative costs on the Section 254(h) schools/library and rural health care programs. In addition, I have grave concerns about the implementation time necessary for the corporate structure adopted today. From a practical point of view, NECA does not have enough personnel to "loan" to USAC and the two new corporations in the short term, while it searches for high quality, full time officers and employees for the corporations. Given this late date, I fear the corporate structure chosen today may seriously endanger a timely start for our schools/library and rural health care programs.

*Fiscal Responsibility for the Section 254(h) Programs Is Imperative*

Throughout the implementation of the universal service provisions of the Telecommunications Act of 1996 (1996 Act), I have repeatedly said that we must not forget that "job one" is getting affordable, quality telephone service to every American household across the nation.<sup>183</sup> To that end, our highest priority should be ensuring that our universal service programs encourage the highest level of subscribership, using mechanisms such as high cost assistance and

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<sup>182</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, paras. 832-33 (1996)(Joint Board Recommended Decision); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, para. 866 (released May 7, 1997).

<sup>183</sup> Separate Statement of Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part, *Re: In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 6 (released May 7, 1997).

low income programs, particularly for areas of chronically low subscribership.<sup>184</sup>

In Section 254(h) of the 1996 Act, Congress also asked that the Commission collect money from every telecommunications carrier to fund two social programs to provide discounted telecommunications service to schools, libraries and rural health care providers. The benefits of such programs are clear.

In implementing Section 254(h), however, I believe we must balance our enthusiasm for such social programs against a sober regard for how much the costs of those programs mean to the basic telephone rates of an average consumer. If basic telephone rates go up because of the Section 254(h) social programs, how does this impact our overriding goal of achieving 100% subscribership in the underserved and unserved areas of the nation? While improving telecommunications services to the education, library and the rural health care communities is clearly an important goal, it is my view that our achievement of these social programs must not come at the detriment of other consumers.

Thus, in light of these concerns, I believe we have a duty to be fiscally responsible in our administration of the Section 254 support mechanisms. As to the Section 254(h) programs, we should be conservative in the administrative procedures that we set up, and ensure that it is efficient and nonburdensome. We must guard against waste, fraud and abuse by retaining administrative oversight where necessary. And finally, it is imperative that we set up all our procedures in a timely manner that allows the program to begin on January 1, 1998, as provided for in our Universal Service Order.

### *Keeping It Simple*

I dissent to this item because, instead of taking a conservative and cost conscious approach, the majority has instead created an elaborate structure that is breathtaking in its breadth and complexity. While I can see a few benefits to this structure, I do not find that they outweigh the detriments, including increased costs of the corporate structure, increased implementation time, and more difficult accountability due to a more convoluted structure.

My preference for the structure of the interim universal service administrator would have been to have NECA establish USAC, and then form three *subcommittees* under USAC for the schools/library, rural health care and high cost/low income programs. This simple proposal,

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<sup>184</sup> E.g., Native American tribal lands, very remote areas such as the Alaskan Bush, and insular areas such as Hawaii, the Commonwealth of the Northern Marianas Islands, Guam and Puerto Rico.

which was also NECA's preferred approach,<sup>185</sup> would have retained the benefits of having individuals administer the schools/library and rural health care programs that have "expertise" and a "direct stake in the success of the programs,"<sup>186</sup> but without the cumbersome corporate structure mandated by the majority decision. This structure would also have operated more efficiently by avoiding duplication of functions between the corporations and minimizing the amount of coordination needed among the multiple companies. Accountability is also retained in the subcommittee structure; each subcommittee would hire staff to run the day-to-day operations and would report to the particular USAC Board members serving on that subcommittee. These USAC Board members are responsible for the functions assigned to that subcommittee and would be directly accountable to the FCC pursuant to our authority over NECA.

The majority, however, has taken a more complicated route. First, they have created a large USAC Board consisting of 17 members. On this point, I would have preferred a smaller USAC Board. A smaller board would have been vastly more efficient, because it could achieve more nimble decision-making with lower administrative costs. Although I agree that the USAC Board should be composed of a broad cross-section of interested parties, I do not see the need for multiple members of certain industry groups or beneficiary groups, especially in light of the fact that the decision makes clear that USAC's duties are limited to administrative, non-substantive functions (such as billing and collection). Broad and fair representation could have just as easily been achieved with fewer Board members.<sup>187</sup>

#### *The Majority Plan May Be Impractical*

I believe that the corporate structure adopted in this decision for operation of the schools/libraries and rural health care programs may be impractical because of two basic problems: cost and timing.

