

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

In the Matter of	)	
	)	
National Exchange Carrier	)	
Association, Inc.	)	CC Docket No. 01-174
	)	
Petition for Interim Waiver of	)	
Section 69.602 of the Commission's Rules	)	

**ORDER**

**Adopted: July 2, 2002**

**Released: July 3, 2002**

By the Deputy Chief, Wireline Competition Bureau:

1. On May 28, 2002, the National Exchange Carrier Association (NECA) filed a Petition for Interim Waiver of section 69.602 of the Commission's rules.<sup>1</sup> Specifically, NECA requests an interim waiver of the rules that require NECA's directors to stand for election annually. The Common Carrier Bureau (now known as the Wireline Competition Bureau) granted a similar waiver on June 6, 2001.<sup>2</sup> We grant NECA's Petition as a temporary measure while the Commission examines the election requirements in a pending rulemaking proceeding.<sup>3</sup>

2. NECA is required to conduct elections for its fifteen member Board of Directors in accordance with section 69.602 of the Commission's rules. Sections 69.602(e) and (f) require annual elections for NECA's telecommunications industry directors and non-telecommunications industry directors, respectively.<sup>4</sup> Each director serves a one-year term commencing January 1 and concluding on December 31.<sup>5</sup> The rules also require that NECA conduct contested elections at least every three years

<sup>1</sup> See 2000 Biennial Regulatory Review—Requirements Governing the NECA Board of Directors under Section 69.602 of the Commission's Rules, Petition for Interim Waiver, filed May 28, 2002 (Petition).

<sup>2</sup> See *National Exchange Carrier Association, Inc. Petition for Waiver of Section 69.602 of the Commission's Rules*, File No. ASD 01-34, Order, 16 FCC Rcd 11,973 (Comm. Car. Bur. 2001).

<sup>3</sup> In a pending notice of proposed rulemaking, the Commission is considering making amendments to the requirements governing NECA's elections for its Board of Directors. 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 16,027 (2001) (*Notice*).

<sup>4</sup> See 47 C.F.R. §§ 69.602(e) and (f). NECA's ten telecommunications industry directors represent three subsets of NECA's membership. Two directors represent the subset of telephone companies owned and operated by the Regional Bell Operating Companies. Two more directors represent the subset of telephone companies with annual operating revenues in excess of forty million dollars. The six remaining telecommunications industry directors represent the subset of "all other telephone companies." See 47 C.F.R. §§ 69.602(a) and (c). The remaining five directors represent all three subsets and must come from outside of the telecommunications industry. See 47 C.F.R. §§ 69.602(c) and (d).

<sup>5</sup> See 47 C.F.R. § 69.602(i).

for non-telecommunications industry directors.<sup>6</sup> In the pending rulemaking proceeding, the Commission sought comment on NECA's proposal to replace the annual election requirement with a periodic election requirement and to eliminate the requirement that directors serve one-year terms.<sup>7</sup> In comments filed in the proceeding, NECA also requests that the Commission eliminate the requirement in section 69.602(f) of the Commission's rules that NECA's non-telecommunications industry directors face contested elections every three years.<sup>8</sup>

3. Pending a Commission decision in the rulemaking proceeding, NECA requests an interim waiver of the annual election requirement. NECA holds its annual Board of Director elections in October and preparations for the elections typically begin in May.<sup>9</sup> NECA claims that once preparations commence, costs are incurred, including fees for independent inspectors of elections, printing and mailing ballots, as well as time and expense for the campaigns.<sup>10</sup> NECA states that a grant of the instant waiver request would "reduce unnecessary administrative and financial burdens."<sup>11</sup>

4. We believe that good cause exists to grant NECA a waiver of the annual election requirement. While the Commission's rules may be waived for good cause shown,<sup>12</sup> waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.<sup>13</sup> We find that, in light of the pending rulemaking proceeding that considers proposals for reducing NECA's board of director election requirements, special circumstances exist warranting a deviation from the general rule. We find that granting the requested waiver is in the public interest because it will relieve NECA and its members of the administrative burdens and costs of holding an election now, at a time when possible modifications to the election requirements are under consideration. Therefore, we waive the section 69.602 requirement that NECA hold annual elections for its Board of Directors' 2003 term. We do not waive any other portion of section 69.602; we waive only those parts of section 69.602 requiring NECA to hold annual elections for its Board of Directors.<sup>14</sup> We find that the waiver will reduce administrative burdens on NECA, its directors, and member companies while the Commission continues to review how it should modify the election processes for NECA's Board of Directors.

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<sup>6</sup> See 47 C.F.R. § 69.602(f).

<sup>7</sup> See Notice at 3. The Notice was issued as part of the Commission's 2000 biennial review process. The biennial regulatory review is conducted pursuant to section 11 of the Communications Act of 1934, as amended. See 47 U.S.C. § 161. In every even-numbered year (beginning with 1998), the Commission is required to 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." *Id.*

<sup>8</sup> See NECA Comments to the Notice at 4, filed Oct. 22, 2001.

<sup>9</sup> See Petition at 4.

<sup>10</sup> *Id.* at 2 n.6 and 4.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> 47 C.F.R. § 1.3.

<sup>13</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). See also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>14</sup> Because the waiver we grant here is limited to the annual election requirement, NECA must continue to comply with all other parts of section 69.602 of the Commission's rules. See 47 C.F.R. § 69.602. For example, if one of NECA's non-telecommunications industry directors has not faced a contested election during the present and two preceding calendar years, NECA must conduct a contested election for this director's seat as required by section 69.602(f) of the Commission's rules. See 47 C.F.R. § 69.602(f).

5. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), and 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), (j), and 201-205, 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 the petition for waiver of the annual election requirements in section 69.602 filed by the National Exchange Carrier Association, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Wireline Competition Bureau