for deletion from the NPL. In the case of the McColl site, EPA believes that the following criteria for site deletion has been met:

All appropriate response under CERCLA has been implemented, and no further action by the responsible parties is appropriate.

EPA, with the concurrence of DTSC, believes that this criterion for deletion have been met. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available from the docket.

I. State Concurrence

The California Department of Toxic Substances Control concurs with the proposed deletion of the McColl Superfund site from the NPL.

Dated: July 16, 1998.

Keith A. Takata,

Acting Regional Administrator, Region 9.

[FR Doc. 98–19653 Filed 7–22–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 69

[CC Docket Nos. 97–21 and 96–45; DA 98–1336]

Federal Universal Service Support Mechanisms

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: In this document, the Commission seeks comment on the Report and Proposed Plan of Reorganization (Plan) filed on July 1, 1998 by the Universal Service Administrative Company (USAC), the Schools and Libraries Corporation (SLC), and the Rural Health Care Corporation (RHCC). The Plan proposes a revised administrative structure of the federal universal service support mechanisms. RHCC filed a Separate Statement of the Rural Health Care Corporation and Request for Three Changes in the Plan, dissenting from certain provisions of the proposed Plan. In this document, the Commission also seeks comment on other issues regarding the administration of the federal universal service support mechanisms, including processes for Commission review of actions by USAC, SLC, and RHCC.

DATES: Comments are due on or before August 5, 1998 and Reply Comments are due on or before August 12, 1998.

ADDRESSES: One original and six copies of all comments and reply comments should be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. All filings should refer to USAC Plan of Reorganization, CC Docket Nos. 97–21 and 96–45, and DA 98–1336. Parties also may file comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the lead docket number for this proceeding, which is Docket No. 97–21. Parties not submitting their comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd, Accounting Policy Division, 2100 M Street, N.W., Room 8606, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding (including the lead docket number in this case, Docket No. 97–21), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on July 15, 1998. The full text of this document and the Plan are available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., 20554. An electronic copy of the complete plan of reorganization also may be found on the Commission's Universal Service Web Page at <www.fcc.gov/ccb/universal_service/usacjuly.pdf>.

Background

1. In connection with supplemental appropriations legislation enacted on May 1, 1998, Congress requested that the Commission propose a single entity to administer the support mechanisms for schools and libraries and rural health care providers. In its *Report to Congress*, the Commission proposed to merge the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC) into the Universal Service Administrative Company (USAC) as the single entity responsible for administering the universal service support mechanisms for schools, libraries and rural health care providers by January 1, 1999. The Commission indicated that USAC, SLC and RHCC would be required jointly to prepare and submit a plan of reorganization, for approval by the Commission.

2. On July 1, 1998, SLC, RHCC and USAC filed a Report and Proposed Plan of Reorganization (Plan) for revising the administrative structure of the federal universal service support mechanisms. RHCC filed a Separate Statement of the Rural Health Care Corporation and Request for Three Changes in the Plan (RHCC Statement), proposing certain modifications to the Plan. In this document, we seek comment from interested parties on issues raised by the Plan and the RHCC Statement. We also seek comment on other issues regarding the administration of the federal universal service support mechanisms, including processes for Commission review of actions by USAC, RHCC and SLC, divestiture of USAC from the National Exchange Carrier Association (NECA), and compensation limitations.

Issues for Comment

Revised Administrative Structure

3. USAC, SLC, and RHCC have proposed a plan to merge SLC and RHCC into USAC as the single entity responsible for administering the universal service support mechanisms for schools, libraries and rural health care providers by January 1, 1999. As described more fully in the Plan, USAC would consist of three divisions—the High Cost & Low Income Division, the Schools and Libraries Division, and the Rural Health Care Division. The current USAC Board consists of seventeen members representing a cross-section of industry and beneficiary interests. Under the revised administrative structure, the USAC Board of Directors (the Board) would consist of seventeen

members plus the USAC Chief Executive Officer (CEO). In addition, the Plan proposes that two new committees of the USAC Board would be established to oversee the schools and libraries and rural health care support mechanisms. Any action taken by the Rural Health Care, Schools and Libraries, and High Cost and Low Income committees with regard to their respective support mechanisms would be binding on the Board, unless such action is presented for review to the full Board by the USAC CEO and the Board disapproves of such action by a two-thirds vote of a quorum of directors. However, all committee budgetary matters would be presented to the full USAC Board and could be disapproved by a two-thirds vote of a quorum of directors. Under the Plan, the USAC CEO would manage all three universal service support mechanisms.

