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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

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April 22, 2002

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.[1] The Notice requests comment on whether and how to reform the methodology for assessment and recovery of contributions to the universal service support mechanism. Specifically, the FCC invites comments on whether a connection-based assessment methodology would be more advantageous than the current revenue-based approach. As described below, the proposed change would have significantly different results for various segments of AMTA's membership.

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 SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. Because AMTA members provide commercial telecommunications service, whether as interconnected Commercial Mobile Radio Service (CMRS) or non-interconnected Private Mobile Radio Service (PMRS) operators, they all have been determined by the FCC to be "telecommunications carriers" pursuant to Section 254(d) of the Communications Act of 1934, as amended ("Act"), and, therefore, subject to the universal service payment obligation to the extent they are engaged in the provision of interstate telecommunications services.[2] All members that provide even entirely non-interconnected dispatch

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[1] *Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 02-43 (rel. Feb. 26, 2002) ("FNPR" or "Notice"). The Association submitted comments in response to the FCC's Notice of Proposed Rulemaking, CC Docket 96-45, FCC 01-145, 16 FCC Rcd 9892 (2001), which initiated this proceeding to reexamine the universal service contribution methodology. AMTA, Comments (June 25, 2001). AMTA's comments are incorporated herein by reference.

[2] 47 U.S.C. § 254(d).

service from a facility that permits coverage across state lines, as well as those with any interconnection capability, no matter how limited, are subject to the federal universal service support mechanism. Thus, AMTA and its members have a significant interest in the outcome of this proceeding.

2. The majority of AMTA's members offer non-interconnected dispatch service or very limited ancillary interconnection capability. Under the current universal service assessment methodology, which uses a carrier's interstate and international end-user telecommunications revenues to gauge its contribution obligation, the typical AMTA carrier member applies the 1% safe harbor interstate revenue percentage[3] and has an annual universal service obligation of less than $10,000. Therefore, most are exempt from contributing to the fund under the Commission's current *de minimis* exception.[4]

3. The Commission proposes to alter the contribution assessment methodology fundamentally "by assessing contributions based on the number and capacity of connections provided to a public network. . . ."[5] As explained below, the FCC's proposal to switch to a connection-based assessment is attractive to the majority of AMTA's members so longs as the Commission retains the *de minimis* exemption. However, for some of AMTA's largest members with more consumer-oriented, fully interconnected wireless systems, the proposed change could as

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[3]The safe harbor percentage recognizes the difficulty for certain carriers, including the majority of AMTA members, to differentiate interstate from intrastate service revenues. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998).

[4]Carriers whose contributions would be less than $10,000 do not contribute to the universal service fund pursuant to FCC Rule Section 54.708.

[5]Notice at ¶ 31.

much as double their universal service obligations. This result raises serious concerns regarding the competitive impact of the proposal.

II. THE PROPOSED CONNECTION-BASED ASSESSMENT METHODOLOGY IS CONSISTENT WITH AMTA'S POSITION THAT DISPATCH-ONLY SYSTEMS SHOULD NOT BE SUBJECT TO UNIVERSAL SERVICE CONTRIBUTIONS.

4. The Telecommunications Act of 1996 mandated that all providers of interstate telecommunications service should contribute to the Federal universal service in some equitable and nondiscriminatory manner.[6] Currently all interstate telecommunications carriers who provide service to the public for a fee potentially are required to contribute to the universal service support mechanism[7]. An entity is considered to provide interstate service if it is classified as a CMRS provider or if an entity's system has the capacity to transmit or receive messages, even dispatch messages, across state lines.[8] Consequently, as explained below, the current assessment methodology is over-inclusive in terms of which telecommunications providers must comply with universal service rules and regulations.

5. Traditional SMR operators are eliminating or reducing any type of interconnection to the Public Switch Network ("PSN") in the face of formidable competition from "broadband" fully interconnected CMRS providers in that marketplace segment. They are focusing on serving the dispatch requirements of the business and public safety community, the vast majority of which constitutes intrastate service. However, under the current funding methodology, certain operators fall within the definition of interstate service providers due solely to where their systems are located.

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[6] 47 U.S.C. § 254(d).

[7] 47 C.F.R §54.706.

[8] 47 U.S.C. § 153(22)

As AMTA has stated in prior pleadings regarding universal service, it is not evident from the record that Congress understood its definition would sweep in purely dispatch telecommunications carriers, those which are not interconnected with the PSN, access to which is the objective of universal service funding, on the entirely random basis that a particular operator's transmitter is located on a tower or building which provides radio coverage across a state line.[9] The result is that one of two otherwise identical dispatch systems separated by only a half-mile might have a universal service obligation if its service contour crossed a state boundary while coverage from the neighboring system fell just shy of the border.

