

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 54 and 69**

[CC Docket Nos. 97–21 and 96–45; FCC 98–306]

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

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we reconsider the current organizational structure for administering the universal service support mechanisms and adopt a plan for merging the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into the Universal Service Administrative Company (USAC) by January 1, 1999. We substantially adopt the Report and Proposed Plan of Reorganization (the Plan) filed with the Commission by USAC, SLC, and RHCC on July 1, 1998, with certain modifications. We also adopt specific procedures under which administrative decisions made by USAC will be reviewable by the Commission.

DATES: These rules are effective January 1, 1999, except for § 54.701, which is effective December 1, 1998; and §§ 54.703(c) and 54.721, which contain modified information collection requirements and will not become effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for §§ 54.703(c) and 54.721.

FOR FURTHER INFORMATION CONTACT: Sharon Webber, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on November 20, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554.

Summary of Third Report and Order in CC Docket No. 97–21, Fourth Order on Reconsideration in CC Docket No. 97–21 and Eighth Order on Reconsideration in CC Docket No. 96–45

I. Introduction

1. In this Order, we reconsider the current organizational structure for administering the universal service

support mechanisms and adopt a plan for merging the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into the Universal Service Administrative Company (USAC) by January 1, 1999. We substantially adopt the Report and Proposed Plan of Reorganization (the Plan) filed with the Commission by USAC, SLC, and RHCC on July 1, 1998, with certain modifications. We also adopt specific procedures under which administrative decisions made by USAC will be reviewable by the Commission.

II. Revised Corporate Structure**A. Consolidation of Administrative Responsibilities**

2. Commenters generally support vesting in USAC the responsibility for administering all of the universal service support mechanisms, including the creation of three divisions—the Schools and Libraries Division, the Rural Health Care Division and the High Cost and Low Income Division—to oversee each of the support mechanisms.

3. We find that consolidating all of the administrative responsibilities into USAC is consistent with Congress's directive to establish a single entity to administer the universal service support mechanisms for schools, libraries, and rural health care providers, and will minimize disruption and take advantage of USAC's experience in administering the universal service support mechanisms. We conclude that USAC is uniquely qualified to assume responsibility for the administration of all of the support mechanisms in light of its current responsibility for administering the high cost and low income mechanisms and for collecting and disbursing funds for the schools and libraries and rural health care support mechanisms. We find that the appointment of USAC minimizes the potential disruption of the ongoing administration of the universal service support mechanisms that could occur were we to appoint an entity that has not previously been involved in the administration of universal service. In addition, establishing USAC as the single administrator establishes clear lines of accountability. We further believe, that the consolidation will result in administrative efficiencies. The distinct mission of each support mechanism will be preserved by establishing divisions within USAC. The divisions will perform the duties and functions currently performed by SLC, RHCC and the High Cost and Low Income Committee, as directed by the committees of the USAC Board.

4. We disagree with SBC's assertions that the revised administrative structure is flawed in light of its "erroneous" reliance on the lawfulness of USAC. SBC contends that the GAO's finding that the Commission's creation of SLC and RHCC violated the Government Corporation Control Act (GCCA) similarly applies to the Commission's creation of USAC.

5. The Commission has stated that it reasonably relied upon the authority of sections 254 and 4(i) of the Communications Act (Act) when it conditioned the approval of NECA as the temporary Administrator of the support mechanisms on NECA's formation of SLC, RHCC, and USAC. Indeed, in enacting section 254, Congress specifically contemplated that the Commission would create federal universal service support mechanisms. NECA, an independent, non-profit organization, had been administering the high cost support mechanism for more than a decade when Congress passed the Telecommunications Act of 1996. Thus, Congress was aware of NECA's role when it adopted section 254, which affirmed and expanded the Commission's authority to direct the administration of universal service and therefore, implicitly affirmed the Commission's authority to employ an independent entity to administer universal service. We find no indication that Congress sought to dismantle the existing administrative system, or to prohibit the Commission from using NECA, or another independent entity to administer universal service. USAC was created as a subsidiary of NECA. Inasmuch as USAC is a subsidiary of NECA, which was lawfully created and has the authority to administer the universal service support mechanisms, we see no statutory impediment to USAC. Moreover, we find it significant that the GAO made findings only with respect to the creation of SLC and RHCC; GAO did not make any findings concerning the establishment of USAC. We thus find that consolidating the administration of universal service into USAC is "pursuant to the findings of the General Accounting Office."

B. Limitations on USAC's Authority

6. Several commenters recommend that USAC's functions be confined strictly to applying the Commission's rules and that it be prohibited from engaging in policy making. Consistent with Congress's directive that the combined entity shall not interpret rules or statute, we emphasize that USAC's function under the revised structure will be exclusively administrative. USAC may not make policy, interpret

unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, USAC must seek guidance from the Commission on how to proceed. Furthermore, USAC may advocate positions before the Commission and Commission staff only on administrative matters relating to the universal service support mechanisms.

7. Commenters also urge the Commission to ensure USAC's accountability to the Commission. The Commission retains ultimate control over the operation of the federal universal service support mechanisms through its authority to establish the rules governing the support mechanisms and through its review of administrative decisions that are appealed to the Commission. The consolidated USAC will continue to be accountable to the Commission through the procedures that currently apply to USAC, SLC, and RHCC. In fact, USAC's appointment as permanent Administrator and the expansion of its responsibilities are conditioned on its compliance with Commission rules and orders. Existing procedures to ensure accountability include the Commission's universal service rules, which provide detailed guidance on administration of the universal service support mechanisms, annual audit requirements, regular coordination with Commission staff, and quarterly filing of projected administrative expenses and estimates of support mechanism demand. In addition, the Commission will continue to oversee the structure and content of the annual independent audit that USAC is required to undertake.

8. To foster greater accountability, we direct USAC to prepare and submit to the Commission and Congress an annual report by March 31 of each year. The Commission proposed such a report in the *Report to Congress* and several commenters supported this proposal. The annual report should detail USAC's operations, activities, and accomplishments for the prior calendar year. In addition, the annual report should provide an assessment of contractor performance. Consistent with the comments of the American Library Association (ALA) and Intermedia, we direct USAC to include in its annual report information about beneficiary and Service Provider participation in each of the universal service support mechanisms and administrative actions intended to prevent waste, fraud, and abuse by beneficiaries and service providers. USAC shall consult with Commission staff to define the scope and content of the annual report. This

report will serve as the basis for an annual review by the Commission of the universal service support mechanisms. Because the annual report will detail contractor operations, it also will enhance the Commission's oversight of contractor performance.

C. USAC Permanence and Divestiture

9. We conclude that USAC should be made the permanent Administrator and hereby dispense with the requirement that the permanent Administrator be chosen by a federal advisory committee. Many commenters support the Plan's recommendation that the Commission designate USAC as the permanent Administrator. The primary reason that USAC initially was designated as temporary rather than permanent Administrator was because the Joint Board had concerns that NECA and USAC, as a subsidiary of NECA, might be biased in favor of local exchange carriers and might not fully represent all interested parties. We conclude that, subject to the modifications set forth in this Order, USAC fairly represents all interested parties, including a broad range of industry, consumer, and beneficiary groups. Therefore, we conclude that USAC should be the permanent Administrator. We also adopt the proposal set forth in the Commission's *Report to Congress* to review USAC's performance after one year to ensure that it is administering universal service in an efficient, effective, and competitively neutral manner. Providing permanence to the revised structure will ensure USAC's ability to continue to attract and maintain qualified personnel and to prevent unnecessary disruption to contributors and beneficiaries.

10. We decline to adopt the Plan's proposal to divest USAC from NECA at this time. Rather, consistent with the Commission's proposal in the *Report to Congress* to divest USAC from NECA pending Commission review of USAC's performance after one year, we will review in one year whether USAC should remain affiliated with NECA. Retaining USAC as a subsidiary of NECA is most responsive to Congress's directive that the revised administrative structure be consistent with the GAO letter. Since NECA was established in 1983, neither GAO nor any other party has alleged that the creation of NECA was unlawful or that it violated the GCCA. Therefore, we find that retaining USAC's affiliation with NECA is responsive to concerns raised by the GAO. Moreover, maintaining USAC as a subsidiary of NECA should minimize disruption to the support mechanisms due to legal challenges. Finally, to

eliminate any further question concerning the Commission's authority to appoint USAC as the permanent Administrator, we renew our request for specific statutory authorization.

