

b. In paragraph (e)(1) add the words "and associated funerary objects" after "inventory of culturally affiliated human remains" and before ", including all information".

9. In § 10.10, revise paragraphs (a)(1)(i), (a)(3) and (b)(1)(i) as follows:

§ 10.10 Repatriation.

(a) * * *

(1) * * *

(i) The object meets the definitions established in § 10.2 (d)(2)(ii), (d)(3), or (d)(4); and

* * * * *

(3) *Notification.* Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of paragraph (a)(1) of this section from a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the **Federal Register** as described in § 10.8.

(b) * * *

(1) * * *

(i) The human remains or associated funerary object meets the definitions established in § 10.2 (d)(1) or (d)(2)(i); and

* * * * *

§ 10.15 [Amended]

10. Amend § 10.15 as follows:

a. In the section heading, remove "Repatriation limitations" and add, in its place, "Limitations"; and

b. In paragraph (a)(1), remove the word "transfer" and add, in its place, "disposition"; and c. In paragraph (a)(2), remove the words "having custody", "has custody" and "in the custody" and add, in their place, "in possession", "is in custody" and "in the possession", respectively.

Dated: July 18, 1997.

Donald J. Barry,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97- 20319 Filed 7-31-97; 8:45 am]

BILLING CODE 4310-70-F

ACTION: Final rule.

SUMMARY: The Report and Order released July 18, 1997, promulgates rules directing the National Exchange Carrier Association, Inc. (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 also direct that NECA create an unaffiliated, not-for-profit corporation to manage 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. 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. 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. 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.

EFFECTIVE DATES: August 1, 1997 except for §§ 54.709, 54.711, 54.713, and 69.614(c) which are effective September 2, 1997.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Legal Counsel, Common Carrier Bureau, (202) 418-1500, or Sheryl Todd, Common Carrier Bureau, (202) 418-7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted July 17, 1997, and released July 18, 1997. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW, Washington, DC. Pursuant to the Telecommunications Act of 1996, the Commission released a Notice of Proposed Rulemaking and Order Establishing a Joint Board, Federal-State Board on Universal Service, CC Docket 96-45, on March 8, 1996 (61 FR 10499 (March 14, 1996)), a Recommended Decision on November 8, 1996 (61 FR 63778 (December 2, 1996)), a Public Notice on November 18, 1996 (61 FR

63778 (December 2, 1996)) seeking comment on rules to implement sections 254 and 214(e) of the Act relating to universal service, and a Notice of Proposed Rulemaking, CC Docket 97-21, on January 10, 1997 (62 FR 2636 (January 17, 1997)). As required by the Regulatory Flexibility Act (RFA), the Report and Order contains a Final Regulatory Flexibility Analysis. Pursuant to section 604 of the RFA, the Commission performed a comprehensive analysis of the Report and Order with regard to small entities and small incumbent local exchange carriers.

Summary of Report and Order:

A. Appointment of NECA as Temporary Administrator

1. *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.

2. *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 in the temporary administration of the new universal service support mechanisms. 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 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. 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. We direct that USAC be

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket No. 96-45; 97-21; FCC 97-253]

Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Board on Universal Service

AGENCY: Federal Communications Commission.

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, within 14 calendar days of release of this Order, 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.

B. USAC Board of Directors

3. *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. The USAC Board shall be comprised of: Three directors representing ILECs; two directors representing IXC; 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 cable operators; one director representing information service providers; three directors representing eligible schools; one director representing eligible libraries; one director representing eligible rural health care providers; one director representing low-income consumers; one director representing state telecommunications regulators; and one director representing state consumer advocates. 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 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. Of the two IXC directors, one director will represent IXC with more than \$3 billion in annual operating revenues, and one director will represent IXC with annual operating revenues of \$3 billion or less.

4. *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 within 14 calendar days of the publication of this Order in the **Federal Register**. A copy of nominations also should be filed with the Secretary of the Commission. 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 IXC with more than \$3 billion in annual operating revenues may submit nominations for the IXC Board member who will represent IXC 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., IXC, 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.

5. 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. If a group fails to reach consensus on a candidate to serve on the USAC Board and instead submits the names of more than one nominee for a single Board member position, the Chairman of the Federal Communications Commission will select an individual or individuals who will serve on the USAC Board. Similarly, if an industry or beneficiary group 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.

6. 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.

C. Functions of USAC

7. *In General.* In connection with the temporary administration of the universal service support mechanisms for schools and libraries and rural health care providers, USAC 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. 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.

8. *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 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).

9. 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. 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.

10. 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. 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.

11. Based on historic demand, 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, 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. 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.

12. 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 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, 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. 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.

13. 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 Commission, 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.

14. 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.

15. 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. In such event, contributions for subsequent quarters will be increased by an amount to cover

the added costs associated with borrowing funds.

16. *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.

D. Creation and Functions of High Cost and Low Income Committee

17. 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.

18. The Committee will consist of 10 USAC Board members, including seven service provider representatives (*i.e.*, the three representatives of ILECs, two representatives of IXC's, one representative of CMRS providers, and one representative of CLECs) and the low-income, state consumer advocate, and state telecommunications regulator representatives described above.

19. 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.

20. Based on the authority granted to the administrator under Commission universal service rules to audit contributors and carriers that report data to the administrator, 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 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.

E. Creation of Schools and Libraries and Rural Health Care Corporations

21. 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, except with regard to those matters directly related to billing, collection, and disbursement of funds. 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 July 31, 1997, in order to permit us to determine prior to NECA's establishing the Corporations whether the requirements of this Order have been satisfied.

22. 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 section G 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.

23. 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 C 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 this Order.

F. Boards of Directors of Schools and Libraries and Rural Health Care Corporations

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

25. 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. 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. 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.

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

27. 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.

G. Functions of Schools and Libraries and Rural Health Care Corporations

28. 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. 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. 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. 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.

29. 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, and when, in the case of the rural health care program, the \$400 million annual cap has been reached. 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. 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.

