

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

In the Matter of
2000 Biennial Regulatory Review --
Requirements Governing the NECA Board of
Directors under Section 69.602 of the
Commission's Rules
and
Requirements for the Computation of
Average Schedule Company Payments under
Section 69.606 of the Commission's Rules
CC Docket No. 01-174

REPORT AND ORDER

Adopted: June 25, 2003

Released: July 3, 2003

By the Commission: Commissioner Copps dissenting and issuing a statement.

I. INTRODUCTION

1. In this Report and Order, as part of our biennial regulatory review under section 11 of the Communications Act of 1934, as amended (the Act), we modify the requirements governing how the National Exchange Carrier Association (NECA) conducts elections for its board of directors (Board). We eliminate the requirement that NECA hold annual elections and that Board members serve one-year terms. We also liberalize our rules regarding contested elections for NECA's non-telecommunications industry directors (Outside Directors). Under the liberalized rules, no Outside Director may serve for more than six consecutive calendar years without standing for an election in which that director is opposed by at least one other qualified candidate. By modifying our election requirements for the Board, we reduce the regulatory burdens that the current election requirements impose on NECA, while furthering our goal of ensuring that NECA fulfills certain Commission-specified functions.

II. BACKGROUND

2. In 1983, as directed by the Commission, NECA, a non-stock membership company incorporated under the laws of Delaware, was established as an association of incumbent local exchange carriers to administer the interstate access tariff and revenue distribution processes. At that time, all local

1 47 U.S.C. § 161. Pursuant to section 11, the Commission, in every even-numbered year beginning in 1998, must review all regulations that apply to the operations and activities of any provider of telecommunications service and "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."

2 See MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241, 333-34 (1983). NECA prepares and files access charge tariffs on behalf of telephone companies that do not file

(continued....)

exchange carriers were required to participate in NECA's pools. While NECA continues to administer the common line and traffic sensitive access tariff pools, participation in NECA's common line tariff and pooling system has been voluntary since 1989.³ In addition to its access-related functions, NECA is permitted to perform other functions as long as such functions are expressly authorized by the Commission.⁴ For example, NECA is the administrator for the Telecommunications Relay Services (TRS) fund.⁵ The North American Billing and Collection Board (NBANC), an independent subsidiary of NECA, is the billing and collection agent for the North American Numbering Plan Administrator.⁶ NECA also collects cost and line-count data from carriers under Part 36 of the Commission's rules.⁷

3. When the Commission adopted rules relating to the NECA Board in 1983, it specified that the composition of the Board should reflect the interests of the different classes of carriers participating in NECA.⁸ Membership in NECA was divided into three classes or subsets: Subset I - all of the telephone companies owned and operated by the seven regional Bell Operating Companies (BOCs), Subset II - all other telephone companies with annual operating revenues in excess of forty million dollars, and Subset III - all other telephone companies.⁹ The Commission determined that the Board

(...continued from previous page)

separate tariffs or concur in a joint access tariff of another telephone company. 47 C.F.R. § 69.601. Incumbent local exchange carriers that participate in NECA's pools collect access charges from interexchange carriers at the rates contained in the access tariffs filed by NECA. *Id.* Each pool participant receives settlements from the pools to recover the cost of providing service plus a pro-rata share of the pool's earnings. See 47 C.F.R. §§ 69.601-69.612. See also Comments of National Exchange Carrier Association, filed Oct. 22, 2001 at 3 (NECA Comments).

³ See e.g., *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, FCC 87-133, 2 FCC Rcd 2953 (1987). All of the largest incumbent LECs are governed by price cap regulation and do not participate in the pools. Also, other LECs were permitted to elect price cap regulation as long as their affiliates converted to price cap regulation and they withdrew from the pools administered by NECA. See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990). Currently, carriers must participate in NECA's common line pool in order to receive universal service long term support (LTS). 47 C.F.R. § 54.303(a). We note, however, that in a further notice of proposed rulemaking, the Commission tentatively concluded that that LTS should be merged with Interstate Common Line Support, after which participation in the NECA common line pool will not be required for receipt of universal service support. See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19724-26 paras. 274 (2001), *recon.*, First Order on Reconsideration in CC Docket No. 00-256, Twenty-Fourth Order on Reconsideration in CC Docket No. 96-45, 17 FCC Rcd 5636 (2002).

⁴ See 47 C.F.R. § 69.603(a).