D. Changes to the USAC Board

11. We adopt the Plan's proposals to retain the current seventeen Board member positions, based on our belief that the current Board has achieved an appropriate balance of broad industry, beneficiary, and consumer representation. In addition, we are persuaded that we should add one additional rural health care provider to the Board. We also adopt the Plan's proposal to create a permanent position on the USAC Board for the USAC CEO, for a total of 19 members. Because the USAC CEO will have overall management responsibility for all of the support mechanisms, we conclude that the creation of a voting position on the Board for the USAC CEO will offer continuity and consistency to USAC's administration, and will create clear lines of accountability. We direct that USAC's by-laws be amended to reflect the addition of the USAC CEO, as well as an additional rural health care position.

12. We modify the Plan to add a second rural health care representative to the USAC Board. We agree with RHCC and numerous commenters that additional rural health care representation will assist the Board's ability to address technical issues that are unique to the rural health care community and that may fall outside of the general competence and expertise of the USAC Board as a whole. We believe that adding a second rural health care representative will help ensure that the administrative structure "take[s] into account the distinct mission of providing universal service to rural health care providers," in accordance with Congress's direction. Rather than changing the Board's composition by replacing schools and libraries representatives with rural health care provider representatives, as GTE suggests, we have determined to add a second rural health care provider representative to the Board. We find that this best ensures adequate representation of all interested groups, without disrupting the existing representation of schools and libraries, which was decided based on input from all interested parties. Accordingly, the additional rural health care representative on the Rural Health Care Board shall serve on the USAC Board.

13. We are not convinced by Intermedia's suggestion that subject matter expertise is necessary only at the

division level, and would not be helpful on the Board as well. We also decline to allocate a total of three positions on the USAC Board for rural health care interests, as requested by RHCC. Given the relatively smaller size of the rural health care mechanism compared to the schools and libraries support mechanism, we find that including two rural health care representatives ensures adequate and proportionate representation of health care interests.

14. The American Psychological Association recommends that we allocate one rural health care position specifically to a representative of rural behavioral health care providers. The Secretary of Health and Human Services recommends that we add a representative with experience in the use of telemedicine in the delivery of rural health care and another one with experience in rural public health. We are reluctant to substitute our judgment for that of the rural health care community concerning the particular categories of rural health care providers that should serve on the USAC Board. Accordingly, we will permit the rural health care community to nominate, through the consensus nomination process, the particular rural health care provider representatives who should serve on the USAC Board. This approach is consistent with the Commission's decision not to specify the particular categories of educational institutions (e.g., public versus private institutions) that are represented on the USAC Board. Rather, the Commission has permitted the education community to select, through the nomination process, the particular schools representatives who serve on the USAC Board.

15. We decline to adopt the American Library Association's recommendation that we increase library representation on the Board commensurate with any increase in rural health care representation on the Board. Although the American Library Association identifies certain universal service implementation issues that are unique to libraries, we find that, for the most part, schools and libraries face similar issues as beneficiaries of the same universal service support mechanism. As a result, in determining whether libraries are adequately represented, we find that it is appropriate to consider whether schools and libraries, as a whole, have adequate representation on the Board. We believe this is consistent with Congress's establishment of a single support mechanism for schools and libraries. Accordingly, we conclude that a total of four positions on the USAC Board adequately represents

these beneficiary interests. Furthermore, in light of the relative number of potential school and library participants, we find that it is appropriate to allocate three representatives to schools and one representative to libraries.

16. We decline to adopt one commenter's suggestion that we fundamentally alter the composition of the Board by adding a variety of industry representatives. We find that the USAC Board, as currently configured, generally has afforded fair representation of the diverse participants in, and competitively neutral administration of, the universal service support mechanisms. We are reluctant to increase further the size of the Board, absent a demonstrated need, because we are concerned that to do so might make the decision-making process more difficult.

E. USAC Committees

17. We generally find that the composition of the Committees of the Board proposed by the Plan adequately represents the variety of beneficiaries' interests and therefore we adopt, subject to the modifications, the Plan's recommendation to retain the existing High Cost and Low Income Committee and to establish two new committees of the Board: the Schools and Libraries Committee and the Rural Health Care Committee. Specifically, we adopt the Plan's proposal with respect to the make-up of the Schools and Libraries Committee. We also adopt the Plan's proposal regarding the Rural Health Care Committee, except that we add one rural health care provider to the Committee. We adopt the Plan's proposal with respect to the High Cost and Low Income Committee, except that we add one incumbent LEC to that Committee. Finally, to enhance Commission oversight of the revised administrative structure, we adopt the Plan's proposal that the USAC Board may not modify substantially the power or authority of the Committees of the Board without Commission approval.

18. We disagree with Intermedia's claims that committees are unnecessary in light of the statutory provision that limits USAC to the performance of purely administrative functions. According to Intermedia, staff in each of the divisions could provide the necessary expertise and interface with particular communities as needed. We are persuaded by the Plan, however, that the proposed committees are uniquely able to provide expertise necessary to administer the support mechanisms most effectively. For example, the Plan notes that the

committee structure will enable USAC to target communications to the particular beneficiary or service provider group impacted by a support mechanism. We conclude that the creation of specialized committees will help preserve the distinct mission of each of the support mechanisms and, in particular, is consistent with Congress's directive to "take into account the distinct mission of providing universal service to rural health care providers."

19. Numerous commenters from the rural health care community oppose the Plan's proposed composition of the Rural Health Care Committee, which consists of one rural health care representative on a seven-member committee. The majority of these commenters recommends that most, if not all, of the members of the Rural Health Care Committee should represent rural health care interests. Some commenters request that USAC establish an advisory committee that would provide guidance to USAC on rural health care issues. We share commenters' concerns with respect to rural health care representation on the Rural Health Care Committee as proposed by the Plan. Accordingly, we conclude that the Committee should include the additional rural health care representative that we allocate to the USAC Board in this Order. We find that adding a second rural health care provider will enable the committee to represent more fully the variety of beneficiaries' interests. We also find that adding an additional representative to the committee will not disturb the balance created by the Plan, which recommended three committees of approximately the same size.

20. We are not persuaded, however, that rural health care providers should comprise most or all of the committee positions, and in fact, RHCC's Separate Statement would not have resulted in a majority of rural health care providers serving on the Rural Health Care Committee. There are many different groups affected by the rural health care support mechanism, including service providers and ratepayers. We find that each interest group should have some representation on the committee. We note that the other two committees will have a broad range of interests represented, and will not be comprised solely of beneficiaries. We also reject suggestions that the Commission establish a separate advisory committee on rural health care matters. To the extent that subject matter expertise is needed, however, USAC is free to seek input from various industry and non-industry groups on particular rural health care matters.

21. The National Telephone Cooperative Association (NTCA) contends that the Plan's proposal for restructuring the High Cost and Low Income Committee would result in a committee that is not sufficiently representative of the beneficiaries of the high cost and low income mechanisms. We agree with NTCA that the "interests and perspectives of a rural carrier will vary significantly from those of a urban carrier." The Plan proposes only one incumbent LEC member of the High Cost and Low Income Committee. We find that one incumbent LEC representative may find it difficult to represent fairly the interests of both small and large carriers. To ensure that both rural and non-rural telephone companies receive adequate representation, we add one more incumbent LEC to the High Cost and Low Income Committee than proposed by the Plan. One incumbent LEC on the Board shall represent rural telephone companies, as that term is defined in section 3(37) of the Act, and one incumbent LEC shall represent non-rural telephone companies. We do not adopt NTCA's suggestion that we retain all the members of the current High Cost and Low Income Committee. We find that retaining the existing ten (10) committee members is unnecessary to represent contributors and beneficiaries of the high cost and low income support mechanisms. We also are concerned that an 11 member committee, comprised of the existing ten (10) members plus the USAC CEO, would disturb the balance achieved by the Plan in proposing three committees of approximately the same size.

F. Binding Authority of the Committees

22. We find that, by vesting in the committees the power and authority to bind the USAC Board on matters relating to the daily administration of the support mechanisms, the Plan gives the committees the autonomy and flexibility needed to administer efficiently and effectively each of the support mechanisms. We also conclude that the power vested in the USAC Board to disapprove the decision of a committee under the Board Disapproval procedure ensures that USAC is accountable for all administrative decisions. Thus, we do not believe, as some commenters suggest, that the committees' ability to bind the Board would somehow diminish the Commission's ultimate responsibility for administration of the universal service support mechanisms. Similarly, because the Board and its committees are subject to Commission rules and oversight, we do not believe, as

Intermedia suggests, that the Board Disapproval process permits the Board, through its committees, to make decisions outside the scope of its authority. We also find that subjecting committee budgets to the Board Disapproval procedure facilitates oversight of committee administrative costs. RHCC requests that the Commission grant the Rural Health Care Committee the authority to bind the full USAC Board on all "programmatic aspects." We find that such an approach would be at odds with Congress's directive to establish a single Administrator that is accountable for all decisions regarding the schools and libraries and rural health care support mechanisms.