30. We also conclude that the Schools and Libraries Corporation may review and certify schools' and libraries' technology plans 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. 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.

H. Implementation Issues

31. *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, DC., 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, DC. 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.

32. *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 G. 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.

33. 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, DC, 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, DC 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.

34. *Intercompany 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. 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. We also direct NECA to revise its cost allocation manual (CAM) to reflect the formation of USAC.

35. *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 *Accounting Safeguards Order*, 62 FR 2918 (January 21, 1997), we established specific audit procedures applicable to separate subsidiaries of the BOCs under section 272(d) of the Act. 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 § 53.209 *et seq.* of our rules. 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 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.

36. 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 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.

37. 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.

38. *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, 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.

39. *Nondisclosure of Information.* The Commission will have full access to all data received by the permanent administrator, USAC, and the Corporations. Requests for Commission nondisclosure can be made under § 0.459 of the Commission's rules at the time that the subject data is submitted to USAC or the Corporations. 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.

40. *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. After the Worksheet has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 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. The permanent administrator or USAC will advise the Commission of any enforcement issues that arise and provide any suggested response.

41. *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.

42. *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 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.

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.

Procedural Matters

I. Final Regulatory Flexibility Analyses

43. 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, non-ILEC interests are represented in the administration of the universal service support mechanisms. 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 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.

Certification

44. 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. 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. This certification conforms to the RFA, as amended by the Small Business Regulatory Fairness Act of 1996 (SBREFA).

45. 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. 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.

46. 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 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.

Final Regulatory Flexibility Analysis

47. As required by section 603 of the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 254 NPRM. 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. 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.

Need for and Objectives of This Order and the Rules Adopted Herein.

48. 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.

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

49. No comments in response to the IRFA in addition to those described in the Universal Service Order were filed.

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

50. 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.

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. 51. 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 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 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. 52. 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 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.

Report to Congress

53. 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**.

J. Effective Date

54. 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.

55. 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 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.

56. 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. 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. 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**.

Ordering Clauses

57. 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 CFR parts 54

and 69, are amended, as specified below. The collections of information contained within sections are contingent upon approval by the Office of Management and Budget.

58. 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 §§ 54.709, 54.711, 54.713, and 69.614(c) subject to the Paperwork Reduction Act (PRA), the rules adopted in this order shall, for good cause shown, become effective August 1, 1997.

59. 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.

60. 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.

61. 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**.

List of Subjects

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 54 and 69 of title 47 of the Code of Federal Regulations (CFR) are amended as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 214, and 254 unless otherwise noted.

2. Section 54.5 is amended by revising the definition of "Administrator" and adding the following new definitions in alphabetical order to read as follows:

§ 54.5 Terms and Definitions.

* * * * *

Administrator. The term "Administrator" shall refer to the National Exchange Carrier Association, Inc. until the date that an independent subsidiary of the National Exchange Carrier Association, Inc. is incorporated and has commenced the administration of the universal service support mechanisms. On that date and until the permanent Administrator has commenced the permanent administration of the universal service support mechanisms, the term "Administrator" shall refer to the independent subsidiary established by the National Exchange Carrier Association, Inc. for the purpose of temporarily administering the portions of the universal service support mechanisms described in § 69.616. On the date that the entity selected to permanently administer the universal service support mechanisms commences operations and thereafter, the term "Administrator" shall refer to such entity.

* * * * *

Contributor. The term "contributor" shall refer to an entity required to contribute to the universal service support mechanisms pursuant to § 54.703.

* * * * *

High Cost and Low Income Committee. The term "High Cost and Low Income Committee" shall refer to a committee of the Board of Directors of the Administrator's independent subsidiary that will have the power and authority to bind the independent subsidiary's Board of Directors on issues relating to the administration of the high

cost and low-income support mechanisms, as described in § 69.615.

Rural Health Care Corporation. The term "Rural Health Care Corporation" shall refer to the corporation created pursuant to § 69.617 that shall administer specified portions of the universal service support mechanisms, as described in § 69.618.

Schools and Libraries Corporation. The term "Schools and Libraries Corporation" shall refer to the corporation created pursuant to § 69.617 that shall administer specified portions of the universal service support mechanisms, as described in § 69.619.

3. Section 54.504 is amended by revising the first sentence of paragraph (b)(1), revising paragraph (b)(2)(vii), and revising the first sentence of paragraph (b)(3) to read as follows:

§ 54.504 Requests for service.

(b) (1) Schools, libraries, and consortia, including those entities wishing to receive discounts for eligible services under this subpart, shall submit requests for services to the Schools and Libraries Corporation.

(2) (vii) The school, library, or consortium including those entities has a technology plan that has been certified by its state, the Schools and Libraries Corporation, or an independent entity approved by the Commission.

(3) After posting a description of services from a school, library, or consortium of these entities on the school and library website, the Schools and Libraries Corporation shall send confirmation of the posting to the entity requesting services.

4. Section 54.505 is amended by revising introductory paragraphs (b)(3) and (c) to read as follows:

§ 54.505 Discounts.

(3) The Schools and Libraries Corporation shall classify schools and libraries as "urban" or "rural" based on location in an urban or rural area, according to the following designations.

(c) *Matrix.* The Schools and Libraries Corporation shall use the following matrix to set a discount rate to be applied to eligible interstate services purchased by eligible schools, school districts, libraries, or library consortia

based on the institution's level of poverty and location in an "urban" or "rural" area.

5. Section 54.507 is amended by revising the first sentence of paragraph (a), the second sentence of paragraph (c), removing the word "administrator" and adding, in its place, the word "Administrator" in paragraph (e), and revising paragraphs (f)(1), and (f)(4) to read as follows:

§ 54.507 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for schools and libraries shall be \$2.25 billion per funding year, and all funding authority for a given funding year that is unused shall be carried forward into subsequent years for use in accordance with demand, with two exceptions.

(c) The Schools and Libraries Corporation shall maintain a running tally of the funds already committed for the existing funding year on the school and library website.