⁵ See *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300 (1993). The TRS Fund reimburses carriers for the costs associated with the provision of interstate TRS. 47 C.F.R. § 64.604(c)(5)(ii). Telecommunications relay services are telephone transmission services that enable an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability. See 47 C.F.R. § 64.601(7).

⁶ See *Administration of the North American Numbering Plan, Toll Free Service Access Codes*, CC Docket Nos. 92-237 and 95-155, Third Report and Order and Third Report and Order, 12 FCC Rcd 23040 (1997) (*NBANC Order*).

⁷ See 47 C.F.R. §§ 36.611, 36.612 and 36.731.

⁸ See *MTS and WATS Structure*, CC Docket No. 78-72, Phase I, Supplemental Order, 94 FCC 2d 852 (1983).

⁹ *Id.* para. 5.

should be comprised of fifteen directors.¹⁰ Three of the directors were to be selected by and represent Subset I, three were to be selected by and represent Subset II, and nine were to be selected by and represent Subset III.¹¹ The Commission also directed NECA to elect its directors annually for one-year terms.¹²

4. In March 1995, the Commission determined that it should change the composition of the Board and, in part, the way it is elected.¹³ The decision was an outgrowth of a Common Carrier Bureau audit of data the BOCs had reported to NECA's common line pool in late 1988 and early 1989.¹⁴ The audit showed that several NECA directors had attempted to influence improperly the common line pool earnings for 1988.¹⁵ Because of this finding, the Commission directed NECA to hire an independent auditor to recommend safeguards to prevent manipulation of NECA's processes.¹⁶ One of the proposed safeguards was to add Outside Directors to the Board that are not affiliated with NECA or any of NECA's telecommunications industry members.¹⁷ The Commission subsequently amended its rules so that NECA's Board would be comprised of the following: five Outside Directors, two directors representing Subset I, two directors representing Subset II, and six directors representing Subset III.¹⁸ The Board rules also require Outside Directors to face contested elections at least every three years.¹⁹

5. As part of its 2000 Biennial Review, the Commission issued a notice of proposed rulemaking seeking comment on proposed changes to the Board election rules.²⁰ The *Notice* asked whether the elimination of the annual election requirements would have any impact on adequate representation of member companies, how long the Board members' terms should be, and whether term limits should be specified in the Commission's rules.²¹ Additionally, the *Notice* observed that the Commission adopted a three-year term for USAC's board of directors and asked for comment on whether

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See *Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes*, RM 7736, AAD 95-34, *Consideration of NECA's Incentive Compensation Plan*, CC Docket No. 93-6, Report and Order and Order to Show Cause, 10 FCC Rcd 6243 (1995) (*NECA Board Order*).

¹⁴ *Id.* at 6245, para. 2.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 6246, para. 4.

¹⁸ See *Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes*, CC Docket No. 93-6, RM 7736, Notice of Proposed Rulemaking, 8 FCC Rcd 1503 (1993). See *NECA Board Order*, 10 FCC Rcd at 6249-50, para. 15.

¹⁹ *NECA Board Order*, 10 FCC Rcd at 6253, para. 22.

²⁰ See *2000 Biennial Regulatory Review – Requirements Governing the NECA Board of Directors under Section 69.602 of the Commission's Rules and Requirements for the Computation of Average Schedule Company Payments under Section 69.606 of the Commission's Rules*, CC Docket No. 01-174, Notice of Proposed Rulemaking, 16 FCC Rcd 16027 (2001) (*Notice*). The *Notice* was prompted by, among other things, a letter from NECA. See Letter from Richard A. Askoff, Deputy General Counsel, NECA, to Magalie R. Salas, Secretary, FCC, dated Jul. 26, 2000. The *Notice* also sought comment on whether we should streamline the average schedule formula process. We do not address the average schedule issues in this Order.

²¹ *Id.* para. 5.

a similar term would be appropriate for the NECA Board members.²² Finally, the *Notice* encouraged parties to submit any alternative proposals that may be appropriate to consider.²³