G. The USAC CEO

23. We adopt the Plan's proposal that the USAC CEO will have ultimate authority over all personnel matters, but may delegate to division heads the authority to hire and fire division staff. We find that vesting the hiring and firing authority with the USAC CEO is necessary to ensure accountability and effective administration of USAC. Although we disagree with RHCC, GTE, and US WEST that the division heads rather than the USAC CEO should have authority to hire and fire division staff, we find that permitting the USAC CEO to delegate some hiring and firing decisions to division chiefs provides reasonable flexibility and may be the most efficient course of action in some instances.

H. Selection Process for USAC Board and Chief Executive Officer

24. We adopt the Plan's recommendation that the consolidated USAC Board be selected under the procedures set forth in 47 CFR 69.614 of the Commission's rules. We do not agree with the view expressed by GTE that procedures set forth in 47 CFR 69.614 allow Board appointments to be "influenced by the Commission's individual preferences." Candidates are nominated through a consensus process of particular interest groups and therefore, it is the preference of a particular industry or non-industry group represented on the Board that is reflected through this process, not the Commission's individual preferences. Moreover, our rules provide that Board members will be nominated by the Commission Chairman only if an industry or non-industry group is unable to reach a consensus or fails to submit a nomination. The process we adopt will encourage groups to nominate the most experienced and knowledgeable individuals who can

most effectively represent the interests of that constituency, while also ensuring that the Commission retains a mechanism for appointing Board members when industry or non-industry groups fail to achieve consensus.

25. With regard to Board member terms, section 69.614(e) of the Commission's rules provides that USAC Board members shall serve two-year terms and may be reappointed for subsequent terms pursuant to the nomination and selection process. The Plan, however, proposes that Board members serve staggered three-year terms. We adopt the Plan's proposal and amend our rules accordingly. These measures help ensure continuity on the Board and continuity in the administration of the support mechanisms. Because the merger is scheduled to take place by January 1, 1999, we conclude that Board member terms should commence on January 1 and conclude on December 31, three years after appointment. Consistent with the January 1, 1999 merger date, and to ensure continuity during the initial implementation of the revised administrative structure, we conclude that the terms of six Board members should expire on December 31, 2000, another six on December 31, 2001, and the remaining six on December 31, 2002. Insofar as Board member terms will not begin to expire until December 31, 2000, we believe this responds to the American Library Association's request that we retain the current library representative during the initial phases of reorganization. USAC shall determine when particular Board member terms shall expire. In making this determination, USAC should attempt to maintain continuity on the Board by providing that the first set of Board members whose terms will expire will be representatives of industry and non-industry groups with multiple representatives on the Board.

26. The Plan is silent with regard to the selection process for the USAC CEO. The *July 15 Public Notice*, 63 FR 39549 (July 23, 1998), proposed adopting the procedure that currently applies to the selection of a CEO for SLC and RHCC. Under that procedure, the consolidated USAC Board would submit to the Chairman of the Commission a candidate to serve as the USAC CEO. Bell Atlantic supports this proposal. The Pennsylvania Public Utility Commission supports approval of the USAC CEO by the Chairman of the Commission, but recommends referral to the other commissioners "to ensure greater visibility and accountability." By contrast, BellSouth recommends selection by the USAC Board, subject to

removal for good cause by the Chairman of the Commission. We conclude that the USAC Board should have the primary responsibility for selection of a CEO, and that approval by the Chairman of the Commission ensures appropriate oversight.

I. Compensation Limitations

27. In a recent order regarding funding levels under the schools and libraries mechanism, the Commission concluded that, effective July 1, 1998, the Administrator must, as a condition of its continued service, compensate all officers and employees of SLC and RHCC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under 47 U.S.C. 5312. Congress's intent regarding the level of compensation for officers and employees of the revised administrative structure was stated clearly in both section 2005(c) of the Senate bill and the Conference Report. Although few parties commented on the issue of salary limitations, those who addressed the issue support the imposition of such limitations on all officers and employees of the consolidated USAC. The Senate and the House-Senate conferees stated that compensation limitations should be imposed on the officers and employees of the entity to be proposed under section 2005(b)(2) of the Senate bill. Thus, consistent with the will of Congress, we direct the consolidated USAC to compensate all officers and employees under the consolidated USAC at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, that does not exceed the rate of basic pay in effect for Level I of the Executive Schedule under 47 U.S.C. 5312. These compensation limitations shall apply to officers and employees who will administer the schools, libraries, rural health care, high cost, and low income support mechanisms, as well as those responsible for USAC's billing, collection and disbursement functions.

28. We decline at this time to extend the salary limitations to NECA inasmuch as Congress did not direct the imposition of salary limitations on NECA. The commenters that address the issue maintain that it would be inappropriate to apply such limitations. We agree with commenters and do not extend salary limitations to NECA.

III. Administrative Efficiencies Under the Unified Structure

29. Congress has directed the Commission to have a single entity administer the schools and libraries and rural health care support mechanisms. We have reviewed the proposals set forth in the Plan to assess whether, where possible, corporate operations will be consolidated to eliminate duplicative functions. In those instances where the Plan proposes to maintain separate operations, we have evaluated whether such separate operations will further the goal of preserving the distinct missions of the four support mechanisms. We find that the functions that the Plan proposes to consolidate will improve the efficiency and effectiveness with which the universal service support mechanisms are administered. We likewise conclude that the retention of separate operations for certain functions that are unique to a particular support mechanism ensures that the administrative systems and expertise that SLC and RHCC have developed will be preserved in the revised administrative structure. Moreover, because the Plan proposes to consolidate most functions, we believe that this streamlined administrative structure will facilitate the Commission's oversight of universal service administration. Subject to the modifications and clarifications set forth, we adopt the Plan's proposals for consolidating operations. Accordingly, we direct USAC, SLC, and RHCC to enter into a merger agreement that reflects the proposal set forth in the Plan, as modified and clarified herein.

30. The Plan suggests that it may be more efficient to have a consolidated USAC website, but initially proposes to retain the SLC and RHCC websites. The American Library Association questions the prudence of merging the websites at all, in light of SLC's and RHCC's different organizational approaches. We find that the websites should be reorganized and consolidated. Blooston, Mordkofsky, Jackson & Dickens (Blooston) notes that currently there is no consistency as to where information regarding the universal service support mechanisms now may be found. We conclude that a separate USAC website should be created and that the information now found on the SLC and RHCC websites should be merged into the USAC website. We find that a single consolidated USAC website is consistent with our goal of eliminating duplicative functions, and that a consolidated website for all four universal service support mechanisms will be easier to utilize. Accordingly, we

direct USAC to report to the Commission by December 31, 1998 the date by which it could consolidate the website. In the interim, as proposed in the Plan, we direct USAC to provide links among all the relevant websites.

31. We also direct USAC to submit to the Commission for approval, as suggested in the Plan and consistent with the Commission's rules, a proposed method for allocating costs among the four support mechanisms by December 31, 1998. We approve of the Plan's proposal to retain common outside counsel for use by all divisions and committees. Outside counsel shall perform work only as directed by the USAC CEO. USAC may hire additional in-house counsel to perform work on its behalf if USAC determines that doing so would be more cost effective than retaining outside counsel to perform such work.

32. We adopt the Plan's proposal regarding merging the corporations. In implementing the merger, USAC may assume, where appropriate, SLC's and RHCC's contracts with employees and subcontractors. To the extent USAC determines that the rescission or modification of certain contracts will result in efficiencies or other benefits, USAC may rescind or modify such contracts, in accordance with applicable law.

33. The American Library Association contends that it is unclear whether the Plan will improve efficiency or effectiveness. We will review USAC's performance after one year from the merger to assess whether USAC has succeeded in eliminating duplicative functions and whether it has succeeded in preserving the distinct missions of the schools and libraries and rural health care support mechanisms. We also require USAC to submit an annual report by March 31 of each year detailing its activities and accomplishments for the prior year. We will continue to evaluate ways of achieving greater efficiency, effectiveness, and accountability in the administration of universal service.