(f) (1) The Schools and Libraries Corporation shall post a message on the school and library website, notify the Commission, and take reasonable steps to notify the educational and library communities that commitments for the remaining \$250 million of support will only be made available to the most economically disadvantaged schools and libraries (those in the two most disadvantaged categories) for the next 30 days or the remainder of the funding year, whichever is shorter.

(4) The Administrator shall notify the Schools and Libraries Corporation of any funds still remaining after all requests submitted by schools and libraries described in paragraphs (f)(2) and (f)(3) of this section during the 30-day period have been met. The Schools and Libraries Corporation shall direct the Administrator to allocate the remaining available funds to all other eligible schools and libraries in the order in which their requests have been received by the Schools and Libraries Corporation, until the \$250 million is exhausted or the funding year ends.

6. Section 54.509 is amended by removing the word "administrator" in paragraph (a) and adding, in its place, the word "Administrator," and revising paragraphs (b) and (c) to read as follows:

§ 54.509 Adjustments to the discount matrix.

(b) *Reduction in percentage discounts.* If the estimates schools and libraries make of their future funding needs lead the Schools and Libraries Corporation to predict that total funding requests for a funding year will exceed the available funding, the Schools and Libraries Corporation shall calculate the percentage reduction to all schools and libraries, except those in the two most disadvantaged categories, necessary to permit all requests in the next funding year to be fully funded.

(c) *Remaining funds.* If funds remain under the cap at the end of the funding year in which discounts have been reduced below those set in the matrices above, the Administrator shall inform the Schools and Libraries Corporation of such remaining funds. The Schools and Libraries Corporation then shall consult with the Commission to establish the best way to distribute those funds.

7. Section 54.516 is amended by revising paragraph (b) to read as follows:

§ 54.516 Auditing.

(b) *Production of records.* Schools and libraries shall produce such records at the request of any auditor appointed by a state education department, the Schools and Libraries Corporation, or any state or federal agency with jurisdiction.

8. Section 54.603 is amended by revising paragraph (b)(2), the first sentence of paragraph (b)(3), paragraph (b)(4), and paragraph (b)(5) to read as follows:

§ 54.603 Competitive bidding.

(2) The Rural Health Care Corporation shall post each request for eligible services that it receives from an eligible health care provider on the corporation's website designated for this purpose.

(3) After posting a description of services from a health care provider on the website, the Rural Health Care Corporation shall send confirmation of the posting to the entity requesting services.

(4) After selecting a telecommunications carrier, the health care provider shall certify to the Rural Health Care Corporation that the provider is selecting the most cost-effective method of providing the requested service or services, where the most cost-effective method of providing a service is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the

health care provider deems relevant to choosing a method of providing the required health care services. The health care provider shall submit to the Rural Health Care Corporation paper copies of the responses or bids received in response to the requested services.

(5) The confirmation from the Rural Health Care Corporation shall include the date after which the requester may sign a contract with its chosen telecommunications carrier(s).

9. Section 54.609 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 54.609 Calculating support.

* * * * *

(b) * * * Absent documentation justifying the amount of universal service support requested for health care providers participating in a consortium, the Rural Health Care Corporation shall not allow telecommunications carriers to offset, or receive reimbursement for, the amount eligible for universal service support.

§ 54.701 Administrator of universal service support mechanisms. [Amended]

10. Section 54.701 is amended by removing the words "Temporary Administrator" wherever they occur.

11. Sections 54.709, 54.711, 54.713, and 54.715 are added to subpart H to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and contribution factors determined quarterly by the Administrator.

(1) For funding the schools and libraries and rural health care programs, the subject revenues will be contributors' interstate, intrastate, and international revenues derived from domestic end users for telecommunications or telecommunications services. For funding the high cost and low-income programs, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services.

(2) The quarterly universal service contribution factors shall be based on the ratio of total projected quarterly expenses of the universal service support programs to total end-user telecommunications revenues. The Commission shall determine two contribution factors, one of which shall be applied to interstate and international end-user

telecommunications revenues and the other of which shall be applied to interstate, intrastate, and international end-user telecommunications revenues. The Commission shall approve the Administrator's, the Schools and Libraries Corporation's, and the Rural Health Care Corporation's quarterly projected costs of universal service support programs, taking into account demand for support and administrative expenses. The total subject revenues shall be compiled by the Administrator based on information contained in the Universal Service Worksheets described in § 54.711(a)

(3) Total projected expenses for universal service support programs for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factors and individual contributions. For each quarter, the High Cost and Low Income Committee or the permanent Administrator once the permanent administrator is chosen and the Schools and Libraries and Rural Health Care Corporations must submit their projections of demand for the high cost and low-income programs, the schools and libraries program, and rural health care program, respectively, and the basis for those projections, to the Commission and the Common Carrier Bureau at least 60 calendar days prior to the start of that quarter. For each quarter, the Administrator and the Schools and Libraries and Rural Health Care Corporations must submit their projections of administrative expenses for the high cost and low-income programs, the schools and libraries program and the rural health care program, respectively, and the basis for those projections to the Commission and the Common Carrier Bureau at least 60 calendar days prior to the start of that quarter. The projections of demand and administrative expenses and the contribution factors shall be announced by the Commission in a Public Notice published in the **Federal Register** and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the 14-day period following publication of the Commission's Public Notice. If the Commission takes no action within 14 days of the date of the Public Notice announcing the projections of demand and administrative expenses, the projections of demand and administrative expenses, and contribution factors shall be deemed

approved by the Commission. Once the projections are approved, the Administrator shall apply the quarterly contribution factors to determine individual contributions.

(4) The Administrator shall bill contributors and collect contributions on a quarterly basis.

(b) If the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter. The contribution factors for the following quarter will take into consideration the projected costs of the support mechanisms for that quarter and the excess contributions carried over from the previous quarter.