6. In its comments to the *Notice*, NECA requests that the Commission eliminate certain rules regarding elections for NECA's Board.²⁴ Specifically, NECA states that because Delaware law does not impose an annual election requirement on non-stock corporations like NECA, the Commission should eliminate its annual election requirements for NECA's Board.²⁵ In support of this request, NECA asserts that the annual election process imposes unnecessary burdens on NECA, its directors, and member companies.²⁶ NECA also submits that the Commission should eliminate the requirement that independent directors run in a contested election every three years.²⁷ NECA claims that the contested election requirement imposes burdens on NECA and Outside Director candidates because such candidates are often unknown to the bulk of NECA's membership and therefore are required to run substantial campaigns.²⁸ As a result, NECA states that it is burdened with spending considerable time and energy to find qualified nominees willing to run such campaigns.²⁹ Moreover, NECA claims that contested elections are burdensome on incumbent Outside Directors who, after putting in a great amount of time and effort learning NECA's pooling, settlement, and tariff processes and rules, must then run in mandatory contested elections.³⁰ NECA suggests that such mandatory elections may have the effect of discouraging Outside Directors from remaining on the Board and loss of such experienced directors would be harmful to NECA.³¹ NECA proposes that the Commission eliminate all rules relating to election of its Board, and instead permit NECA to determine how best to conduct such elections. NECA proposes to develop reasonable election procedures and to hold "periodic elections" to be conducted in accordance with the needs of its membership.³²

III. DISCUSSION

7. We find that the current election process imposes several unnecessary administrative burdens on NECA and therefore we eliminate certain election requirements for NECA's Board. We also find, however, that because NECA continues to perform certain functions pursuant to Commission rules, we have a continuing interest in ensuring that NECA fulfills its obligations. In retaining certain

²² *Id.* See also 47 C.F.R. § 54.703(d).

²³ See *Notice*, para. 5.

²⁴ See generally NECA Comments. Comments were also filed by AT&T Corp., National Telephone Cooperative Association, the Organization for Promotion and Advancement of Small Telephone Companies (OPASTCO) and Fred Williamson & Associates, Inc. (FW&A). NECA also filed Reply Comments. All of the commenters support the elimination of the annual election requirement for NECA's Board. OPASTCO, for example, states that the Commission should eliminate the annual election requirements and encourages NECA to, on its own accord, establish three-year terms for NECA's Board. See OPASTCO Comments at 2.

²⁵ See NECA Comments at 3. NECA adds that the Delaware General Corporation Law adequately governs reasonable election procedures. *Id.* at 3-4.

²⁶ *Id.* at 3.

²⁷ *Id.* at 3-4.

²⁸ *Id.* 3.

²⁹ *Id.* at 3-4.

³⁰ *Id.* at 4.

³¹ *Id.*

³² *Id.* at 3. See also NECA Comments at Appendix A, A-1.

requirements, we seek to ensure that NECA, as overseen by its Board, continues to comply with the Commission's rules.³³ We find that the modifications to the Board requirements described below allow us to achieve our goals, yet impose minimal burdens on NECA.

8. We retain the current composition of NECA's Board positions, which consists of five Outside Directors, two directors representing Subset I, two directors representing Subset II, and six directors representing Subset III.³⁴ NECA is a unique organization that performs several functions pursuant to the Commission's rules, including the administration of the common line and traffic sensitive access tariff pools.³⁵ The access rates established by these pools have a direct impact on interstate telephone rates and pursuant to section 201 of the Act, interstate telephone rates must be just and reasonable.³⁶ We believe that a Board that consists of directors representing all classes of carriers helps to ensure that NECA prepares accurate and reasonable tariffs, which in turn helps to further the Commission's implementation of the statutory requirement that rates be just and reasonable.³⁷

9. Although we retain our rules regarding the composition of the Board, we find that it is appropriate to eliminate our rule that requires that NECA elect its directors annually for one-year terms.³⁸ As NECA notes, Delaware General Corporation Law (DGCL) does not require non-stock corporations like NECA to hold annual elections.³⁹ We find it is no longer in the public interest to retain such requirements in our rules because we accept NECA's claim that the election requirements are overly burdensome without a concomitant benefit. Our primary policy goal is to ensure that NECA, as overseen by its Board, fulfills its Commission-specified functions. In this regard, we believe that the composition

³³ In addition, because of NECA's responsibilities as the parent corporation of subsidiaries that perform functions pursuant to Commission rules, Commission oversight remains necessary. For example, in the *NBANC Order*, the Commission charged NECA with the responsibility to create NBANC, a subsidiary of NECA responsible for the billing and collection activities necessary to recover costs for the North American Numbering Plan. *See NBANC Order*, 12 FCC Rcd at 23082-84, paras. 84-86. It was expected that this subsidiary corporation would have access to the experience and resources of NECA in order to implement the numbering administration support mechanisms. *Id.* para. 85.

³⁴ *See* 47 C.F.R. § 69.602(c). We make a non-substantive edit to section 69.602(c), which currently describes how the makeup the Board will change in the year 1996. Because this change has already occurred, there is no longer a need to describe the makeup of the Board prior to 1996.