IV. Procedures for Review of USAC Decisions

34. We agree with commenters that affected parties should have the right to appeal USAC division, committee, and Board decisions directly to the Commission. The majority of commenters opposes requiring affected parties to seek review of USAC division decisions from the appropriate USAC Committee of the Board or the full USAC Board before filing an appeal with the Commission. Commenters generally maintain that direct appeal to

the Commission is necessary to ensure adequate oversight of USAC's operations. Commenters further argue that review by USAC in the first instance would be burdensome and would cause unnecessary delays in obtaining a final decision. We find that Commission oversight will be strengthened by an appeals process that ensures that matters are brought promptly to the Commission. Requiring affected parties to seek review from a Committee of the Board or the full USAC Board in the first instance might cause unnecessary delay in the appeals process without, as MCI notes, any identifiable benefit.

35. We also agree with USAC and SLC that affected parties should be encouraged to bring issues to the attention of the division head or the USAC CEO to determine whether the matter can be handled without a formal appeal to the Commission. We anticipate that, under certain circumstances, a party may prefer to seek redress initially from the appropriate Committee of the Board or the full USAC Board. Accordingly, we conclude that affected parties should have the option of seeking redress from a Committee of the Board or, if the matter concerns a billing, collection, or disbursement matter that falls outside of the jurisdiction of a particular committee, from the full USAC Board. We encourage parties to seek redress in the first instance from Committees of the Board for matters that involve straightforward application of the Commission's rules. To the extent that affected parties can obtain prompt resolution of such disputes, support mechanism participants will be better served and limited Commission resources will be conserved. Although Intermedia recommends excluding USAC internal administrative decisions from the appeal process, we do not believe that any benefits would be realized from limiting the types of decisions that may be appealed to the Commission. We believe that the option of seeking redress from USAC or the Commission addresses BellSouth's concerns regarding the due process guarantees of the APA.

36. As proposed in the *July 15 Public Notice*, we delegate to the Bureau the authority to rule on petitions for review of USAC division, committee, or Board decisions that do not raise novel questions of fact, law, or policy. This delegation to the Bureau is consistent with the Commission's authority under section 5(c) of the Act to delegate particular functions to staff in the first instance, subject to the filing of applications for review with the

Commission. Petitions that raise novel questions of fact, law, or policy shall be brought before the full Commission. As with other decisions made by the Bureau acting pursuant to its delegated authority, parties may seek Commission review of any Bureau decision. The Bureau also would have the authority to review the decisions of USAC at any time on its own motion. Contrary to GTE's claims that Bureau involvement is unnecessary and will result in delay, we believe that granting the Bureau delegated authority to review petitions that do not raise novel questions of fact, law, or policy will facilitate prompt resolution of routine or settled matters.

37. Furthermore, consistent with the Commission's ultimate responsibility over the universal service support mechanisms, we conclude that USAC decisions, whether considered by the Bureau or the Commission, should be subject to *de novo* review. Accordingly, we decline to adopt USAC's and SLC's recommendation that the Commission uphold USAC decisions without considering the merits of the appeal if the Commission finds that USAC has not exceeded its authority and has acted consistently with the Commission's rules.

38. In response to commenters' requests for a streamlined appeals process, we conclude that an affected party will have thirty (30) days to file an appeal of a USAC decision. This thirty (30) day period will begin to run from the date of issuance of a USAC decision. The filing of an appeal to a Committee of the Board or the full Board will toll the time period for filing an appeal with the Commission. For matters that are not new or novel, and may be decided by the Bureau, we further find that we should establish a streamlined process for review. If the Bureau takes no action within ninety (90) days upon an appeal properly before it, USAC's decision will be deemed approved. We are confident that a 90-day period will provide an adequate opportunity for review, in most cases, and the Bureau, within that 90-day period, may take action to extend the period of review. For appeals that are properly before the Commission, a written decision will be issued within 90 days unless the Commission takes action to extend the period for review; under no circumstances will an appeal before the full Commission be deemed approved as a result of inaction on the part of the Commission. We expect that the Bureau and the Commission will act promptly to resolve appeals of USAC decisions. Based on this expectation, we do not adopt BellSouth's suggestion that the

Commission adopt a mechanism similar to the accelerated review process adopted for complaints filed under section 208 of the Act.

39. To facilitate prompt resolution by the Commission of appeals of USAC decisions, we also adopt specific filing requirements for such petitions. The appellant must state specifically its interest in the matter presented for review. The appellant also must provide the Commission with a full statement of relevant, material facts with supporting affidavits and documentation. In addition, the appellant must state concisely the question presented for review, with reference, where appropriate, to the relevant Commission rule, Commission order, or statutory provision. The appellant also must state the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought. If an appellant alleges prohibited conduct by a third party, the appellant shall serve a copy of the appeal on such third party, who shall have an opportunity to file an opposition. Similarly, appellants shall serve on USAC a copy of the appeal of a USAC decision filed with the Commission. We encourage USAC to file comments setting forth USAC's position on the issues raised in the appeal. We believe that USAC's comments may aid the Commission in understanding the nature of the disputed issues and facilitate a timely resolution of the matter. We decline to adopt Weisiger's recommendation that the applications for discounted services provide information regarding beneficiaries' right to seek review of USAC decisions.

40. We note that BellSouth questions whether the Commission has jurisdiction to adjudicate a dispute involving a non-telecommunications carrier. We find that the Commission has the authority to review USAC decisions, regardless of the identity of the parties, because USAC is administering the universal service support mechanisms for the Commission, subject to Commission rules and oversight.

41. We decline to adopt SBC's proposal, supported by GTE, NTCA, and Ameritech, that the appeal procedures should apply to decisions previously rendered by USAC, SLC, and RHCC. Specifically, SBC proposes that affected parties be granted sixty (60) days from the effective date of our rules to appeal prior USAC, SLC, or RHCC decisions. Parties seeking redress from previously issued decisions of USAC, SLC, and RHCC have not been prevented from appealing those decisions to the Commission under existing Commission

procedures. Indeed, several parties have filed appeals with the Commission. Thus, we conclude that retroactive application of these appeal procedures is not warranted.

42. The *July 15 Public Notice* also proposed that, if an application for discounted services or support is approved, and that approval is appealed to the Commission, the pendency of that appeal would not affect the eligibility of the applicant to receive discounted services, nor would it prevent reimbursement of service providers for discounted services provided to such applicants. We conclude that, until the Bureau or the full Commission has resolved an appeal of a USAC decision, an applicant will not be permitted to receive discounted services and service providers will not be permitted to receive reimbursement for discounted services provided to such applicants. We believe that withholding support during the pendency of an appeal will reduce the likelihood that support is disbursed in error. We further find that, because requests for review of USAC decisions that are properly before the Bureau will be deemed approved if the Bureau takes no action within 90 days, and because the full Commission is committed to issuing decisions within 90 days, parties will have limited ability to delay support and discounts for a substantial period of time merely by filing an appeal.

V. Implementation Issues

A. Submission and Approval of Merger Documents

43. Consistent with our adoption of the Plan as modified herein, we direct USAC, SLC, and RHCC to submit draft merger documents to the Commission by December 1, 1998. We also direct USAC to submit to the Commission by December 1, 1998, draft revised by-laws and articles of incorporation. The Commission delegates to the Bureau the authority to review and approve the merger documents, revised by-laws and revised articles of incorporation. Such documents should be consistent with the requirements of this Order and consistent with principles and requirements of Delaware state law. The Bureau will indicate its approval of the documents in a public notice. Upon consummation of the merger and the filing of the revised by-laws, SLC and RHCC shall take all steps necessary to dissolve SLC and RHCC in accordance with Delaware state law.

B. Effective Date of Rules

44. In this Order, the Commission directs that SLC and RHCC merge into

USAC as the single entity responsible for administering the universal service mechanisms by January 1, 1999. To ensure that USAC is able to meet the January 1, 1999 deadline, the Commission directs USAC to submit to the Commission by December 1, 1998 USAC's draft merger documents and draft revised by-laws. Thus, we make this requirement effective December 1, 1998, which may occur within fewer than thirty (30) days after publication in the **Federal Register** of the rules adopted in this Order. In this Order, we also adopt rules that will govern USAC following the required merger. Accordingly, these rules must take effect upon the required consummation of the merger on January 1, 1999, which may occur fewer than thirty (30) days after publication in the **Federal Register** of the rules adopted in this Order. These actions are necessary to ensure completion of the merger by the January 1, 1999 deadline that the Commission proposed in the *Report to Congress* in an effort to respond promptly to Congress's directive that the Commission establish a single entity to administer universal service. In addition, the parties required to take these actions—SLC, RHCC, and USAC—will have actual notice of their obligations when the Commission adopts this Order. Accordingly, we find good cause to depart in the manner described from the general requirement of 5 U.S.C. 553(d) that final rules take effect not less than thirty (30) days after their publication in the **Federal Register**.