(c) If the contributions received by the Administrator in a quarter are inadequate to meet the amount of universal service support program payments and administrative costs for that quarter, the Administrator shall request authority from the Commission to borrow funds commercially, with such debt secured by future contributions. Subsequent contribution factors will take into consideration the projected costs of the support mechanisms and the additional costs associated with borrowing funds.

(d) If a contributor fails to file a Universal Service Worksheet by the date on which it is due, the Administrator shall bill that contributor based on whatever relevant data the Administrator has available, including, but not limited to, the number of lines presubscribed to the contributor and data from previous years, taking into consideration any estimated changes in such data.

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Universal Service Worksheet. The Universal Service Worksheet sets forth information that the contributor must submit to the Administrator on a semi-annual basis. The Commission shall announce by Public Notice published in the **Federal Register** and on its website the manner of payment and dates by which payments must be made. An officer of the contributor must certify to the truth and accuracy of the Universal Service Worksheet, and the Commission or the Administrator may verify any information contained in the Universal Service Worksheet at the discretion of the Commission. Inaccurate or untruthful information contained in the Universal Service Worksheet may lead

to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

(b) The Commission shall have access to all data reported to the Administrator, Rural Health Care Corporation, and Schools and Libraries Corporation. Contributors may make requests for Commission nondisclosure of company-specific information under § 0.459 of this chapter at the time that the subject data are submitted to the Administrator. The Commission shall make all decisions regarding nondisclosure of company-specific information. The Administrator, Rural Health Care Corporation, and Schools and Libraries Corporation shall keep confidential all data obtained from contributors, shall not use such data except for purposes of administering the universal service support programs, and shall not disclose such data in company-specific form unless directed to do so by the Commission.

(c) The Bureau may waive, reduce, or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms.

§ 54.713 Contributors' failure to report or to contribute.

A contributor that fails to file a Universal Service Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed. The Administrator may bill a contributor a separate assessment for reasonable costs incurred because of that contributor's filing of an untruthful or inaccurate Universal Service Worksheet, failure to file the Universal Service Worksheet, or late payment of contributions. Failure to file the Universal Service Worksheet or to submit required quarterly contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response. Once a contributor complies with the Universal Service Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interest, or costs.

§ 54.715 Administrator's functions.

The Administrator shall have the same functions as the independent

subsidiary set out in § 69.616 of this chapter.

PART 69—ACCESS CHARGES

12. The authority citation for part 69 is revised to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

13. Section 69.600 is added to read as follows:

§ 69.600 Definitions.

High Cost and Low Income Committee. The term "High Cost and Low Income Committee" shall refer to a committee of the Board of Directors of the Administrator's independent subsidiary that will have the power and authority to bind the independent subsidiary's Board of Directors on issues relating to the administration of the high cost and low-income support mechanisms, as described in § 69.615.

Rural Health Care Corporation. The term "Rural Health Care Corporation" shall refer to the corporation created pursuant to § 69.617 that shall administer specified portions of the universal service support mechanisms, as described in § 69.618.

Schools and Libraries Corporation. The term "Schools and Libraries Corporation" shall refer to the corporation created pursuant to § 69.617 that shall administer specified portions of the universal service support mechanisms, as described in § 69.619.

14. Section 69.603 is amended by revising paragraphs (c), (d), and (e), removing paragraph (f), and redesignating paragraphs (g), (h), and (i) as (f), (g), and (h) to read as follows:

§ 69.603 Association functions.

* * * * *

(c) Upon the incorporation and commencement of operations by the association's independent subsidiary that, pursuant to § 69.613(a), will administer temporarily specified portions of the universal service support mechanisms, the association shall no longer administer the Universal Service charge, including the direct billing to and collection of associated revenues on a monthly basis from interexchange carriers pursuant to § 60.116 of this chapter and the distribution of these revenues to qualified telephone companies based on their share of expenses assigned to the Universal Service Factor portion of the interstate allocation pursuant to § 36.631 of this chapter. Such functions shall be assumed by the independent subsidiary of the association as provided in § 69.613. Commencing on January 1, 1998, the billing and collection of

universal service support for high cost areas shall be performed in a manner consistent with § 54.709 of this chapter.

(d) Upon the incorporation and commencement of operations by the association's independent subsidiary that, pursuant to § 69.613, will administer temporarily specified portions of the universal service support mechanisms, the association shall no longer administer the Lifeline Assistance charge, including the direct billing to and collection of associated revenues on a monthly basis from interexchange carriers pursuant to § 69.117, and the distribution of these revenues to qualified telephone companies based on their share of expenses assigned to the Lifeline Assistance Fund pursuant to § 36.741 of this chapter and of End User Common Line charges associated with the operation of § 69.104(j) through (l). Such functions shall be assumed by the independent subsidiary of the association as provided in § 69.613. Commencing on January 1, 1998, the billing and collection of Lifeline support shall be performed in a manner consistent with § 54.709 of this chapter.

(e) Upon the incorporation and commencement of operations by the association's independent subsidiary that, pursuant to § 69.613, will administer temporarily specified portions of the universal service support mechanisms, the association shall no longer compute, in accordance with §§ 69.105 and 69.612, the mandatory Long Term Support payment of telephone companies that are not association Common Line tariff participants, bill or collect the appropriate amounts on a monthly basis from such telephone companies, or distribute Long Terms Support revenue among association Carrier Common Line tariff participants. Such functions shall be assumed by the independent subsidiary of the association as provided in § 69.613. Commencing on January 1, 1998, the computation, billing, and collection of Long Term Support shall be performed in a manner consistent with § 54.303 of this chapter.

* * * * *

15. Sections 69.613 through 69.622 are added to subpart G to read as follows:

§ 69.613 Temporary administrator of universal service support mechanisms.

(a) The association shall establish an independent subsidiary through which the association shall administer temporarily the portions of the universal service support mechanisms described in § 69.616 until the permanent Administrator is established and ready

to commence operations. The independent subsidiary shall be incorporated under the laws of Delaware and shall be designated the Universal Service Administrative Company. The association shall submit the independent subsidiary's proposed articles of incorporation, bylaws, and any other documents necessary to incorporate the independent subsidiary to the Commission by August 1, 1997 for review prior to the independent subsidiary's incorporation.