4. We seek comment on whether vesting the consolidated USAC with the administrative responsibilities for all of the universal service support mechanisms would best further the goals of efficient administration and accountability. We also seek comment on whether the Plan fulfills the goal of administrative efficiency while preserving the distinct missions of the three universal service support mechanisms. We seek comment on any other administrative structures the Commission could adopt. To the extent that parties suggest alternative structures, we urge them to provide as much detail as possible, and to evaluate fully the benefits and disadvantages of such structure in comparison to USAC's Plan. We also seek comment on the proposed functions and composition of the three committees of the Board, as described in the Plan.

5. Although the Plan is silent on the selection process for the USAC CEO, we seek comment on whether the Commission should adopt 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. Final selection of that individual would be subject to the approval of the Chairman of the Commission.

6. In the RHCC Statement, RHCC proposes three modifications to the proposed Plan. First, RHCC proposes that two additional rural health care representatives serve on the USAC Board and that the Plan identify the individuals who initially would serve on the combined Board and the individuals who would serve on the initial Rural Health Care Committee. Second, RHCC proposes that the RHCC Committee have the authority to bind the full USAC Board with regard to all of the Committee's programmatic functions and that Committee decisions not be subject to disapproval by a two-thirds vote of a quorum of the Board. Third, while RHCC agrees that the CEO should have the authority to hire and fire the division heads, RHCC proposes that the RHCC division head be granted the authority to hire and fire division staff. We seek comment on RHCC's proposals.

Compensation Limitations

7. In the Commission's recent order regarding funding for the schools and libraries universal service support mechanism, the Commission concluded that 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 section 5312 of Title 5 of the United States Code. The Commission further stated that such level of compensation would apply, effective July 1, 1998, to all officers and employees of SLC and RHCC, as currently organized, as well as to all such officers and employees in the consolidated administrative corporation following reorganization on January 1, 1999. We seek comment on whether compensation limitations also should apply to all USAC officers and employees, including, for example, those responsible for administering the support mechanisms for high cost areas and low income consumers as well as those responsible for performing the billing and collection functions for all of the support mechanisms. We also seek comment on whether such compensation limitations should apply to officers and employees of NECA.

USAC's Permanence and Divestiture From NECA

8. In the *Report to Congress*, the Commission proposed that the revised administrative structure be made permanent, subject to the Commission's review and determination after one year that the new structure is administering the distribution of universal service support and benefits to eligible entities in an efficient, effective and competitively neutral manner. We seek comment on the Commission's proposal to designate USAC as the permanent Administrator. In the *Report to Congress*, the Commission further proposed that, pending Commission review of USAC's performance after one year, USAC should be divested from NECA. The Plan proposes to divest USAC from NECA as soon as possible. We seek comment on the proposed divestiture of USAC from NECA and the timing of such divestiture.

FCC Oversight

9. The Commission has always retained ultimate control over the operation of the federal universal service support mechanisms through its authority to establish the rules governing the support mechanisms and to review all decisions concerning administration of the support mechanisms. The consolidated USAC would continue to be accountable to the Commission pursuant to the procedures that currently apply to USAC, SLC, and RHCC. SLC and RHCC have the authority to direct the performance of audits of schools and libraries and rural health care provider beneficiaries of universal service support. The Commission also oversees the structure and content of the annual independent audit that USAC, SLC, and RHCC are required to undertake.

10. The Commission will levy a forfeiture for a violation of the Act under section 503(b)(1)(B) and (2)(C) of the Act. Furthermore, persons found willfully to have made false statements to the Commission may be subject to criminal penalties under Title 18 of the United States Code.

11. We note that parties already have asked the Commission what procedures will be used to review decisions by SLC, RHCC, and USAC. Any affected party may seek review from the Commission using existing Commission procedures. However, until a revised administrative structure is adopted, we strongly encourage parties seeking relief from a decision of USAC, SLC, or RHCC to seek initial reconsideration from SLC, RHCC or the High Cost and Low Income Committee, as appropriate.