VI. Final Regulatory Flexibility Analysis

45. The Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." This regulatory flexibility certification supplements our prior certifications and analyses in this proceeding. The Commission will send a copy of this Order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, this Order and

certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

46. This Order directs the merger of SLC and RHCC into USAC as the single entity responsible for administering the universal service support mechanisms. In addition, we adopt specific procedures under which administrative decisions made by USAC will be reviewable by the Commission, including the requirements for filing review petitions with the Commission. Pursuant to the RFA, and as described, we certify that these actions will not have a significant economic impact on a substantial number of small entities.

47. Regarding the subject merger, in the *NECA Order*, 62 FR 41294 (August 1, 1997), the Commission directed NECA, as a condition of its service as temporary Administrator of the universal service support mechanisms, to create an independent subsidiary, USAC, to administer temporarily certain aspects of the universal service support mechanisms and to establish SLC and RHCC to administer specific aspects of the universal service mechanisms for schools and libraries and rural health care providers. In that order, the Commission also concluded that NECA is not a small organization within the meaning of the RFA, finding that NECA is a non-profit association that was created to administer the Commission's interstate access tariff and revenue distribution processes. On this basis, the Commission certified pursuant to the RFA that the rules adopted in the *NECA Order* would not have a significant economic impact on a substantial number of small entities.

48. In the *July 15 Public Notice*, the Bureau sought comment on the proposed plan to merge SLC and RHCC into USAC as the single entity responsible for the administration of the universal service support mechanisms for schools and libraries and rural health care providers. For the reasons stated in the *NECA Order*, the Bureau found that NECA is not a small organization within the meaning of the RFA. Similarly, USAC, as a wholly-owned, non-profit subsidiary of NECA, is not a small organization. SLC and RHCC are non-profit corporations created by NECA as a condition of its service as temporary Administrator. The Bureau tentatively certified that, even if NECA, USAC, SLC, and RHCC are small entities, the reorganization of SLC, RHCC, and USAC would affect directly only those four entities and thus would not have a direct, significant economic impact on a substantial number of small

entities. The Bureau requested comment on this matter.

49. Under the rules adopted in this Order, USAC will serve as the single entity responsible for administering all of the universal service support mechanisms as of January 1, 1999. The Commission received no comments requesting that we modify our previous certification that the reorganization of SLC, RHCC, and USAC will not have a significant economic impact on a substantial number of small entities. We hereby certify pursuant to the RFA, 5 U.S.C. 605(b), that the rules adopted in this Order directing the merger of SLC and RHCC into USAC as the permanent Administrator of the universal service support mechanisms will not have a significant economic impact on a substantial number of small entities.

50. Regarding the adoption of specific procedures under which administrative decisions made by USAC will be reviewable by the Commission, we note that, in the Final Regulatory Flexibility Analysis to the *Universal Service Order*, 62 FR 32862 (June 17, 1997), we described and estimated the number of small entities that might be affected significantly by the new universal service rules, including the rule requiring telecommunications carriers and other entities to contribute to the universal service support mechanisms. These entities included telephone companies and similar entities, including wireless entities; cable system operators and similar entities, including DBS and international entities; municipalities; rural health care providers; schools; and libraries. The rules adopted here, which set forth the procedures by which affected parties may seek Commission review of administrative decisions made by USAC, will apply to those same telecommunications carriers and entities. In the *July 15 Public Notice*, the Bureau tentatively certified that the rule amendments under consideration would not have a significant economic impact on a substantial number of small entities, noting that the rules, which would afford entities multiple options in seeking review, would likely have a beneficial impact on such entities. The Bureau requested comment specifically on this tentative conclusion. No such comments were filed.

51. In this Order, the Commission adopts, *inter alia*, procedures under which affected parties may appeal USAC division, committee, and Board decisions directly to the Commission. This decision affords parties options for seeking review of USAC decisions and as a result, the economic effect of such change should, if anything, be

beneficial. In addition, we adopt specific requirements for filing review petitions with the Commission under these rules. We find that the filing requirements we adopt are merely procedural in nature and are no more onerous than other, similar filing requirements in the Commission's rules; as such they will not result in a significant economic impact on entities that choose to file under the rules. We therefore certify that the rules we adopt to afford direct review of USAC decisions by the Commission, including the requirements for filing review petitions with the Commission, will not have a significant economic impact on a substantial number of small entities.

VII. Ordering Clauses

52. Accordingly, it is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, the Third Report and Order in CC Docket No. 97–21, Fourth Order on Reconsideration in CC Docket No. 97–21 and Eighth Order on Reconsideration in CC Docket No. 96–45 is adopted.

53. It is further ordered that, pursuant to the authority contained in sections 1–4, 201–205, 218–220, 254, 303(r), 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and 47 CFR 1.108, Part 54 of the Commission's rules, 47 CFR Parts 54 and 69, are amended.

54. It is further ordered that, because the Commission has found good cause, this Order and 47 CFR 54.701, as amended, are effective on December 1, 1998, which may be less than thirty (30) days after publication in the **Federal Register**.

55. It is further ordered that the merger of SLC and RHCC into USAC shall be consummated by January 1, 1999.

56. It is further ordered that, because the Commission has found good cause, except as otherwise provided herein, the rule changes set forth are effective on January 1, 1999, which may be less than thirty (30) days after publication in the **Federal Register**.

57. It is further ordered that, upon consummation of the merger of SLC and RHCC into USAC, SLC and RHCC shall be dissolved, in accordance with applicable state law.

58. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

59. It is further ordered that the information collections contained in 47 CFR 54.703(c) and 54.721 of the Commission's rules, will become effective following approval from the Office of Management and Budget.

List of Subjects

47 CFR Part 54

Healthcare providers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

Parts 54 and 69 of Title 47 of the Code of Federal Regulations are amended to read 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, 205, 214, and 254 unless otherwise noted.

2. In § 54.5 remove the terms *High Cost and Low Income Committee*, *Rural Health Care Corporation*, and *Schools and Libraries Corporation* and the definitions of those terms; revise the definition of the term *Administrator*; add the definition of the term *website* in alphabetical order as follows:

§ 54.5 Terms and definitions.

* * * * *

Administrator. The term “Administrator” shall refer to the Universal Service Administrative Company that is an independent subsidiary of the National Exchange Carrier Association, Inc., and that has been appointed the permanent Administrator of the federal universal service support mechanisms.

* * * * *

Website. The term “website” shall refer to any websites operated by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost

mechanism, and the low income mechanism.

3. In § 54.504 remove the words "Schools and Libraries Corporation" in paragraphs (b)(1), (b)(2)(vii), (b)(3), and (c) and add, in its place, the word "Administrator", and revise paragraph (b)(4) to read as follows:

§ 54.504 Requests for services.

* * * * *

(b) * * *

(4) After posting on the Administrator's website an eligible school's, library's, or consortium's FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

* * * * *

§ 54.505 [Amended]

4. In § 54.505 remove the words "Schools and Libraries Corporation" in paragraphs (b)(3) and (c) and add, in its place, the word "Administrator."

5. In § 54.507 remove the words "Schools and Libraries Corporation" in paragraphs (e) through (f), the introductory text to (g), (g)(1) and add, in its place, the word "Administrator", and revise paragraphs (c), (g)(2)(i) and (g)(2)(iv) to read as follows:

§ 54.507 Cap.

* * * * *

(c) *Requests.* Funds shall be available to fund discounts for eligible schools and libraries and consortia of such eligible entities on a first-come-first-served basis, with requests accepted beginning on the first of July prior to each funding year. The Administrator shall maintain on the Administrator's website a running tally of the funds already committed for the existing funding year. The Administrator shall implement an initial filing period that treats all schools and libraries filing within that period as if their applications were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator. The Administrator may implement such additional filing periods as it deems necessary.

* * * * *

(g) * * *

(2) * * *

(i) The Administrator or the Administrator's subcontractor shall post a message on the Administrator's 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 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.