(b) As a condition of its appointment as the temporary Administrator of the universal service support mechanisms, the association shall agree to make available, if the association or its independent subsidiary is not appointed permanent Administrator, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from the independent subsidiary's temporary administration of the universal service support mechanisms, and to make such property available to whomever the Commission directs, free of charge. Such property includes, but is not limited to, 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. The association must specify any property it proposes to exclude from the foregoing types of property based on the existence of such property prior to the effective date of the association's appointment as the temporary Administrator.

(c) As a further condition of its appointment as the temporary Administrator of the universal service support mechanisms, the association and the independent subsidiary must provide services to the Corporations, such as contracting for the services of association or independent subsidiary employees, loans or transfers of assets, upon the request of the Corporations and on reasonable terms.

§ 69.614 Independent subsidiary Board of Directors.

(a) The independent subsidiary described in § 69.613(a) shall have a Board of Directors separate from the association's Board of Directors. Except as expressly permitted, the association's Board of Directors shall be prohibited from participating in the functions of the independent subsidiary.

(b) The independent subsidiary's Board of Directors shall consist of 17 directors:

(1) Three directors shall represent incumbent local exchange carriers, with

one director representing the Bell Operating Companies and GTE, one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues in excess of \$40 million, and one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues of \$40 million or less;

(2) Two directors shall represent interexchange carriers, with one director representing interexchange carriers with more than \$3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of \$3 billion or less;

(3) One director shall represent commercial mobile radio service (CMRS) providers;

(4) One director shall represent competitive local exchange carriers;

(5) One director shall represent cable operators;

(6) One director shall represent information service providers;

(7) Three directors shall represent schools that are eligible to receive discounts pursuant to § 54.501 of this chapter;

(8) One director shall represent libraries that are eligible to receive discounts pursuant to § 54.501 of this chapter;

(9) One director shall represent rural health care providers that are eligible to receive supported services pursuant to § 54.601 of this chapter;

(10) One director shall represent low-income consumers;

(11) One director shall represent state telecommunications regulators; and

(12) One director shall represent state consumer advocates.

(c) The industry and non-industry groups that will be represented on the independent subsidiary's Board of Directors as specified in § 69.614(b)(1) through (12) shall nominate by consensus the independent subsidiary's directors. Each of these industry and non-industry groups shall submit the name of its nominee for a seat on the independent subsidiary's Board of Directors, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission within 14 calendar days of the publication of these rules in the **Federal Register**. Only members of the industry or non-industry group that a Board member will represent may submit a nomination for that position.

(d) The Chairman of the Federal Communications Commission shall review the nominations submitted by industry and non-industry groups and

shall select the independent subsidiary's Board of Directors. If an industry or non-industry group does not reach consensus on a nominee or fails to submit a nomination for a position on the independent subsidiary's Board of Directors, the Chairman of the Federal Communications Commission shall select an individual to represent such group on the independent subsidiary's Board of Directors.

(e) The directors on the independent subsidiary's Board shall be appointed for two-year terms and may be reappointed for subsequent terms pursuant to the initial nomination and appointment process described in paragraph (d) of this section. If a Board member vacates his or her seat prior to the completion of his or her term, the independent subsidiary will notify the Common Carrier Bureau of such vacancy, and a successor will be chosen pursuant to the initial nomination and appointment process described in paragraph (d) of this section.

(f) The independent subsidiary's Board of Directors shall convene its first meeting within 14 calendar days of the appointment of the directors to the independent subsidiary's Board.

(g) All meetings of the independent subsidiary's Board of Directors shall be open to the public and held in Washington, D.C.

(h) Each member of the independent subsidiary's Board of Directors shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the independent subsidiary's Board of Directors.

§ 69.615 High Cost and Low Income Committee.

The independent subsidiary's Board of Directors shall require in its bylaws the creation of a High Cost and Low Income Committee with the power and authority to bind the independent subsidiary's Board of Directors on issues relating to the administration of the high cost and low-income support mechanisms, as specifically delineated in the independent subsidiary's bylaws. The High Cost and Low-Income Committee will consist of ten members: the seven service provider representatives (i.e., the representatives listed in § 69.614(b)(1) through (4)) and the low-income, state consumer advocate, and state telecommunications regulator representatives. 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.

§ 69.616 Independent subsidiary functions.

(a) The independent subsidiary shall be solely responsible for administering the universal service support mechanisms for high-cost areas and low-income consumers, including billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds. The independent subsidiary also shall be required to perform any other duties of the Administrator that relate to the billing, collection, and disbursement of funds that are specified elsewhere in the Commission's universal service rules.

(b) With respect to the universal service support mechanisms for schools, libraries, and rural health care providers, the independent subsidiary shall be responsible for billing contributors to the universal service support mechanisms, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds within 20 days following receipt of authorization to disburse such funds from the Schools and Libraries Corporation and Rural Health Care Corporation.

(c) The independent subsidiary may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms.

(d) The independent subsidiary shall maintain books of account separate from those of the association. The independent subsidiary's books of account shall be maintained in accordance with generally accepted accounting principles. The independent subsidiary may borrow start-up funds from NECA. Such funds may not be drawn from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts.

§ 69.617 Schools and Libraries Corporation and Rural Health Care Corporation.

(a) *Schools and Libraries and Rural Health Care Corporations.* The association shall incorporate two unaffiliated corporations. The two corporations shall be not-for-profit, non-stock corporations incorporated in the state of Delaware. The corporations shall be designated the Schools and Libraries Corporation and the Rural Health Care Corporation. After incorporating the Schools and Libraries Corporation and the Rural Health Care Corporation, the association shall take such steps as are necessary to make the Corporations independent of, and unaffiliated with, the association and

independent subsidiary. The association shall submit to the Commission for approval the proposed articles of incorporation, bylaws, and any documents necessary to incorporate the Schools and Libraries Corporation and Rural Health Care Corporation by August 1, 1997. The Schools and Libraries Corporation and Rural Health Care Corporation should continue to perform their designated functions, as described in §§ 69.618 and 69.619, after the date on which the permanent Administrator is selected and commences operations.

