

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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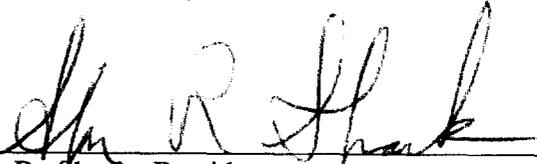
In the Matter of )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service ) (Report to Congress)

To: The Common Carrier Bureau

REPLIES OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
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February 6, 1998

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") hereby submits its Reply in response to Comments filed pursuant to the Federal Communications Commission ("FCC" or "Commission") Public Notice seeking input for inclusion in the Commission's report to Congress on the implementation of the provisions of the Telecommunications Act of 1996 in respect to universal service.<sup>1</sup> AMTA agrees with those commentors who recommend that the Commission continue to refine its universal service obligations to ensure that its requirements conform to Congressional intent and to the public interest.

## **I. INTRODUCTION**

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. These members provide commercial wireless services throughout the country. Some of the systems operated by AMTA's members are interconnected with the Public Switched Network ("PSN") while others provide only dispatch capability. Certain of the dispatch systems provide service within a single state exclusively; others are located at sites that provide coverage across state lines. Because the majority of the Association's members currently fall within the Commission's definition of telecommunications carriers subject to universal service contribution obligations, AMTA has a significant interest in this proceeding.

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<sup>1</sup> Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996, Public Notice, DA 98-2 (rel. Jan. 5, 1998).

## II. BACKGROUND

2. AMTA has already participated in earlier stages of this rule making, as well as in other Commission proceedings involving various aspects of the recently-adopted universal service obligations, and the Association requests that those filings be incorporated herein by reference.<sup>2</sup>

Its comments generally have focused on the following issues:

1) Purely dispatch systems should not be included within the definition of telecommunications carriers subject to the obligations since they have no physical or economic connection with the PSN;

2) Commercial Mobile Radio Service ("CMRS") systems are statutorily exempt from state universal service funding obligations unless they are determined to be providing services that are a substitute for land line telephone exchange service for a substantial portion of the communications within the state;

3) The interstate/intrastate analysis required to calculate universal service obligations is rooted in the traditional wireline economic model, and does not translate easily into the operational or economic environment of wireless services.

3. Because the first two issues are specifically related to the intention of Congress, it is appropriate that they be included in the Commission's report. The FCC's universal service rules, of necessity, must conform to the agency's statutory directive. To the extent that disagreement exists as to whether the FCC has interpreted that directive correctly in respect to

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<sup>2</sup> See, e.g., Petition of Pittencrieff Communications, Inc. for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995, Memorandum Opinion and Order, File No. WTB/POL 96-2, FCC 97-343 (rel. October 2, 1997); Vanguard and Comcast Joint Petition for Reconsideration or Withdrawal and Reply to Oppositions, File No. WTB/POL 96-2.

those areas, Congress now will have the opportunity to provide clarification as appropriate.

### III. COMMENTS

4. The most fundamental aspect of universal service obligations is determining the scope of entities subject to them. As an initial matter, the Association wishes to commend the Commission for revisiting its calculation of the appropriate threshold for de minimis contributions, and for increasing that figure from \$100 to \$10,000. Many of the smaller, often dispatch-oriented systems operated by AMTA members likely will fall under that contribution level and will, therefore, be exempt at least from federal universal service filings and contributions. That relief is both appropriate and appreciated.

5. Nonetheless, AMTA has previously advised the FCC that there is no public policy rationale for including within that universe systems that meet the definition of "telecommunications carriers", but that are not interconnected with the PSN. Specifically, AMTA's membership includes a significant number of commercial dispatch-only systems that conform to the telecommunications carrier definition, but that have no greater nexus to the use of the telephone network than do pizza delivery services, plumbers, or taxicab companies. They use telephones in operating their businesses, but the telecommunications service they provide has no telephone component.