12. In the *Report to Congress*, the Commission proposed to establish specific appeal procedures under which administrative decisions made by USAC would be reviewable by the Commission. We seek comment on the following proposal: An affected party would be permitted to file with the Common Carrier Bureau (the Bureau), within sixty days of an action taken by USAC, a petition for Commission review. The Bureau would have delegated authority to rule on such petition and if the Bureau took no action within sixty days, USAC's decision would be deemed approved by the Bureau. As with other decisions made by the Bureau acting pursuant to its

delegated authority, parties could seek Commission review of the Bureau's decision. The Bureau also would have the authority to review the decisions of USAC at any time on the Bureau's own motion. The Bureau would conduct *de novo* review of appeals from USAC decisions. 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 carriers for discounted services provided to such applicants. We seek comment on all aspects of this proposal. At the same time, we propose to limit the Bureau's authority to issues that are not novel questions of fact, law or policy. We seek comment on this proposal. We also seek comment on whether state procurement rules or other state experiences may serve as useful models in addressing appeals of USAC's decisions.

13. In addition, we seek comment on whether a party affected by a decision made by the division staff should be required to seek relief from the appropriate committee of the Board before filing an appeal with the Commission. Similarly, if the relief sought pertains to a matter that is solely within the jurisdiction of the full USAC Board, we seek comment on whether the affected party should be required to seek relief from the full USAC Board before filing an appeal with the Commission. We also seek comment on the timing issues that would be raised if the USAC CEO chose to bring the matter before the full USAC Board under the supermajority procedure. In addition, we seek comment on other ways in which the appeals process may be made as fair and efficient as possible.

14. To foster greater accountability of the consolidated USAC entity, the Commission proposed in the *Report to Congress* that, in connection with its annual audit, USAC prepare and file with Congress and the Commission an annual report describing all significant aspects of its structure and operations for the preceding year. We seek comment on this proposal and on ways to structure such a report to enhance the Commission's oversight of USAC's administration and operations.

15. We seek comment on whether there are any additional enforcement mechanisms that the Commission should invoke. Furthermore, we seek comment on what action the Commission should take if it is determined that an application was approved and funds subsequently disbursed erroneously.

Regulatory Flexibility Analysis

16. 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 analysis supplements our prior certification and analyses.

17. *Supplemental Regulatory Flexibility Certification.* In the *NECA Governance Order,* 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 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 Governance Order* would not have a significant economic impact on a substantial number of small entities.

18. This document seeks 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, libraries and rural health care providers. We also seek comment on a proposal to require USAC to prepare and file with Congress and the Commission an annual report describing all significant aspects of its structure and operations for the preceding year. For the same reasons stated in the *NECA Governance Order,* we find 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. Even if NECA, USAC, SLC and RHCC are small entities, we certify that the reorganization of SLC, RHCC, and USAC proposed here will affect directly only those four entities and thus will not have a direct, significant impact on a substantial number of small entities. We therefore certify, pursuant to RFA, 5 USC 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

19. *Supplemental Regulatory Flexibility Analysis.* This document seeks comment on the proposed procedures under which administrative decisions made by USAC would be reviewable by the Commission. This document also seeks comment on the enforcement mechanisms the Commission should invoke in connection with the universal service support mechanisms. We previously performed a regulatory flexibility analysis regarding the implementation of the universal service support mechanisms. This supplemental regulatory flexibility analysis addresses possible changes to our previous analyses that might result from our proposal here.

20. The Commission is required by sections 254(a)(2) and 410(c) of the Act to propose rules to implement properly the universal service support mechanisms. In this document, the Commission proposes procedures under which administrative decisions made by USAC would be reviewable by the Commission. This document also seeks comment on whether a party affected by a decision made by the division staff of USAC should be required to seek relief from the appropriate committee of the USAC Board before filing an appeal with the Commission. Specific appeal procedures are necessary to ensure that the Commission retains ultimate authority over the implementation of universal service support mechanisms. The description of the small entities to which the proposed rules would apply is set forth in the *Universal Service Order* and continues to apply to our analysis. The Commission proposes a two-level appeal process. We do not believe that such a requirement will have a significant economic impact on the small entities affected by the process. Affected parties will benefit from review by the appropriate committee of the full USAC Board instead of having to resort to full Commission review in the first instance. We seek comment on these tentative conclusions.

21. The Commission's Office of Public Affairs Reference Operations Division, will send a copy of this document,

including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Ex Parte

22. Pursuant to 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

List of Subjects

47 CFR Part 54

Healthcare providers, Libraries, Schools, Telephone.

47 CFR Part 69

Communications common carriers.

Federal Communications Commission.

Kathryn C. Brown,

Chief Common Carrier Bureau.

Statement of Commissioner Harold Furchtgott-Roth

Re: Proposal to Revise Administrative Structure for Federal Universal Service Support Mechanisms; (CC Docket No 96–45)

July 15, 1998.