(b) *Schools and Libraries Corporation's Board of Directors.* The Board of Directors of the Schools and Libraries Corporation shall consist of seven directors and will be composed as follows:

(1) The three directors representing eligible schools on the independent subsidiary's Board of Directors also shall serve on the Board of Directors of the Schools and Libraries Corporation;

(2) The director representing eligible libraries on the independent subsidiary's Board of Directors also shall serve on the Board of Directors of the Schools and Libraries Corporation.

(3) One director representing one of the categories of telecommunications service providers on the independent subsidiary's Board of Directors also shall serve on the Schools and Libraries Corporation's Board of Directors. The independent subsidiary's Board of Directors shall select the telecommunications service provider representative who will serve on the Schools and Libraries Corporation's Board of Directors within seven calendar days of the first meeting of the independent subsidiary's Board of Directors;

(4) One independent director who does not represent schools, libraries, or service providers shall be selected by the Chairman of the Federal Communications Commission to serve on the Schools and Libraries Corporation's Board of Directors. The Chairman of the Federal Communications Commission will select such an independent director simultaneously with selection of the independent subsidiary's Board members.

(5) The directors representing schools, libraries, and service providers and the independent director on the Schools and Libraries Corporation's Board of Directors shall submit to the Chairman of the Federal Communications Commission a candidate to serve as the Chief Executive Officer (CEO) of the Schools and Libraries Corporation. The chosen CEO shall serve on the Schools

and Libraries Corporation's Board of Directors.

(c) *Rural Health Care Corporation's Board of Directors.* The Board of Directors of the Rural Health Care Corporation shall consist of five directors and will be composed as follows:

(1) The director representing rural health care providers on the independent subsidiary's Board of Directors also shall serve on the Rural Health Care Corporation's Board of Directors;

(2) An additional director representing rural health care providers also shall serve on the Rural Health Care Corporation's Board of Directors. Interested parties shall submit nominations for the additional director representing rural health care providers simultaneously with submitting nominations for the independent subsidiary's Board of Directors, as described in § 69.614(c). The Chairman of the Federal Communications Commission will select the additional rural health care provider representative simultaneously with the selection of the members of the independent subsidiary's Board of Directors.

(3) One director representing one of the categories of telecommunications service providers on the independent subsidiary's Board of Directors also shall serve on the Rural Health Care Corporation's Board of Directors. The independent subsidiary's Board of Directors shall select the telecommunications service provider representative who will serve on the Rural Health Care Corporation's Board within seven calendar days of the first meeting of the independent subsidiary's Board of Directors;

(4) One independent director who does not represent rural health care providers or service providers shall be selected by the Chairman of the Federal Communications Commission to serve on the Rural Health Care Corporation's Board of Directors. The Chairman will select, simultaneously with selection of the independent subsidiary's Board of Directors, the independent director to serve on the Rural Health Care Corporation's Board of Directors;

(5) The directors representing rural health care providers and service providers and the independent director on the Rural Health Care Corporation's Board of Directors shall submit to the Chairman of the Federal Communications Commission a candidate to serve as the chief executive officer (CEO) of the Rural Health Care Corporation. The chosen CEO shall serve on the Rural Health Care Corporation's Board of Directors.

(d) All of the Board members of the Schools and Libraries Corporation and Rural Health Care Corporation shall be appointed for two-year terms. Directors may be reappointed for subsequent terms pursuant to the appointment process used initially to select the Corporations' Boards of Directors described in § 69.617 (b) and (c). In the event that a director vacates his or her seat prior to the completion of his or her term, the Corporation will notify the Common Carrier Bureau of such vacancy and a successor will be chosen pursuant to the initial nomination and appointment process described in § 69.617(b) and (c). Removal of members from the Board of the Schools and Libraries Corporation or Rural Health Care Corporation may only occur with the approval of the Chairman of the Federal Communications Commission.

(e) All Board of Directors meetings of the Rural Health Care Corporation and the Schools and Libraries Corporation shall be open to the public and held in Washington, D.C.

(f) Each member of the Board of Directors of the Rural Health Care Corporation and Schools and Libraries Corporation shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on such Board of Directors.

§ 69.618 Rural Health Care Corporation functions.

(a) The Rural Health Care Corporation shall perform the following functions as they relate to the support mechanisms for eligible rural health care providers:

(1) Administering the application process for rural health care providers, including the dissemination, processing, and review of applications for service from rural health care providers;

(2) Creating and maintaining a website on which applications for services will be posted on behalf of rural health care providers;

(3) Performing outreach and public education functions;

(4) Reviewing bills for services that are submitted by rural health care providers on which service providers designate the amount of universal service support they should receive for services rendered and on which rural health care providers and confirm that they have received such services;

(5) Monitoring demand for the purpose of determining when the \$400 million cap has been reached in the case of the rural health care providers program;

(6) Submitting to the Commission all quarterly projections of demand and

administrative expenses, as described in § 54.709(a)(3) of this chapter;

(7) Informing the independent subsidiary, as quickly as possible, but no later than 20 days following the Rural Health Care Corporation's receipt of the bills for services, of the amount of universal service support to be disbursed to service providers;

(8) Authorizing the performance of audits of rural health care provider beneficiaries of universal service support; and

(9) Any other function relating to the administration of the rural health care program that is not specifically assigned to the independent subsidiary.

(b) The Rural Health Care Corporation shall maintain books of account separate from those of the association, the independent subsidiary, and the Schools and Libraries Corporation. The Rural Health Care Corporation's books of account shall be maintained in accordance with generally accepted accounting principles.

(c) The Rural Health Care Corporation may borrow start-up funds from the association or the independent subsidiary, but such funds may not come from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts.