6. In that respect, AMTA believes that it agrees with the definition of eligible telecommunications carriers implicit in the Comments of the United States Telephone Association ("USTA"):

Section 254(d) properly reflects the fact that Congress intended universal service to be a national public policy. **Since all providers benefit from the preservation and advancement of ubiquitous public networks, all providers should contribute to universal service.** USTA Comments at p.5 (emphasis added).

The providers to which AMTA refers do not "benefit from the preservation and advancement of ubiquitous public networks" in any fashion that is different than all members of the American public who use the telephone system as end user subscribers. That use is in no way connected with the telecommunications service they offer. While the current contribution threshold will exempt many of them from a federal obligation, they will remain susceptible to state funding requirements although their inclusion in either appears inconsistent with the intent of Congress or with any articulated public policy objective.

7. Congress also should be apprised of the stark differences of opinion among various segments of the telecommunications industry, the Commission, and certain states as to the statutory interpretation of state universal service funding obligations in respect to wireless services. AMTA endorses fully the Comments filed by parties such as the Personal Communications Industry Association ("PCIA"), Vanguard Cellular Systems, Inc. ("Vanguard") and Comcast Corporation ("Comcast") on this subject. Those commenters note that the wireless industry does not read Section 254 of the Telecommunications Act of 1996 as modifying in any way the unambiguous language of Section 332(c)(3)(A) which states specifically:

Nothing in this subparagraph shall exempt providers of commercial mobile services (**where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State**) from requirements imposed by a State commission on all providers or telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. (emphasis added)

They argue in this, as well as in several related proceedings, that until a finding is made that wireless service constitutes a substitute for the land line network for a substantial segment of the population in a particular state, wireless services are statutorily exempt from funding state universal service funds.

Thus, Vanguard states:

Therefore, the imposition of state universal service levies on inherently interstate telecommunications services of interstate carriers such as CMRS providers cannot be a lawful state regulatory activity, unless CMRS services constitute a substitute for land line telephone exchange services under the plain parenthesized language of Section 332(c)(3)(A). Vanguard at p. 6.

Similarly, Comcast concludes that:

The presence of this clear and unambiguous sentence in a section of the law which otherwise addresses the preemption of state ratemaking authority does not alter its meaning. Indeed, it is clear that it was added to ensure that general limitations on state ratemaking authority would not extend to "requirements" with respect to universal service, provided the condition in the parenthetical was satisfied. Comcast at p. 15.

8. The FCC has consistently disagreed with that interpretation. PCIA states that, "...the Commission has persisted in distorting the application of the statutory language and the standards for interpreting such language in order to conclude otherwise." PCIA Comments at p. 6. It is evident that this issue is ripe for Congressional review and clarification.

9. Finally, it has become increasingly evident that the economic model designed for calculating wireline carriers' universal service funding obligations cannot be engrafted on the wireless industry and yield a meaningful result. By contrast with the wireline network in which infrastructure and subscribers are geographically fixed and transmissions have traditionally been recognized as having recognizable interstate and intrastate components, the wireless industry has never had a technical, economic or business reason to use that delineation. Wireless service frequently transcends state boundaries, but there never was a need to identify or quantify its interstate versus intrastate segments from either an operational or revenue perspective.

10. The complexity, and in some instances practical impossibility, of providing a breakdown of revenue on an interstate/intrastate basis for wireless systems has already been well

documented. A number of real world examples are again provided in the Comments submitted by the Cellular Telecommunications Industry Association ("CTIA") at n. 6 and by Vanguard at p. 4. AMTA and other wireless industry representatives will continue to work with the Commission and with their constituents to resolve these problems, but Congress must be apprised of the difficulties that this approach presents.

#### **IV. CONCLUSION**

11. The Commission has made substantial progress in implementing the universal service obligations imposed by Congress. It now needs further Congressional guidance to resolve the issues identified above so that the statutory intent of that body and the public interest can properly be served.

## CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 6th day of February, 1998, caused to be hand carried a copy of the foregoing Replies to the following:

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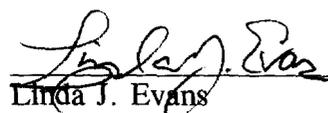
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