* * * * *

(iv) After all requests submitted by schools and libraries described in paragraphs (g)(2) and (g)(3) of this section during the 30-day period have been met, the Administrator shall allocate the remaining available funds to all other eligible schools and libraries in the order in which their requests have been received by the Administrator, until the \$250 million is exhausted or the funding year ends.

* * * * *

6. In § 54.509 remove the words "Schools and Libraries Corporation" in paragraph (b) and add, in its place, the word "Administrator" and revise paragraph (c) to read as follows:

§ 54.509 Adjustments to the discount matrix.

* * * * *

(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, the Administrator shall consult with the Commission to establish the best way to distribute those funds.

§ 54.511 [Amended]

7. In § 54.511 remove the words "Schools and Libraries Corporation" in paragraph (c)(3) and add, in its place, the word "Administrator."

§ 54.516 [Amended]

8. In § 54.516 remove the words "Schools and Libraries Corporation" in paragraph (b) and add, in its place, the word "Administrator."

§ 54.603 [Amended]

9. In § 54.603 remove the words "Rural Health Care Corporation" in paragraphs (a)(1) through (5) and add, in its place, the word "Administrator."

§ 54.604 [Amended]

10. In § 54.604 remove the words "Rural Health Care Corporation" in paragraph (c) and add, in its place, the word "Administrator."

§ 54.605 [Amended]

11. In § 54.605 remove the words "Rural Health Care Corporation" in paragraph (e) and add, in its place, the word "Administrator."

§ 54.609 [Amended]

12. In § 54.609 remove the words "Rural Health Care Corporation" in paragraph (b) and add, in its place, the word "Administrator."

§ 54.619 [Amended]

13. In § 54.619 remove the words "Rural Health Care Corporation" in paragraphs (b) and (d) and add, in its place, the word "Administrator."

§ 54.623 [Amended]

14. In § 54.623 remove the words "Rural Health Care Corporation" in paragraphs (c), (e) through (f) and add, in its place, the word "Administrator."

§ 54.625 [Amended]

15. In § 54.625 remove the words "Rural Health Care Corporation" in paragraph (a) and add, in its place, the word "Administrator."

16. Revise § 54.701 to read as follows:

§ 54.701 Administrator of universal service support mechanisms.

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the federal universal service support mechanisms, subject to a review after one year by the Federal Communications Commission to determine that the Administrator is administering the universal service support mechanisms in an efficient, effective, and competitively neutral manner.

(b) The Schools and Libraries Corporation and the Rural Health Care Corporation shall merge into the Universal Service Administrative Company by January 1, 1999; provided, however, that the merger shall not take place until the Common Carrier Bureau, acting pursuant to delegated authority, has approved the merger documents, the amended by-laws, and the amended articles of incorporation, as set forth in paragraphs (c) and (d) of this section.

(c) By December 1, 1998, the Schools and Libraries Corporation, the Rural Health Care Corporation and the Universal Service Administrative Company shall file with the Federal Communications Commission draft copies of all documents necessary to effectuate the merger.

(d) By December 1, 1998, the Universal Service Administrative Company shall file with the Federal Communications Commission draft

copies of amended by-laws and amended articles of incorporation.

(e) Upon consummation of the merger of the Schools and Libraries Corporation and the Rural Health Care Corporation into the Universal Service Administrative Company, the Schools and Libraries Corporation and the Rural Health Care Corporation shall take all steps necessary to dissolve such corporations.

(f) The Administrator shall establish a nineteen (19) member Board of Directors, as set forth in § 54.703. The Administrator's Board of Directors shall establish three Committees of the Board of Directors, as set forth in § 54.705: (1) the Schools and Libraries Committee, which shall oversee the schools and libraries support mechanism; (2) the Rural Health Care Committee, which shall oversee the rural health care support mechanism; and (3) the High Cost and Low Income Committee, which shall oversee the high cost and low income support mechanism. The Board of Directors shall not modify substantially the power or authority of the Committees of the Board without prior approval from the Federal Communications Commission.

(g) The Administrator shall establish three divisions: (1) the Schools and Libraries Division, which shall perform duties and functions in connection with the schools and libraries support mechanism under the direction of the Schools and Libraries Committee of the Board, as set forth in § 54.705(a); (2) the Rural Health Care Division, which shall perform duties and functions in connection with the rural health care support mechanism under the direction of the Rural Health Care Committee of the Board, as set forth in § 54.705(b); and (3) the High Cost and Low Income Division, which shall perform duties and functions in connection with the high cost and low income support mechanism under the direction of the High Cost and Low Income Committee of the Board, as set forth in § 54.705(c). As directed by the Committees of the Board set forth in § 54.705, these divisions shall perform the duties and functions unique to their respective support mechanisms.

(h) The Administrator shall be managed by a Chief Executive Officer, as set forth in § 54.704. The Chief Executive Officer shall serve on the Committees of the Board established in § 54.705.

17. Add a new § 54.702 to read as follows:

§ 54.702 Administrator's functions and responsibilities.

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism and the low income support mechanism.

(b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(c) The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

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

(e) The Administrator shall maintain books of account separate from those of the National Exchange Carrier Association, of which the Administrator is an independent subsidiary. The Administrator's books of account shall be maintained in accordance with generally accepted accounting principles. The Administrator may borrow start up funds from the National Exchange Carrier Association. Such funds may not be drawn from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts.

(f) Pursuant to its responsibility for billing and collecting contributions, the Administrator shall compare periodically information collected by the administrator of the TRS Fund from TRS Fund Worksheets with information submitted by contributors on Universal Service Worksheets to verify the accuracy of information submitted on Universal Service Worksheets. When performing a comparison of contributor information as provided by this paragraph, the Administrator must undertake company-by-company comparisons for all entities filing Universal Service and TRS Fund Worksheets.

(g) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools, libraries and rural health care providers.

(h) The Administrator shall file with the Commission and Congress an annual report by March 31 of each year. The report shall detail the Administrator's

operations, activities, and accomplishments for the prior year, including information about participation in each of the universal service support mechanisms and administrative action intended to prevent waste, fraud, and abuse. The report also shall include an assessment of subcontractors' performance, and an itemization of monthly administrative costs that shall include all expenses, receipts, and payments associated with the administration of the universal service support programs. The Administrator shall consult each year with Commission staff to determine the scope and content of the annual report.

(i) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, and high cost and insular areas.

(j) Information based on the Administrator's reports will be made public by the Commission at least once a year as part of a Monitoring Report.

(k) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the universal service support programs.

(l) Pursuant to § 64.903 of this chapter, the Administrator shall file with the Commission a cost allocation manual (CAM) that describes the accounts and procedures the Administrator will use to allocate the shared costs of administering the universal service support mechanisms and its other operations.

(m) The Administrator 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 support mechanisms, if its participation in administering the universal service support mechanisms ends.

(n) If its participation in administering the universal service support mechanisms ends, the Administrator shall be subject to close-out audits at the end of its term.

18. Revise § 54.703 to read as follows:

§ 54.703 The Administrator's Board of Directors.

(a) The Administrator shall have a Board of Directors separate from the Board of Directors of the National Exchange Carrier Association. The National Exchange Carrier Association's

Board of Directors shall be prohibited from participating in the functions of the Administrator.

(b) *Board composition.* The independent subsidiary's Board of Directors shall consist of nineteen (19) 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;

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

(9) Two directors shall represent rural health care providers that are eligible to receive supported services pursuant to § 54.601;

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

(11) One director shall represent state telecommunications regulators;

(12) One director shall represent state consumer advocates; and

(13) The Chief Executive Officer of the Administrator.

(c) *Selection process for board of directors.* (1) Sixty (60) days prior to the expiration of a director's term, the industry or non-industry group that is represented by such director on the Administrator's Board of Directors, as specified in paragraph (b) of this section, shall nominate by consensus a new director. The industry or non-industry group shall submit the name of its nominee for a seat on the Administrator's Board of Directors, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission. Only

members of the industry or non-industry group that a Board member will represent may submit a nomination for that position.

(2) The name of an industry or non-industry group's nominee shall be filed with the Office of the Secretary of the Federal Communications Commission in accordance with part 1 of this chapter. The document nominating a candidate shall be captioned "In the matter of: Nomination for Universal Service Administrator's Board of Directors" and shall reference FCC Docket Nos. 97-21 and 96-45. Each nomination shall specify the position on the Board of Directors for which such nomination is submitted. Two copies of the document nominating a candidate shall be submitted to the Common Carrier Bureau's Accounting Policy Division.