³⁵ *See* Section II, para. 2, *supra*.

³⁶ 47 U.S.C. §§ 201-202.

³⁷ *Id.*

³⁸ We note that on January 31, 2003, NECA filed a Petition for Waiver of the annual election requirement. *See* 2000 Biennial Regulatory Review – Requirements Governing the NECA Board of Directors Under Section 69.602 of the Commission's Rules, National Exchange Carrier Association, Petition for Waiver, CC Docket No 01-174, filed Jan. 31, 2003 (Petition for Waiver). In light of the modifications to our rules adopted herein, this Petition for Waiver is moot and will be dismissed herein without prejudice.

³⁹ *See* NECA Comments at 3. NECA has indicated its intention to develop a system of three-year staggered terms for its directors. *See* Petition for Waiver at 1, 4. Although we do not find it necessary to codify a specific election system for all directors, we believe that, if consistent with all applicable laws, staggered elections would be an appropriate election system and would ensure sufficient Board-member turnover. In the event NECA does not adopt a staggered three-year term election system, we expect NECA to adopt terms that ensure that elections occur at reasonable intervals, consistent with all applicable state laws and regulations. If elections do not occur at reasonable intervals and the Commission finds that insufficient turnover of Board members has in any way compromised NECA's fulfillment of its Commission-specified functions, the Commission may revisit this issue. We emphasize, however, that while we retain some requirements for NECA's Board elections, we do not believe that NECA has acted improperly or is not in compliance with our rules.

of the Board positions, and not how often elections are held or the terms of the directors, best achieves this goal. We find that the presence on the Board of five Outside Directors is particularly important to achieving our goals, including providing effective governance of NECA consistent with our rules. As described in more detail below, we amend the contested election requirement for Outside Directors to provide NECA greater flexibility in how it elects these Outside Directors. With regard to the Board generally, we conclude that safeguards exist to ensure that NECA will adopt an appropriate election process, even absent specific Commission direction, because NECA must continue to comply with all applicable DGCL rules and regulations.⁴⁰

10. We find that it is no longer in the public interest to retain the existing rule regarding NECA's Outside Directors being subjected to contested elections. We do believe, however, that it is in the public interest, as NECA proposes, to modify the rules so that instead of every three years as the current rules require, Outside Directors may not serve for more than six consecutive calendar years without standing for an election in which that director is opposed by at least one other qualified candidate.⁴¹ The Commission instituted contested elections for Outside Directors to "assure NECA's members an opportunity to choose among a range of candidates for each outside director position."⁴² Also, the overarching goal of the *NECA Board Order* was to add Outside Directors to NECA's Board to bring independent perspectives to NECA's deliberations and ensure that NECA complies with the Commission rules.⁴³ While our goals remain the same, we recognize the burdens associated with contested elections, and believe that this rule can be liberalized without impairing our achievement of those fundamental goals.⁴⁴ We believe it appropriate to amend our rules so that contested elections for Outside Directors will occur at least every six years. We note that, although we are relaxing the contested election requirement for Outside Directors, this will not preclude contested elections from taking place more frequently than every six years. If it so chooses, NECA may allow independent parties to challenge an incumbent Outside Director's seat whenever that seat is subject to an election.

11. The rule amendments adopted herein will be effective thirty days after publication in the Federal Register. We also direct NECA to revise its by-laws and articles of incorporation as required by Delaware state law and in accordance with this order, and to submit its revised by-laws to the Commission as soon as practicable. Finally, we note that NECA lists its current Board of directors on its Internet website.⁴⁵ We strongly encourage NECA to continue to post this listing and revise it each time there is a change to the Board.

IV. PROCEDURAL ISSUES

12. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as

⁴⁰ For example, while nonstock corporations may be exempt from the annual election requirement under section 211(b) of the Delaware Code, the DGCL requires nonstock corporations to conduct elections at reasonable intervals and to specify its election procedures in its by-laws. *See, e.g.*, 8 Del. C. § 215(d) (stating that if an election of the governing body of any nonstock corporation shall not be held on the day designated by the bylaws, the governing body shall cause the election to be held as soon thereafter as convenient).

⁴¹ *See* Letter from Colin Sandy, NECA, to Marlene H. Dortch, FCC, dated May 19, 2003. *See also* 47 C.F.R. § 69.602(f).

⁴² *See NECA Board Order*, 10 FCC Rcd at 6253, para. 22.

⁴³ *Id.* at 6249-50, paras. 12-15.

⁴⁴ *See* NECA Comments at 3-4.

