

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

In the Matter of)	
)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.)	CC Docket No. 97-21
)	
Nominations for Two Board Member Positions on the Universal Service Administrative Company Board of Directors)	

ORDER

Adopted: May 20, 2008

Released: May 20, 2008

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we waive on our own motion¹ sections 54.702(b)(1) and 54.703(c) of the Commission’s rules that specify that one member of the Universal Service Administrative Company (USAC) Board of Director’s shall be nominated by and shall represent “interexchange carriers with more than \$3 billion in annual operating revenues.”² For the reasons described below, we find good cause exists to waive these rules to enable the Chairman of the Commission to designate a member USAC Board of Directors for the seat from an interexchange carrier (IXC), regardless of its annual operating revenues.³

2. In 1997, the Commission established the initial composition of the USAC Board of Directors.⁴ The Commission required that the board be comprised of “17 directors that will represent a cross-section of industry and beneficiary interests.”⁵ In particular, the Commission allocated two of the 17 seats on the USAC Board of Directors to IXC representatives, with one seat representing IXCs with more than \$3 billion in annual operating revenues and one seat representing IXCs with less than \$3 billion

¹ See 47 C.F.R. § 1.3.

² See 47 C.F.R. §§ 54.703(b)(1), (c).

³ This order does not affect the allocation of a seat on USAC Board of Directors for an IXC with less than \$3 billion in annual operating revenues. See *id.*

⁴ *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18420-23, paras. 33-40 (1997) (*Second Order on Reconsideration*).

⁵ *Id.* at para. 33.

in annual operating revenues.⁶ In determining the composition of the USAC Board of Directors, the Commission's "objective [was] to enable USAC's Board to achieve a balance of broad industry and beneficiary representation and administrative efficiency so that the Board can implement the [universal service fund mechanisms] in a neutral and efficient manner."⁷ In addition, the Commission determined that a board of at least this size was necessary "to assure balanced representation of both industry and beneficiary interests."⁸ In 1998, the Commission increased the minimum size of the USAC Board of Directors from 17 to 19 members.⁹

3. The Commission's rules require that the relevant industry or non-industry groups represented on the USAC Board of Directors submit nominations to the Commission for their respective board seats.¹⁰ These rules further require that "[t]he Chairman of the Federal Communications Commission shall review the nominations submitted by industry and non-industry groups and select each direct of the [USAC] Board of Directors."¹¹

4. The Commission's rules regarding the composition of, and the process for appointment to, the USAC Board of Directors have remained in place since 1998. The Commission, however, is presently considering whether to make changes in the composition of the USAC Board of Directors. Specifically, in 2005, the Commission sought comment "on whether the current board composition results in effective, efficient, and competitively neutral management of [the universal service fund]."¹²

5. On March 24, 2008, the Commission's Office of the Managing Director released a Public Notice seeking nominations for two USAC Board of Director members, one for competitive local exchange carriers and one for IXCs (other than Bell Operating Companies) with more than \$3 billion in annual operating revenues.¹³ The IXC board seat is currently vacant.¹⁴ On April 23, 2008, XO Communications (XO) submitted the nomination of Rex Knowles for the vacant IXC seat.¹⁵ Although XO is an IXC, its annual operating revenues appear to be less than \$3 billion.¹⁶ For the reasons described below, we find good cause to waive sections 54.703(b)(1) and 54.703(c) of the Commission's rules so

⁶ *Id.* at para. 35.

⁷ *Id.* at para. 34.

⁸ *Id.*

⁹ *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, 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, 13 FCC Rcd 25058, 25071-74, paras. 22-29 (1998) (*USAC Appointment Order*) (adding a second board member representing rural health care providers and a seat on the board for the USAC Chief Executive Officer); see 47 C.R.R. § 54.703(b).

¹⁰ 47 C.F.R. § 54.703(c)(1); *Second Reconsideration Order*, 12 FCC Rcd at 18423-24, para. 38.

