

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

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

ORDER

Adopted: April 25, 2013

Released: April 25, 2013

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this order, we waive on our own motion¹ appropriate portions of section 54.703(b) and 54.703(c)(3) of the Commission’s rules, which specify the composition of the Universal Service Administrative Company (USAC) Board of Directors (USAC Board or Board).² For the reasons described below, we find good cause to waive these rules, to the extent described below, to enable the Chairman of the Federal Communications Commission (Commission) to appoint members to the USAC Board.

2. USAC is the permanent administrator of all four of the Universal Service Fund (USF or Fund) programs.³ USAC is overseen by a Board of Directors.⁴ Pursuant to the Commission’s rules and USAC’s own by-laws, the USAC Board has 19 members and must include: (i) Three representatives of incumbent local exchange carriers (ILECs), with one director representing the Bell Operating Companies and GTE, one director representing other ILECs with annual operating revenues in excess of \$40 million, and one director representing ILECs with annual operating revenues of \$40 million or less; (ii) Two directors representing interexchange carriers (IXCs), with one director representing IXCs with more than \$3 billion in annual operating revenues and one director representing IXCs with annual operating revenues of \$3 billion or less; (iii) One director representing commercial mobile radio service providers;

¹ See 47 C.F.R. § 1.3.

² See 47 C.F.R. §§ 54.703(b), (c)(3).

³ See *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carriers Association, Inc.*, 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 Red 25058, 25069-70, para. 20 (1998).

⁴ 47 C.F.R. § 54.703(a).

(iv) One director representing competitive local exchange carriers; (v) One director representing cable operators; (vi) One director representing information service providers (ISPs); (vii) Three directors representing schools that are eligible to receive discounts pursuant to 47 C.F.R. § 54.501; (viii) One director representing libraries that are eligible to receive discounts pursuant to 47 C.F.R. § 54.501; (ix) Two directors representing rural health care providers that are eligible to receive supported services pursuant to 47 C.F.R. § 54.601; (x) One director representing low-income consumers; (xi) One director representing state telecommunications regulators; (xii) One director representing state consumer advocates; and (xiii) USAC's Chief Executive Officer (CEO).⁵ Except for USAC's CEO, who serves for the length of his or her tenure as CEO, the members of the USAC Board serve staggered three year terms, so that six members' terms expire every year.⁶

3. Section 54.703(c) of the Commission's rules provides that, sixty days prior to the expiration of a Board member's term, the industry or non-industry group that is represented by such director shall nominate by consensus a new director.⁷ The group must then submit the name of its nominee, along with relevant professional and biographical information about the nominee, to the Chairman of the Commission.⁸ Pursuant to the Commission's rules, the Chairman reviews the nominations selected by the relevant groups, and appoints new directors as the prior directors' terms expire.⁹ If a group does not reach consensus on a nominee or fails to submit a nomination, the Chairman selects an individual to represent such group on the Board.¹⁰ The procedures for filling vacant seats are the same as those for nominating new Board members at the start of a new term.¹¹

4. On September 13, 2012, the Wireline Competition Bureau (Bureau) released a public notice seeking nominations for nine USAC Board member positions, including the position representing IXCs with more than \$3 billion in annual operating revenues, which has been vacant since 2010.¹² On March 12, 2013, the Bureau released a public notice seeking nominations for four additional Board positions, including the position representing ISPs.¹³ The Bureau did not receive any nominations for the Board seats representing ISPs, or IXCs with annual revenues in excess of \$3 billion.

⁵ See 47 C.F.R. § 54.703(b); Article III of the BY-LAWS OF UNIVERSAL SERVICE ADMINISTRATIVE COMPANY (a Delaware Corporation), available at <http://www.usac.org/res/documents/about/pdf/bod/usacbylaws.pdf> (last visited Apr. 23, 2013).

⁶ 47 C.F.R. § 54.703(d).

⁷ *Id.* § 54.703(c).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* § 54.703(d).

