

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

3. 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. 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. 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. 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.

4. 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. As NECA notes, Delaware General Corporation Law (DGCL) does not require non-stock corporations like NECA to hold annual elections. 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 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, 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.

5. We believe that it is in the public interest, as NECA proposes, to modify the contested election 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. 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." Also, the overarching goal of the *NECA Board Order*, 60 FR 19528, April 19, 1995, 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. 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. 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.

6. 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. We strongly encourage NECA to continue to post this listing and revise it each time there is a change to the Board.

III. Procedural Issues

7. *Final Regulatory Flexibility Certification*. The Regulatory Flexibility Act of 1980, as amended, (RFA), 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." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small

organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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).

8. 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. 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. No comments were received concerning that initial certification.

9. 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. 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**.

IV. Ordering Clauses

10. Pursuant to the authority contained in sections 1, 4(i), 11, 201–