¹¹ 47 C.F.R. § 54.703(c)(3); *Second Reconsideration Order*, 12 FCC Rcd at 18424, para. 39.

¹² *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket Nos. 05-195, 03-109, 02-60, CC Docket Nos. 02-6, 97-21, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11315-16, at para. 15 (1995) (*Comprehensive Review Notice*).

¹³ *The Office of Managing Director Seeks Nominations for Two Board Member Positions on the Universal Service Administrative Company Board of Directors*, CC Docket Nos. 96-45, 97-21, Public Notice, 23 FCC Rcd 4919 (2008).

¹⁴ See *id.*

¹⁵ Letter from Heather Burnett Gold, Senior Vice President, External Affairs, XO Communications, to Daniel Gonzalez, Chief of Staff, Office of the Chairman, FCC, CC Docket Nos. 96-45, 97-21 (filed Apr. 23, 2008).

¹⁶ See XO Holdings Inc., 2007 Annual Report, at F-3 (filed Mar. 17, 2008), available at http://www.xo.com/SiteCollectionDocuments/about-xo/investor-relations/Annual_Reports/10-K_2008_03_17_FY2007.pdf.

that the Chairman may consider the nomination of Rex Knowles for the vacant non-Bell Operating Company IXC board seat.

II. DISCUSSION

6. On our own motion, we find that there is good cause to waive sections 54.703(b)(1) and 54.703(c) of the Commission's rules to the extent described below.¹⁷ Waiver of these rules will further the goals of universal service by enabling the Chairman of the Commission to designate members of the USAC Board of Directors in a manner that meets the Commission's stated objective of best reflecting a cross-section of the communications industry (as well as non-industry), while recognizing that this industry has changed since the Commission determined the current composition of the Board.¹⁸

7. Because of significant changes in the communications marketplace and, in particular, to the IXC marketplace since the Commission adopted the current structure for the USAC Board of Directors in 1997, we find it in the public interest to waive the requirements that one member of the Board be nominated by and represent an interexchange carrier that has in excess of \$3 billion in annual operating revenues. Notably, the three largest IXCs in 1997 and 1998 when the current rules were established, AT&T, MCI, and Sprint, now operate extensively in different lines of business that would have different representation on the USAC Board of Directors. For example, AT&T and MCI from the late 1990s are now part of the two largest Bell Operating Companies (AT&T and Verizon), which have their own seats on the USAC Board of Directors. Indeed, today the Bell Operating Company representative on the USAC Board of Directors is an AT&T employee. In addition, Sprint, another of the three largest IXCs from the time the rules were established, is a wireless provider today. With the largest IXCs from the period when the current board configuration was established now operating significant lines of business other than IXCs, we find it appropriate and in the public interest to waive the \$3 billion revenue threshold for the vacant seat on the USAC Board of Directors that is currently allocated to IXCs. In so doing, the Chairman will be able to consider the full panoply of qualified IXC nominees for the USAC Board of Directors.¹⁹

8. Finally, in light of the changes in the configuration of the communications market discussed in this order and otherwise, we encourage interested parties to update the record in the *Comprehensive Review Notice* with regard to whether the Commission should modify its rules regarding the composition of the USAC Board of Directors to better ensure "the effective, efficient, and competitively neutral management of the [universal service fund]."²⁰

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that sections 54.703(b)(1) and 54.703(c), 47 C.F.R. §§ 54.703(b)(1), (c) ARE WAIVED to the extent described herein.

¹⁷ The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ See *USAC Appointment Order*, 13 FCC Rcd at 25071-74, paras. 22-29 (1998) (*USAC Appointment Order*).

¹⁹ See 47 C.F.R. § 54.703(c)(3).

²⁰ See *Comprehensive Review NPRM*, 20 FCC Rcd at 11315-16, para. 15.

10. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291 and 1.102 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana R. Shaffer
Chief
Wireline Competition Bureau