(3) The Chairman of the Federal Communications Commission shall review the nominations submitted by industry and non-industry groups and select each director of the Administrator's Board of Directors, as each director's term expires pursuant to paragraph (d) of this section. 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 Administrator's Board of Directors, the Chairman of the Federal Communications Commission shall select an individual to represent such group on the Administrator's Board of Directors.

(d) *Board member terms.* The directors on the Administrator's Board shall be appointed for three-year terms, except that the Chief Executive Officer shall be a permanent member of the Board. Board member terms shall run from January 1 of the first year of the term to December 31 of the third year of the term, except that, for purposes of the term beginning on January 1, 1999, the terms of six directors shall expire on December 31, 2000, the terms of another six directors on December 31, 2001, and the terms of the remaining six directors on December 31, 2002. Directors may be reappointed for subsequent terms pursuant to the initial nomination and appointment process described in paragraph (c) of this section. If a Board member vacates his or her seat prior to the completion of his or her term, the Administrator will notify the Common Carrier Bureau of such vacancy, and a successor will be chosen pursuant to the nomination and appointment process described in paragraph (c) of this section.

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

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

19. Add a new § 54.704 to read as follows:

§ 54.704 The Administrator's Chief Executive Officer.

(a) *Chief Executive Officer's functions.*

(1) The Chief Executive Officer shall have management responsibility for the administration of the federal universal service support mechanisms.

(2) The Chief Executive Officer shall have management responsibility for all employees of the Universal Service Administrative Company. The Chief Executive Officer may delegate such responsibility to heads of the divisions established in § 54.701(g).

(3) The Chief Executive Officer shall serve on the Administrator's Board of Directors as set forth in § 54.703(b) and on the Committees of the Board established under § 54.705.

(b) *Selection process for the Chief Executive Officer.* (1) The members of the Board of Directors of the Administrator shall nominate by consensus a Chief Executive Officer. The Board of Directors shall submit the name of its nominee for Chief Executive Officer, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission.

(2) The Chairman of the Federal Communications Commission shall review the nomination submitted by the Administrator's Board of Directors. Subject to the Chairman's approval, the nominee shall be appointed as the Administrator's Chief Executive Officer.

(3) If the Board of Directors does not reach consensus on a nominee or fails to submit a nomination for the Chief Executive Officer, the Chairman of the Federal Communications Commission shall select a Chief Executive Officer.

20. Revise § 54.705 to read as follows:

§ 54.705 Committees of the Administrator's Board of Directors.

(a) *Schools and Libraries Committee.*—(1) *Committee functions.* The Schools and Libraries Committee shall oversee the administration of the schools and libraries support mechanism by the Schools and Libraries Division. The Schools and Libraries Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the schools and libraries support mechanism;

(ii) Development of applications and associated instructions as needed for the

schools and libraries support mechanism;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of outreach and education functions;

(v) Review of bills for services that are submitted by schools and libraries;

(vi) Monitoring demand for the purpose of determining when the \$2 billion trigger has been reached;

(vii) Implementation of the rules of priority in accordance with § 54.507(g) of this chapter;

(viii) Review and certification of technology plans when a state agency has indicated that it will not be able to review such plans within a reasonable time;

(ix) The classification of schools and libraries as urban or rural and the use of 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;

(x) Performance of audits of beneficiaries under the schools and libraries support mechanism; and

(xi) Development and implementation of other functions unique to the schools and libraries support mechanism.

(2) *Committee composition.* The Schools and Libraries Committee shall consist of the following members of the Administrator's Board of Directors:

(i) Three school representatives;

(ii) One library representative;

(iii) One service provider representative;

(iv) One at-large representative elected by the Administrator's Board of Directors; and

(v) The Administrator's Chief Executive Officer.

(b) *Rural Health Care Committee.*—(1) *Committee functions.* The Rural Health Care Committee shall oversee the administration of the rural health care support mechanism by the Rural Health Care Division. The Rural Health Care Committee shall have authority to make decisions concerning:

(i) How the Administrator projects demand for the rural health care support mechanism;

(ii) Development of applications and associated instructions as needed for the rural health care support mechanism;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Calculation of support levels under § 54.609;

(v) Performance of outreach and education functions;

(vi) Review of bills for services that are submitted by rural health care providers;

(vii) Monitoring demand for the purpose of determining when the \$400 million cap has been reached;

(viii) Performance of audits of beneficiaries under the rural health care support mechanism; and

(ix) Development and implementation of other functions unique to the rural health care support mechanism.

(2) *Committee composition.* The Rural Health Care Committee shall consist of the following members of the Administrator's Board of Directors:

(i) Two rural health care representatives;

(ii) One service provider representative;

(iii) Two at-large representatives elected by the Administrator's Board of Directors;

(iv) One State telecommunications regulator, one state consumer advocate; and

(v) The Administrator's Chief Executive Officer.

(c) *High Cost and Low Income Committee.*—(1) *Committee functions.* The High Cost and Low Income Committee shall oversee the administration of the high cost and low income support mechanisms by the High Cost and Low Income Division. The High Cost and Low Income Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the high cost and low income support mechanisms;

(ii) Development of applications and associated instructions as needed for the high cost and low income support mechanisms;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of audits of beneficiaries under the high cost and low income support mechanisms; and

(v) Development and implementation of other functions unique to the high cost and low income support mechanisms.

(2) *Committee composition.* The High Cost and Low Income Committee shall consist of the following members of the Administrator's Board of Directors:

(i) One low income representative;

(ii) One state telecommunications regulator;

(iii) One state consumer advocate;

(iv) Two incumbent local exchange carrier representatives (one shall

represent rural telephone companies, as that term is defined in 47 U.S.C. 153(37) and one shall represent non-rural telephone companies);

(v) One interexchange carrier representative;

(vi) One competing local exchange carrier representative;

(vii) One commercial mobile radio service representative; and

(viii) The Administrator's Chief Executive Officer.

(d) *Binding Authority of Committees of the Board.*

(1) Any action taken by the Committees of the Board established in paragraphs (a) through (c) of this section shall be binding on the Board of Directors of the Administrator, unless such action is presented for review to the Board by the Administrator's Chief Executive Officer and the Board disapproves of such action by a two-thirds vote of a quorum of directors, as defined in the Administrator's by-laws.

(2) The budgets prepared by each Committee shall be subject to Board review as part of the Administrator's combined budget. The Board shall not modify the budgets prepared by the Committees of the Board unless such modification is approved by a two-thirds vote of a quorum of the Board, as defined in the Administrator's by-laws.

21. Add a new § 54.706 to read as follows:

§ 54.706 Contributions.

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support programs. Interstate telecommunications include, but are not limited to:

(1) Cellular telephone and paging services;

(2) Mobile radio services;

(3) Operator services;

(4) Personal communications services (PCS);

(5) Access to interexchange service;

(6) Special access service;

(7) WATS;

(8) Toll-free service;

(9) 900 service;

(10) Message telephone service (MTS);

(11) Private line service;

(12) Telex;

(13) Telegraph;

(14) Video services;

(15) Satellite service;

(16) Resale of interstate services; and

(17) Payphone services.

(b) Every telecommunications carrier that provides interstate

telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for eligible schools, libraries, and health care providers on the basis of its interstate, intrastate, and international end-user telecommunications revenues. Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

(c) Every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for high cost, rural and insular areas, and low-income consumers on the basis of its interstate and international end-user telecommunications revenues. Entities providing OVS, cable leased access, or DBS services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

22. Add a new § 54.708 to read as follows:

§ 54.708 De minimis exemption.

If a contributor's contribution to universal service in any given year is less than \$10,000, that contributor will not be required to submit a contribution or Universal Service Worksheet for that year. If a contributor improperly claims exemption from the contribution requirement, it will be subject to the criminal provisions of sections 220(d) and (e) of the Act regarding willful false submissions and will be required to pay the amounts withheld plus interest.