¹² See *Wireline Competition Bureau Seeks Nominations for Nine Board Member Positions on the Universal Service Administrative Company Board of Directors*, CC Docket Nos. 96-45, 97-21, Public Notice, 27 FCC Rcd 10995 (Wireline Comp. Bur. 2012); Letter from D. Scott Barash, Acting Chief Executive Officer, USAC, to Sharon Gillett, Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 96-45, 97-21 (dated Jan. 7, 2010) (attaching resignation letter of Rex Knowles) (*Knowles IXC Resignation Letter*). On May 20, 2008, the Commission issued a waiver order in which it determined that there was good cause to waive section 54.703 of the Commission's rules, to enable the Chairman to consider the nomination of a representative from an IXC with revenues less than \$3 billion for the then-vacant position for IXCs with revenues in excess of \$3 billion. See *Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; Nominations for Two Board Member Positions on the Universal Service Administrative Company Board of Directors*, CC Docket Nos. 96-45, 97-21, Order, 23 FCC Rcd 8260, 8262, paras. 7-8 (Wireline Comp. Bur. 2008).

¹³ See *Wireline Competition Bureau Seeks Nominations for Four Board Member Positions on the Universal Service Administrative Company Board of Directors*, CC Docket Nos. 96-45, 97-21, Public Notice, 28 FCC Rcd 2292 (Wireline Comp. Bur. 2013).

II. DISCUSSION

5. On our own motion, we find that there is good cause to waive appropriate portions of section 54.703(b) and 54.703(c)(3) of the Commission's rules to the extent described below.¹⁴

6. In determining the composition of the USAC Board in its rules, 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 [USF mechanisms] in a neutral and efficient manner."¹⁵ 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."¹⁶ We find that waiver of appropriate portions of section 54.703(b) and 54.703(c)(3) will further the goals of universal service by enabling the Chairman to appoint members of the USAC Board 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 the communications landscape and USF have changed since the Commission determined the current composition of the Board.

7. The rules governing the composition of the USAC Board and the process for appointments to the Board have remained in place since 1998. Over the last 15 years, as the Fund has grown, the Commission has made major modifications to the universal service programs and adopted measures to improve the management, administration and oversight of the Fund.¹⁷ Over the same period of time, the communications industry has experienced dramatic growth and change, and the set of stakeholders interested in the USF has evolved. In light of the changes that have occurred since 1998, we find it in the public interest to waive the requirements that one Board member be nominated by and represent ISPs, and that one member of the Board be nominated by and represent IXCs with greater than \$3 billion in annual operating revenues. The Bureau did not receive any nominations to fill the ISPs' representative position on the Board,¹⁸ which may be driven in part by changes in the telecommunications industry — most

¹⁴ 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 an 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. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008); *Northeast Cellular*, 897 F. 2d at 1166.

¹⁵ *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18420, para. 34 (1997).

¹⁶ *Id.*

¹⁷ See, e.g., *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337; 03-109; CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011) (reforming the High-Cost universal service support mechanism); *Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service; Advancing Broadband Availability Through Digital Literacy Training*, WC Docket Nos. 11-42, 12-23, 03-109; CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (reforming the Low-Income universal service support mechanism).

¹⁸ Letter from Julie A. Veach, Chief, Wireline Competition Bureau, Federal Communications Commission, to D. Scott Barash, Acting Chief Executive Officer, USAC, CC Docket Nos. 96-45, 97-21, DA 13-608 (dated Apr. 25, 2013) (*USAC Appointment Letter*).

telecommunications providers today operate as both telecommunications carriers and ISPs.¹⁹ There were also no nominations submitted for the position representing IXCs with more than \$3 billion in annual operating revenues,²⁰ and this position has been vacant since January 2010.²¹

8. For the foregoing reasons, we find good cause to waive the telecommunications sector criteria, as expressed in section 54.703(b) and 54.703(c)(3), for positions on the USAC Board of Directors that are currently allocated to ISPs and IXCs with revenues in excess of \$3 billion. The public interest would be served by allowing the Chairman to consider the complete array of qualified telecommunications nominees for the USAC Board of Directors, and by enabling USAC to operate with a full complement of Directors that represent, to the extent possible, a cross section of industry and USF beneficiary interests.

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), 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) and 54.703(c)(3) ARE WAIVED to the extent described herein.

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

Julie A. Veach
Chief
Wireline Competition Bureau

¹⁹ See Federal Communications Commission, *Connecting America: The National Broadband Plan*, at 38 (rel. Mar. 16, 2010); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 09-66, Fourteenth Report, 25 FCC Rcd 11407, 11437, para. 22 (2010).

²⁰ See *USAC Appointment Letter*.

²¹ See *Knowles IXC Resignation Letter*.