6. Accordingly, the FCC's proposal to switch to a connection-based assessment is attractive to carriers that offer non-interconnected dispatch service. A connection-based assessment supports the Association's position that dispatch-only systems were not intended by Congress to be subject to universal service contributions since they do not benefit from the PSN in any fashion that is different from all members of the American public who use the telephone system as end user subscribers. Additionally, unlike the current methodology, a connection-based assessment is a clear standard by which carriers can determine if they are subject to universal service obligations. Currently, non-interconnected PMRS licensees are subject to universal service obligations if they *believe* their systems transmit or receive messages across state lines. AMTA agrees with the Commission that:

> [a] connection-based assessment approach would not require carriers to distinguish between interstate and intrastate revenues, or telecommunications and non-telecommunications services, distinctions that do not apply easily or naturally outside

[9]AMTA Comments at n.6.

of the traditional wireline context, and may become more and more difficult to apply as the marketplace evolves.[10]

7. Since the trend for traditional SMR operators is to eliminate interconnection to the PSN, a significant number of AMTA's members would no longer be subject to the universal service funding obligation should the Commission's proposal be implemented.[11] Switching to the Commission's proposed approach, while a more intellectually rational result, would not alter the amount these carriers actually contribute to the universal fund. As explained above, under the current methodology, with few exceptions non-interconnected, PMRS licensees currently subject to universal service requirements are exempt from contributing to the universal service fund because they meet the *de minimis* exemption. However, as described below, the proposed $1 per connection assessment would impact AMTA's other, interconnected members.

III. THE COMMISSION SHOULD CAREFULLY CONSIDER THE IMPACT ON INTERCONNECTED SMR OPERATORS.

8. Under the Commission's proposal, "interstate telecommunication providers would contribute $1 per month for each residential, single-line business, and mobile wireless connections to a public network, except for pagers . . . "[12] Absent retention of a *de minimis* exemption, mobile service providers would contribute a $1 per month for each activated handset connected to the PSN.[13]

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[10]Notice at ¶ 71.

[11] The Commission seeks comment on whether "the level of contribution from interstate telecommunications service providers that do not provide any connection to a public network would in fact be *de minimis* and in accordance with section 254(d) of the Act." Id at ¶ 68. As explained *infra*, AMTA suggests that the *de minimis* exemption apply to carriers with connections to the PSN and whose contributions would be below the administrative cost associated with billing and collection. Non-connection based providers would not be subject to the universal service rules and regulations.

[12]Notice at ¶ 35.

[13]*Id.*

The AMTA members who offer interconnection service generally can be classified into two groups: the first offers interconnection on a very limited basis as an adjunct to their primary dispatch offerings, while the second, AMTA's largest members, is comprised of more consumer-oriented, fully interconnected digital SMR systems with expanded coverage and service offerings.

1. The *De Minimis* Exemption Should Be Retained.

9. Under the current revenue-based assessment, carriers in the first group apply the 1% safe harbor percentage of interstate revenues because they have no practical means of determining which calls routed through their system are interstate versus intrastate. The vast majority of these operations are exempt from contributing to the fund under the current *de minimis* exemption. Accordingly, while these carriers must expend the considerable time to report their revenue information, they are relieved from making a contribution to the universal service fund.

10. In the FNPR the Commission seeks comments on the "the appropriate assessment amount for certain Specialized Mobile Radio providers that currently contribute based on a safe harbor of one percent of their total revenues."[14] If the Commission adopts the proposed $1 per month per activated handset fee, contribution amounts from AMTA's members who currently apply the 1% percent safe harbor percentage would be negligible since they generally have no more than a handful of activated units. Under these circumstances, AMTA advocates retaining the *de minimis* threshold. The rationale for adopting the current *de minimis* test - "compliance costs associated with contributing to the universal service mechanism should not exceed contributing amounts"[15] - continues to apply even if the Commission changes the assessment methodology. There will be an

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[14] *Id.* at ¶ 39.