23. In § 54.709 remove the words "Administrator's, the Schools and

Libraries Corporation's, and the Rural Health Care Corporation's" from paragraph (a)(2) and add, in its place, the word "Administrator's"; revise paragraph (a)(3) to read as follows:

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

* * * * *

(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 Administrator must submit its projections of demand for the high cost and low-income support mechanisms, the schools and libraries support mechanism, and the rural health care support mechanism, respectively, and the basis for those projections, to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. For each quarter, the Administrator must submit its projections of administrative expenses for the high cost and low-income programs, the schools and libraries program and the rural health care program and the basis for those projections to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Universal Service Worksheets, the Administrator must submit the total contribution bases to the Common Carrier Bureau at least sixty (60) days before the start of each quarter. The projections of demand and administrative expenses and the contribution factors shall be announced by the Commission in a public notice 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 fourteen-day period following release of the Commission's public notice. If the Commission takes no action within fourteen (14) days of the date of release 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 and contribution factors are approved, the Administrator shall apply the quarterly contribution factors to determine individual contributions.

* * * * *

§ 54.711 [Amended]

24. In § 54.711 remove the words "Administrator, Rural Health Care Corporation and Schools and Libraries Corporation" from paragraph (b) and add, in its place, the word "Administrator."

25. Revise § 54.715 to read as follows:

§ 54.715 Administrative expenses of the Administrator.

(a) The annual administrative expenses of the Administrator should be commensurate with the administrative expenses of programs of similar size, with the exception of the salary levels for officers and employees of the Administrator described in paragraph (b) of this section. The annual administrative expenses 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 of support recipients.

(b) All officers and employees of the Administrator may be compensated at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, in an amount not to exceed the rate of basic pay in effect for Level I of the Executive Schedule under 5 U.S.C. 5312.

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism and the low income support mechanism shall be deducted from the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903 of this chapter.

26. Add a new § 54.717 to read as follows:

§ 54.717 Audits of the Administrator.

The Administrator shall obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether the Administrator is properly

administering the universal service support mechanisms to prevent fraud, waste, and abuse:

(a) Before selecting an independent auditor, the Administrator shall submit preliminary audit requirements, including the proposed scope of the audit 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 Administrator shall engage within thirty (30) calendar days an independent auditor to conduct the annual audit required by this paragraph. In making its selection, the Administrator 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 auditor selected by the Administrator to conduct the annual audit shall be instructed by the Administrator to develop a detailed audit program based on the final audit requirements and shall be instructed by the Administrator to submit the audit program to the Common Carrier Bureau Audit Staff. The Common Carrier Bureau Audit Staff shall review the audit program and make modifications, as needed, that shall be incorporated into the final audit program. During the course of the audit, the Common Carrier Bureau Audit Staff may direct the Administrator to direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements.

(e) During the course of the audit, the Administrator shall instruct the independent auditor to:

(1) Inform the Common Carrier Bureau Audit Staff of any revisions to the final audit program or to the scope of the audit;

(2) Notify the Common Carrier Bureau Audit Staff of any meetings with the Administrator in which audit findings are discussed; and

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

(f) Within sixty (60) calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed

by the Administrator to submit a draft of the audit report 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 audit or the audit findings to the independent auditor. Exceptions of the Common Carrier Bureau Audit Staff to the findings and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(h) Within fifteen (15) calendar days after receiving the Common Carrier Bureau Audit Staff's recommendations and making any revisions to the audit report, the Administrator shall instruct the independent auditor to submit the audit report to the Administrator for its response to the audit findings. At this time the auditor also must send copies of its audit findings to the Common Carrier Bureau Audit Staff. The Administrator shall provide the independent auditor time to perform additional audit work recommended by the Common Carrier Bureau Audit Staff.

(i) Within thirty (30) calendar days after receiving the audit report, the Administrator shall respond to the audit findings and send copies of its response to the Common Carrier Bureau Audit Staff. The Administrator shall instruct the independent auditor that any reply that the independent auditor wishes to make to the Administrator's responses shall be sent to the Common Carrier Bureau Audit Staff as well as the Administrator. The Administrator's response and the independent auditor's replies shall be included in the final audit report;

(j) Within ten (10) calendar days after receiving the response of the Administrator, the independent auditor shall file with the Commission the final audit report.

(k) Based on the final audit report, 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 this Part, as well as such other action as is deemed necessary and in the public interest.

27. Add a subpart I to part 54 of title 47 of the Code of Federal Regulations as follows:

Subpart I—Review of Decisions Issued by the Administrator

54.719 Parties permitted to seek review of Administrator decisions.

54.720 Filing deadlines.

54.721 General filing requirements.

54.722 Review by the Common Carrier Bureau or the Commission.

54.723 Standard of review.

54.724 Time periods for Commission approval of Administrator decisions.

54.725 Universal service disbursement during pendency of a request for review of an Administrator decision.

28. Add a new § 54.719 to read as follows:

§ 54.719 Parties permitted to seek review of Administrator decisions.

(a) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), may seek review from the appropriate Committee of the Board, as defined in § 54.705.

(b) Any person aggrieved by an action taken by the Administrator pertaining to a billing, collection or disbursement matter that falls outside the jurisdiction of the Committees of the Board may seek review from the Board of Directors of the Administrator, as defined in § 54.703.

(c) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), a Committee of the Board of the Administrator, as defined in § 54.705, or the Board of Directors of the Administrator, as defined in § 54.703, may seek review from the Federal Communications Commission, as set forth in § 54.722.

29. Add a new § 54.720 to read as follows:

§ 54.720 Filing deadlines.

(a) An affected party requesting review of an Administrator decision by the Commission pursuant to § 54.719(c), shall file such request within thirty (30) days of the issuance of the decision by a division or Committee of the Board of the Administrator.

(b) An affected party requesting review of a division decision by a Committee of the Board pursuant to § 54.719(a), shall file such request within thirty (30) days of issuance of the decision by the division.

(c) An affected party requesting review by the Board of Directors pursuant to § 54.719(b) regarding a billing, collection, or disbursement matter that falls outside the jurisdiction of the Committees of the Board shall file such request within thirty (30) days of issuance of the Administrator's decision.

(d) The filing of a request for review with a Committee of the Board under § 54.719(a) or with the full Board under § 54.703, shall toll the time period for seeking review from the Federal Communications Commission. Where the time for filing an appeal has been tolled, the party that filed the request for review from a Committee of the Board

or the full Board shall have thirty (30) days from the date the Committee or the Board issues a decision to file an appeal with the Commission.

(e) Parties shall adhere to the time periods for filing oppositions and replies set forth in 47 CFR 1.45.

30. Add a new § 54.721 to read as follows:

§ 54.721 General filing requirements.

(a) Except as otherwise provided herein, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned "In the matter of: Request for Review by (name of party seeking review) of Decision of Universal Service Administrator" and shall reference FCC Docket Nos. 97-21 and 96-45.

(b) A request for review pursuant to § 54.719(a) through (c) shall contain: (1) a statement setting forth the party's interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(c) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in § 1.47 of this chapter.

(d) If a request for review filed pursuant to § 54.720(a) through (c) alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party

shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.

31. Add a new § 54.722 to read as follows:

§ 54.722 Review by the Common Carrier Bureau or the Commission.

(a) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Common Carrier; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.

(b) An affected party may seek review of a decision issued under delegated authority by the Common Carrier Bureau pursuant to the rules set forth in part 1 of this chapter.

32. Add a new § 54.723 to read as follows:

§ 54.723 Standard of review.

(a) The Common Carrier Bureau shall conduct *de novo* review of requests for review of decisions issued by the Administrator.

(b) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Common Carrier Bureau under delegated authority.

33. Add a new § 54.724 to read as follows:

§ 54.724 Time periods for Commission approval of Administrator decisions.

(a) If the Common Carrier Bureau does not take action within ninety (90) days upon appeals that are properly before it, a decision issued by the Administrator shall be deemed approved; provided, however, that within the 90-day period, the Common Carrier Bureau may extend the time period for taking action on a request for review of an Administrator decision.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law or policy within ninety (90) days; provided, however, that the Commission may extend the time period for taking action on the request for review.

34. Add a new § 74.725 to read as follows.

§ 74.725 Universal service disbursements during pendency of a request for review of an Administrator decision.

(a) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission.

(b) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been issued either by the Administrator or by the Federal Communications Commission.

PART 69—ACCESS CHARGES

35. The authority citation for part 69 continues to read as follows:

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

§ 69.600 [Removed]

36. Remove § 69.600.

§ 69.603 [Amended]

37. In § 69.603 remove paragraphs (c), (d), and (e).

§ § 69.613 through 69.622 [Removed]

38. Remove §§ 69.613 through 69.622.

[FR Doc. 98-33549 Filed 12-18-98; 8:45 am]

BILLING CODE 6712-01-P