(d) The Rural Health Care Corporation shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the rural health care program, if its participation in administering the rural health care program ends. The Rural Health Care Corporation must specify any property it proposes to exclude from the foregoing types of property based on the existence of such property prior to the incorporation of the Rural Health Care Corporation.

§ 69.619 Schools and Libraries Corporation functions.

(a) The Schools and Libraries Corporation shall perform the following functions as they relate to the support mechanisms for eligible schools and libraries:

(1) administering the application process for schools and libraries including the dissemination, processing, and review of applications for service from schools and libraries;

(2) creating and maintaining a website on which applications for services will be posted on behalf of schools and libraries;

(3) performing outreach and public education functions;

(4) reviewing bills for services that are submitted by schools and libraries and on which service providers designate the amount of universal service support they should receive for services rendered and on which schools and libraries confirm that they have received such services;

(5) monitoring demand for the purpose of determining when the \$2 billion trigger has been reached in the case of the schools and libraries program;

(6) submitting to the Commission all quarterly projections of demand and administrative expenses, as described in § 54.709(a)(3) of this chapter;

(7) informing the independent subsidiary, as quickly as possible, but no later than 20 days following the Schools and Libraries Corporation's receipt of the bills for services, of the amount of universal service support to be disbursed to service providers;

(8) authorizing the performance of audits of schools and libraries beneficiaries of universal service support; and

(9) any other function relating to the administration of the schools and libraries programs that is not specifically assigned to the independent subsidiary.

(b) The Schools and Libraries Corporation shall implement the rules of priority in accordance with § 54.507(f) of this chapter.

(c) The Schools and Libraries Corporation may review and certify schools' and libraries' technology plans when a state agency has indicated that it will be unable to review such plans within a reasonable time.

(d) The Schools and Libraries Corporation shall classify schools and libraries as urban or rural and use the discount matrix established in § 54.505(c) of this chapter to set the discount rate to be applied to services purchased by eligible schools and libraries.

(e) The Schools and Libraries Corporation shall maintain books of account separate from those of the association, the independent subsidiary, and the Rural Health Care Corporation. The Schools and Libraries Corporation's books of account shall be maintained in accordance with generally accepted accounting principles.

(f) The Schools and Libraries Corporation may borrow start-up funds from the association or the independent subsidiary, but such funds may not come from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts.

(g) The Schools and Libraries Corporation shall make available to

whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the schools and libraries program, if its participation in administering the schools and libraries program ends. The Schools and Libraries Corporation must specify any property it proposes to exclude from the foregoing types of property based on the existence of such property prior to the incorporation of the Schools and Libraries Corporation.

§ 69.620 Administrative expenses of independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation.

(a) The annual administrative expenses of the independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation should be commensurate with the administrative expenses of programs of similar size and may include, but are not limited to, salaries of officers and operations personnel, the costs of borrowing funds, equipment costs, operating expenses, directors' expenses, and costs associated with auditing contributors or support recipients.

(b) The independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation shall submit to the Commission projected quarterly budgets at least 60 days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the independent subsidiary disburses funds for administrative expenses to the Schools and Libraries Corporation and Rural Health Care Corporation. The Schools and Libraries Corporation's and Rural Health Care Corporation's administrative expenses shall be paid from the universal support mechanisms. The administrative expenses of the Schools and Libraries Corporation and Rural Health Care Corporation shall be deducted from their respective programs' annual funding, which is capped at \$2.25 billion in the case of the schools and libraries program, as established in § 54.507 of this chapter, and capped at \$400 million in the case of the rural health care providers program, as established in § 54.623 of this chapter. The Schools and Libraries Corporation and Rural Health Care Corporation shall receive payments for administrative expenses from the permanent Administrator under the same terms as they shall receive payments pursuant to this paragraph.

§ 69.621 Audits of independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation.

The independent subsidiary, the Schools and Libraries Corporation, and the Rural Health Care Corporation shall obtain and pay for annual audits conducted by independent auditors to examine their operations and books of account to determine, among other things, whether they are properly administering the universal service support mechanisms to prevent fraud, waste, and abuse:

(a) Before selecting an independent auditor, the independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation shall submit preliminary audit requirements, including the proposed scope of the audits and the extent of compliance and substantive testing, to the Common Carrier Bureau Audit Staff;

(b) The Common Carrier Bureau Audit Staff shall review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. The Common Carrier Bureau Audit Staff shall prescribe modifications that shall be incorporated into the final audit requirements;

(c) After the audit requirements have been approved by the Common Carrier Bureau Audit Staff, the independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation each shall engage within 30 calendar days an independent auditor to conduct the annual audit required by this subsection. In making their selections, the independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation shall not engage any independent auditor who has been involved in designing any of the accounting or reporting systems under review in the audit;

(d) The independent auditors selected by the independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation to conduct the annual audits shall develop detailed audit programs based on the final audit requirements and submit them to the Common Carrier Bureau Audit Staff. The Common Carrier Bureau Audit Staff shall review the audit programs and make modifications, as needed, that shall be incorporated into the final audit programs. During the course of the audits, the Common Carrier Bureau Audit Staff may direct the independent auditors to take any actions necessary to ensure compliance with the audit requirements;

(e) During the course of the audits, the independent auditors shall:

(1) Inform the Common Carrier Bureau Audit Staff of any revisions to

the final audit programs or to the scope of the audits;

(2) Notify the Common Carrier Bureau Audit Staff of any meetings with the independent subsidiary, the association, Schools and Libraries Corporation, or Rural Health Care Corporation in which audit findings are discussed;

(3) Submit to the Chief of the Common Carrier Bureau, any accounting or rule interpretations necessary to complete the audit.