As to cost, I note that the Joint Board gave NECA the job of interim administrator because NECA has past expertise in billing and collecting money for our existing low income and high cost programs. The Joint Board (and subsequently the FCC) chose NECA because we

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<sup>185</sup> NECA *ex parte* letter, filed June 23, 1997.

<sup>186</sup> Majority decision at para. 58.

<sup>187</sup> It is unclear to me why information service providers (ISPs) are included on the USAC Board when ISPs are not mandatory contributors or beneficiaries to the universal service mechanisms, but are merely possible service providers to the Section 254(h) social programs. Others in a like position -- such as internal connection or "inside wire" providers -- were not given a seat on USAC, but have just as much interest in the proceeding as the ISPs.

believed it could get the job done quickly, efficiently and by our deadline.<sup>188</sup> But today, the majority changes the Joint Board's wise decision to give NECA the full responsibilities of interim administrator and instead, sets up two new corporations to handle the majority of the functions of the schools/library and rural health care programs.<sup>189</sup> I fear this unnecessary corporate structure will prove to be costly at ratepayer expense.

Moreover, setting up and operating two separate corporations unquestionably will be more costly than my proposed alternative of having a single USAC Board, with specialized subcommittees directing the Section 254(h) programs. Typically, nonprofit corporations have a Board of Directors and officers. Corporate officers often include a Chief Executive Officer (CEO), a Chief Financial Officer (CFO), and a Corporate Secretary.<sup>190</sup> Moreover, a corporate structure generally requires bylaws, articles of incorporation, the filing of annual reports, and other corporate activities required by law.

In light of all the above, I believe that the significant expenditures necessary to establish and maintain these two corporate structures may subject our programs to undue criticism, and may eat up funds that could better be used towards discounts on telecommunications services, Internet access, and internal connections by the schools, libraries and rural health care providers.

The second problem with this structure is time. Time is of the essence given our firm January 1, 1998, start date for the Section 254 programs.

At the outset, I must note my great disappointment that, even though the Commissioners were promised this draft decision by mid-February, 1997, in order to have time to consider these implementation issues carefully and still meet our start date for the Section 254(h) programs, it was not until June 20, 1997, that the Chairman's Office released the draft item for the full Commission's consideration. This delay has put significant time pressure on the Commission to put out this decision, and unreasonable time pressures on NECA to implement these changes, and put the mechanisms in place by our deadline.

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<sup>188</sup> Universal Service Order at para. 866; Joint Board Recommended Decision at paras. 832-33.

<sup>189</sup> For example, the corporations have the functions of reviewing school and library applications and technology plans, creating and maintaining a web site, performing outreach and public education functions, reviewing bills for services, and submitting quarterly projections of demand and administrative expenses to the Commission.

<sup>190</sup> Corporations also often retain an executive director to oversee day-to-day operations, not to mention a general counsel.

In light of this delay on our part, it seems untenable that we are ordering NECA to establish this complex corporate structure at this time, because this structure will probably take more time to fully implement than we have at this moment. For example, I do not see how qualified officers for the corporations can be located, hired and brought on board quickly enough to begin our schools/library program by January 1, 1998.<sup>191</sup> With a \$2.25 billion program at stake, a top quality CEO and CFO must be carefully selected from among qualified candidates. At a minimum, this executive search process will likely take several months. I see no reason to create this problem and I fear that it may result in the program being delayed from the current start date.

Given the importance of the Section 254(h) programs, this structure could be detrimental to the programs' success. Thus, I think we should have remained faithful to the recommendation of the Joint Board to give NECA the job of interim administrator, and we should have adopted a simpler structure utilizing subcommittees.

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<sup>191</sup> To find a qualified CEO of the schools/library corporation, USAC will need to conduct an executive search, interview numerous candidates, extend an offer, and if the candidate accepts, wait for the new officer to transition from his or her current job, and then give the officer time to come up to speed on the Commission's relevant orders and other USAC implementation actions.