⁴⁵ *See* NECA, About Us, Board of Directors, <http://www.neca.org/source/NECA_264.asp>, Apr. 14, 2003.

amended, (RFA),⁴⁶ requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁴⁷ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴⁹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵⁰

13. In this Report and Order, we amend certain of our rules pertaining to the National Exchange Carrier Association (NECA), which operates pooling mechanisms to collect and distribute revenues among its participating carriers.⁵¹ In particular, we eliminate the requirement that NECA hold annual elections and the requirement that NECA’s board of directors serve one-year terms. We also modify the rule requiring NECA to hold contested elections for its non-telecommunications industry directors (Outside Directors) at least every three years. Under the modified rule, Outside Directors may not serve more than six consecutive calendar years without standing for a contested election. In the Initial Regulatory Flexibility Certification in the *Notice*, we stated that the proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities.⁵² No comments were received concerning that initial certification.⁵³

14. We conclude that this regulatory flexibility certification is appropriate for the amended rules adopted herein. NECA is a non-profit association created to administer the Commission’s interstate access tariff and revenue distribution processes. Because the proposed rule amendments affect only NECA directly, we find that the amendments will not affect a substantial number of small entities. In addition, any economic effect that might result is positive (de-regulatory) and not significant. Therefore, we certify that the amended rules adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.⁵⁴ In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and it will be published in the Federal Register.⁵⁵

⁴⁶ The RFA, *see* 5 U.S.C. §§ 601 – 612, was significantly amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴⁷ 5 U.S.C. § 605(b).

⁴⁸ 5 U.S.C. § 601(6).

⁴⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁵⁰ 15 U.S.C. § 632.

⁵¹ *See* 47 C.F.R. § 69.601 *et seq.*

⁵² *See Notice*, para. 28.

⁵³ In the *Notice*, we also proposed to streamline the average schedule formula process under section 69.609. We have not addressed the average schedule issues herein.

⁵⁴ *See* 5 U.S.C. § 801(a)(1)(A).

⁵⁵ *See* 5 U.S.C. § 605(b).

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 11, 201-205, 218-220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 161, 201-205, 218-220, and 403, and 5 U.S.C. section 553(d), that Part 69 of the Commission's rules, 47 C.F.R. Part 69, IS AMENDED as described above and in Appendix A attached hereto, and IS EFFECTIVE 30 days after publication in the Federal Register.

16. IT IS FURTHER ORDERED that the National Exchange Carrier Association's Petition for Waiver, filed January 31, 2003, IS DISMISSED WITHOUT PREJUDICE.

17. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A—FINAL RULES

Part 69 of title 47 of the CFR is amended as follows:

PART 69 – ACCESS CHARGES

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

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

Section 69.602 is revised by amending paragraphs (c), (e), (f), and deleting paragraph (i) to read as follows:

§ 69.602 **Board of directors**

(c) Two directors shall represent the first subset, two directors shall represent the second subset, six directors shall represent the third subset, and five directors shall represent all three subsets.

(e) Each subset of the association membership shall select the directors who will represent it through elections in which each member of the subset shall be entitled to one vote for each director position within that subset.

(f) The association membership shall select the directors who will represent all three subsets through an election in which each member of the association shall be entitled to one vote for each director position. No director representing all three subsets may serve for more than six consecutive calendar years without standing for an election in which that director is opposed by at least one other candidate meeting the qualifications in paragraph (d) of this section.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
DISSENTING**

Re: *2000 Biennial Regulatory Review—Requirements Governing the NECA Board of Directors under Section 69.602 of the Commission’s Rules and Requirements for the Computation of Average Schedule Company Payments under Section 69.606 of the Commission’s Rules*

I must respectfully dissent from today’s decision modifying Commission requirements governing elections for the National Exchange Carrier Association board of directors. At a time when corporate governance problems and accounting deprecations dominate so much business news, this Commission has an especially high bar to clear before pulling back from its own requirements. We need to protect against both the possibility and the perception of relaxed vigilance. A deregulatory rush here, with little evidence to support it, goes, I fear, in precisely the wrong direction.

I appreciate that the annual election process imposes administrative burdens on NECA. I also understand that a contested election process imposes costs on NECA and the outside directors who must run substantial campaigns to support their candidacy. It is regrettable that nowhere in this decision can we point to evidence quantifying these costs and administrative burdens. Had the record been more substantial, I perhaps would have been willing to support this item. As it stands, in this decision too little evidence supports too great a reduction in our oversight of the NECA board of directors at a time when it is less than prudent to do so.