(f) Within 60 calendar days after the end of the audit period, but prior to discussing the audit findings with the independent subsidiary, the association, Schools and Libraries Corporation, or Rural Health Care Corporation, the independent auditors shall be instructed to submit drafts of the audit reports to the Common Carrier Bureau Audit Staff;

(g) The Common Carrier Bureau Audit Staff shall review the audit findings and audit workpapers and offer its recommendations concerning the conduct of the audits or the audit findings to the independent auditors. Exceptions of the Common Carrier Bureau Audit Staff to the findings and conclusions of the independent auditors that remain unresolved shall be included in the final audit reports;

(h) Within 15 calendar days after receiving the Common Carrier Bureau Audit Staff's recommendations and making any revisions to the audit reports, the independent auditors shall submit the audit reports to the respective audit subjects for their responses to the audit findings. At this time they must also send copies of their audit findings to the Common Carrier Bureau Audit Staff. The independent auditors shall be provided additional time to perform additional audit work recommended by the Common Carrier Bureau Audit Staff;

(i) Within 30 calendar days after receiving the audit reports, the audit subjects shall respond to the audit findings and send copies of their responses to the Common Carrier Bureau Audit Staff. Any reply that the independent auditors wish to make to the audit subjects' responses shall be sent to the Common Carrier Bureau Audit Staff as well as the audit subjects. The audit subjects' responses and the independent auditors' replies shall be included in the final audit reports;

(j) Within 10 calendar days after receiving the responses of the audit subjects, the independent auditors shall file with the Commission the final audit reports;

(k) Based on the final audit reports, the Chief of the Common Carrier Bureau may take any action necessary to ensure that the universal service support

mechanisms operate in a manner consistent with the requirements of part 54 of this chapter, as well as such other action as is deemed necessary and in the public interest.

§ 69.622 Transition to the permanent Administrator.

(a) If the association or the independent subsidiary is not appointed the permanent Administrator, the association, independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation shall cooperate fully in making the permanent Administrator operational.

(b) The association and independent subsidiary shall take all steps necessary to maintain the division of responsibilities between the association, independent subsidiary, Schools and Libraries Corporation, and Rural Health Care Corporation as set forth in parts 54 and 69 of this chapter or such other steps that the Commission may order.

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. PS-151; Amdt. 193-14]

RIN 2137-AC 88

Liquefied Natural Gas Regulations—Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Direct final rule.

SUMMARY: This direct final rule incorporates safety requirements for mobile and temporary Liquefied Natural Gas (LNG) facilities by referencing the National Fire Protection Association (NFPA) Standard 59A (1996 edition), Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG). This rule will reduce the burden on the industry and state and federal governments by eliminating waiver requirements for mobile and temporary LNG facilities. In this rule RSPA is responding to the adverse comment received on the mobile LNG facilities requirements in the previously published direct final rule [62 FR 8402; 2/25/97] by addressing a commenter's main concern that states in which mobile LNG equipment is located must be notified two weeks in advance. The remainder of the requirements for mobile LNG facilities are unchanged.

EFFECTIVE DATES: This direct final rule takes effect October 15, 1997. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 15, 1997. If RSPA does not receive any adverse comment or notice of intent to file an adverse comment by September 2, 1997 the rule will become effective on the date specified. RSPA will issue a subsequent notice in the **Federal Register** by September 30, 1997 after the close of the comment period to confirm that fact and reiterate the effective date. If an adverse comment or notice of intent to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and RSPA would withdraw the direct final rule in whole or in part. RSPA may then incorporate the adverse comment into a subsequent direct final rule or may publish a notice of proposed rulemaking.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Mike Israni, telephone (202) 366-4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this document, or the Dockets Unit (202) 366-4453, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1997, RSPA published a direct final rule (62 FR 8402) titled, "Liquefied Natural Gas Regulations—Miscellaneous Amendments." In that rule RSPA updated the Liquefied Natural Gas (LNG) regulations by replacing the current 'Flammable vapor-gas dispersion protection' method with a method based on the 'dense gas dispersion (DEGADIS)' model, and replacing the current 'Thermal radiation protection' method with a method based on the "LNGFIRE" program model. In addition, that final rule incorporated safety requirements for mobile and temporary LNG facilities by referencing to the National Fire Protection Association (NFPA) Standard 59A (1996 edition).

RSPA did not receive any comments relative to the direct final rule provisions for § 193.2057, Thermal radiation protection, and § 193.2059, Flammable vapor-gas dispersion protection. Therefore, a separate document [62 FR 36465; July 8, 1997] confirming that the changes to Sections 193.2057 and 193.2059 in the direct final rule became effective on June 25, 1997, was sent to the **Federal Register**.

RSPA received two comments on the requirements for mobile and temporary LNG facilities. One comment was from the industry and a second was from an individual employed by a state utility commission. The industry comment, from the largest independent natural gas distribution company in New England, applauded RSPA's incorporation by reference of the safety requirements for mobile and temporary LNG facilities in the NFPA standard 59A. This commenter stated that the waiver approval process for temporary LNG facilities was burdensome because a separate waiver request to state regulators was required for each facility. However, the commenter praised RSPA for issuing a direct final rule which would no longer require a waiver from Part 193 requirements for these LNG facilities if they comply with NFPA 59A.

The commenter from the state utility commission expressed concern over adopting the NFPA standard 59A by reference for the mobile and temporary LNG facilities. This commenter noted that the specific provisions of the 16 alternative requirements for mobile LNG facilities that were jointly developed by New England area state representatives were missing or were inadequately addressed in the NFPA standard 59A. This commenter stated that RSPA should review the requirements in greater detail, and ensure all 16 items were addressed before adopting NFPA 59A.

RSPA, prior to initiating this rulemaking, reviewed all 16 alternative requirements and, with the exception of one issue (namely, requiring an operator to notify the State agency having jurisdiction at least 2 weeks in advance), determined that all requirements are adequately addressed in NFPA standard 59A. The NFPA did not include this requirement in standard 59A because it is beyond the NFPA's scope. RSPA did not include it in the previous direct final rule. However, RSPA is adding that requirement in this direct final rule.

As described in the direct final rule (February 25, 1997; 62 FR 8402), RSPA is amending 49 CFR Part 193 by adding a section 193.2019 on mobile and temporary LNG facilities. Mobile and