Today the Common Carrier Bureau releases a Public Notice seeking comment on the Universal Service Administrative Company's (USAC) proposed plan for reorganization of the universal service administrative structures. The proposal for consolidating the three corporations is a good first step in reaching a more rational and efficient structure to administer universal service. I also appreciate that the Bureau is following up on the Commission's commitment in its May 8, 1998 report to Congress to ''establish a procedure under which administrative decisions made by USAC would be reviewable by the Commission.'' I have reservations, however, about the details of these proposals, including the specific functions of the consolidated entity and the Bureau's proposed procedures for Commission oversight.

Section 2005(b)(2)(A) of Senate Bill 1768, which prompted these revisions, provides for an extremely limited administrative entity:

[T]he entity proposed by the Commission to administer the program—(i) is limited to implementation of the FCC rules for applications for discounts and processing the application necessary to determine eligibility for discounts under section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)) as determined by the Commission: (ii) may not administer the program in any manner that requires that entity to interpret the intent of Congress in establishing the programs or interpret any rule promulgated by the Commission in carrying out the programs, without appropriate consultation and guidance from the Commission.

In light of such limited administrative functions, I fail to see the need for such bureaucratic corporations with formal multiple committees. If the overall entity is prohibited from setting policy and limited to the function of processing applications, then any subcommittee must be similarly constrained. But what kinds of decisions will any subcommittee be making that would be of such paramount interest to the program that it would be necessary to bind the full USAC board absent a supermajority? In establishing an entity to review and process the applications, the Commission is merely contracting out administrative functions. All decisions regarding where the money should be going and how it should be distributed should—indeed must—be made by the Commission.

I am also concerned that the Commission itself is insufficiently involved in the decision-making process under the Bureau's proposal. For example, an affected party would file a petition for review first with the Common Carrier Bureau, who would have specific delegated authority to rule on the petitions with possible appeal to the full Commission. I would prefer that the full Commission be more actively involved in overseeing the administration of these new programs. For example. unless amended, this process would allow for Bureau approval of USAC decisions without an order explaining their reasoning. My concerns regarding sufficient Commission involvement earlier in the process are only exacerbated by the Bureau's proposal to allow applicants to receive discounted services and carriers to be reimbursed during the pendency of such an appeal. Thus, If the Bureau failed to act for any number of reasons, public funds would still be disbursed while a potentially valid challenge remained. What assurances are there for taxpayers that erroneous payments will be returned?

I also fail to see the need for any party to be required to appeal a USAC staff decision first to the USAC Board, and possibly even to the relevant committee of the Board, as proposed. USAC has no policy-making or adjudicative authority. As such, an affected party should be able to seek relief directly from the full Commission, or the Bureau if appropriate under delegated authority.

Moreover, my concerns regarding appropriate Commission oversight are heightened by the fact that the proposed committees of USAC would have the power to bind the USAC Board regarding matters within their expertise, absent a supermajority of the full USAC Board voting to override the committee's actions. Matters within the Schools and Libraries Committee's expertise. For example, include ''developing and implementing other distinctive program functions.'' I am concerned with such open-ended authority, especially in light of the protracted procedure for Commission review. I encourage parties to take these issues into account when commenting on the proposed structure.

I believe that the full Commission must take a more active role in the direct oversight of these quasi-public companies. Congress clearly favors a more efficient organization of only limited administrative functions, without the ability to ''interpret the intent of Congress'' or ''any rule promulgated by the Commission.[1] While a good start, this public notice fails to ensure meaningful and early Commission involvement in budgetary decisions and the policy-making process.[2]

Finally, I remain concerned that the report fails to address fully the issues raised by the GAO report regarding the legality of the Commission creating any new corporations without specific statutory authority. I fail to see how the Commission can direct that these corporations continue to act without first receiving the requisite authorization from Congress, and urge others to comment on this aspect of the revised organization.

[FR Doc. 98–19707 Filed 7–22–98; 8:45 am]

BILLING CODE 6712–01–M

[1] Section 2005(b) of Senate Bill 1768.

[2] For example, I am concerned about the degree of oversight that is being exercised regarding administrative and start-up costs. In their latest filing, the Schools and Libraries Corporation indicates that it paid NECA $1.86 million in start-up costs, more than three time the original estimate, and it is still not able to provide an accurate estimate of all its administrative costs for the first quarter. Third Quarter 1998 Fund Size Requirements for the Schools and Libraries Universal Service Program, dated May 1, 1998.