[15] *Id.* at ¶ 68.

administrative cost associated with collecting and processing carriers' PSN connection information, particularly if the Commission adopts a monthly reporting requirement. AMTA is reasonably certain that these administrative costs would exceed the small contribution amounts generated from carriers with limited interconnection offerings.[16]

2. The Proposed Connection-Based Assessment Will Have A Significant Detrimental Impact on AMTA's Largest Members.

11. AMTA's largest members do not apply the 1% safe harbor percentage and exceed the current *de minimis* threshold. AMTA has been advised by these members that the proposed $1 flat fee could as much as double their universal service obligations. The Commission noted in the FNPR that "the proposed connection-based assessment would have the effect of making local exchange carriers and mobile service providers responsible for a larger portion of the universal service funding, the majority of which is currently paid by interexchange carriers."[17] The Notice raises the following questions:

> What relevance, if any, these potential shifts should have for the analysis of whether to move to a connection-based assessment system. [And] whether minimizing the reallocation of contribution obligations among industry segments should be a goal in moving to a per-connection assessment system. . . .[18]

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[16]The Commission already has determined that contributions of less than $10,000 do not justify the administrative costs associated with contributing to the fund. As stated in its previously filed Comments, the Association is unaware of any record or anecdotal evidence indicating that the administrative costs have declined under the current assessment methodology. Additionally, there is no indication in the Notice to indicate that the administrative costs will be significantly reduced under the proposed methodology. Accordingly, AMTA suggests that the Commission retain the current $10,000 *de minimis* exemption.

[17]Notice at ¶ 36.

[18]*Id.* at ¶ 59.

AMTA understands that certain of its members will be filing separate comments in this proceeding, and the Association urges the Commission to give their recommendations serious consideration. AMTA, however, takes this opportunity to question whether the significant shift in funding responsibility reported by these members who expect their contributions to double is consistent with the Commission's intent to "ensure that contributors continue to be assessed in an equitable and non discriminatory manner."[19] It is the Commission's obligation to consider the significant contribution burden for which certain segments of the interconnected mobile wireless industry would be responsible under the proposal. AMTA is concerned that the reported contributor impact is inconsistent with the "principle of competitive neutrality which the Commission stated in the Universal Service Order would guide its determination about both disbursement and contribution."[20]

IV. IMPLEMENTATION ISSUES

12. The Commission seeks comment on numerous implementation issues associated with the proposed change in assessment.[21] Should the Commission adopt a flat fee assessment, irrespective of the specific per unit payment, AMTA supports a periodic review and adjustments, where necessary, as the universal fund requirements and as the number and capacity of connections change over time. Such review is consistent with the Commission's goals "to ensure the stability and sufficiency of the universal fund" and "to assess contributors in an equitable manner."[22]

13. The Commission proposes to require contributors to report the number and capacity of their connections on a monthly basis. While the Association supports the proposal to combine

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[19] *Id* at ¶ 15.

[20] *Id.* at ¶67.

[21] *Id.* at ¶¶ 74-84.

[22] *Id.*

a carrier's reporting obligation with its bill, AMTA opposes implementing a monthly reporting requirement. A monthly requirement adds to the already considerable state and federal filings that telecommunication carriers are required to submit. A quarterly reporting and billing system, such as the one currently in place under the revenue-based assessment, is more reasonable. While the proposed fill-in-the-blank FCC 499-M seems less burdensome than the current revenue reporting system, it is important that the Commission consider the collective time and costs associated with all the filings a telecommunication carrier is required to make in a given year.[23]

V. CONCLUSION

14. The Commission's proposal to switch to a connection-based assessment is attractive to carriers that offer non-interconnection dispatch service. However, as the Commission evaluates the proposal, the Association urges the Commission to consider the very substantial impact on more consumer-oriented, fully interconnected SMR operators. Whether the Commission determines to modify the existing assessment methodology or switch to a connection-based methodology, the Associations urges the FCC to retain the *de minimis* exception.

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[23] As the Commission recognized, by switching to a connection-based assessment carriers will be required to report connection/capacity information for purposes of the universal service fund and report revenue information for purposes of the Telecommunications Relay Service, North American Numbering Plan, and Local Number Portability. *Id* at ¶82. The Commission's suggestion that carriers provide revenue information as reported to the Securities and Exchange Commission ("SEC") would not be appropriate for AMTA's members, only a few of which are subject to routine SEC filing requirements.

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 April 22, 2002 caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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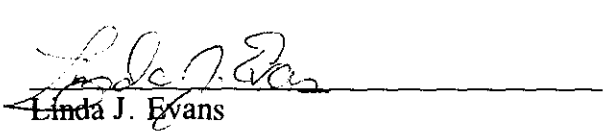

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