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Federal Communication Commission
Office of Secretary

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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 Act of **1990**	)	CC Docket No. **90-571**
	)	
Administration of 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**

Comments of the Industrial Telecommunications Association, Inc.

The Industrial Telecommunications Association, Inc. (ITA) hereby respectfully submits its comments in response to the Commission's ***Report and Order and Second Further Notice of***

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Proposed Rulemaking (NPRM) in the above-referenced matter.[1] As will be discussed below, ITA believes that the revenue-based assessment is the most equitable Universal Service contribution methodology, but of the connection-based methodologies proposed, the mandatory minimum obligation proposal is potentially the least damaging, administratively and financially, for small carriers.[2]

I. Statement of Interest

ITA is a Commission-certified frequency advisory committee coordinating in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz

ITA enjoys the support of a broad membership including more than 3,500 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

Alliance of Motion Picture and Television Producers
Aeronautical Radio, Inc.
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association

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[1] *See,* 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, Number Resource Optimization, CC Docket No. 99-200, Telephone Number Portability, CC Docket No. 95-116, Truth-in-Billing Format, CC Docket No. 98-170, *Report arid Order and Second Notice of Proposed Rulemaking*, (rel. Dec. 13, 2002) (NPRM).

[2] ***See,*** NPRM at ¶ 75-85. For the purposes of this proceeding, ITA is providing comments on Universal Service assessment methodologies for wireless providers and analog-SMR providers, not small paging entities.

Florida Fruit & Vegetable Association
National Mining Association
National Propane Gas Association
National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communication Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc

Many of ITA's members are ***"de minimis*** entities'" who operate under Part 90 of the Commission's rules either as a PMRS licensee or CMRS carrier that uses or provides private, internal communications systems for the purpose of facilitating smooth business operations. In either case, the radios are used for the coordination of daily business activities, such as building maintenance, security and safety operations, among other activities associated with sound business operation. Moreover, a substantial portion of ITA's members meet the definition of a "small business" under the Small Business Act.'

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3 ***See.*** Federal State Joint Board on Universal Service; 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; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act **of** 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number resource Optimization; Telephone Number Portability. CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-1 16, NSD File No. L-00-72, ***Notice of Proposed*** *Rulemaking* (rel. May 8, 2001) at ¶ 31 and n.73, stating that wireless entities with an expected universal service contribution less than $10,000 are exempt from contributing to universal service mechanisms (2001 NPRM). **See** *also,* 47 C.F.R. § 54.708. ***See also,*** 47 **U.S.C.§** 254(d).

4 5 U.S.C. § 601(3), whereby **a** "'small business' has the same meaning as the term 'small business concern'" under 15 U.S.C § **632.** A "small business concern" meets the following criteria: "(1) is

II. Background

On May 8, 2001, the Commission released a *Notice of Proposed Rulemaking* (2001 NPRM), which sought to revisit its universal service contribution mechanism that was established at the outset of the universal service proceeding in 1997.[5] In response to the Commission's 2001 NPRM, ITA and many of its members, filed joint comments and reply comments urging the Commission to retain the *de minimis* exemption for small businesses throughout the nation.[6] On February 26, 2002, the Commission released the *Memorandum Opinion and Order and Second Report and Order* seeking comment on a proposal to alter the universal service contribution mechanism from a revenue-based to a connection-based approach.' Now the Commission solicits further comments on three connection-based Universal Service contribution proposals.'

III. Discussion

ITA, as expressed through previous comments in this proceeding, does not support a connection-based contribution methodology for the collection of Universal Service

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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."

[5] 2001 NPRM at ¶ 17.

[6] *See* Joint Comments of 26 Concerned "De Minimis" Entities, FCC 01-145 (June 25, 2001); *See also*, Reply Comments of the 26 Concerned "De Minimis" Entities, FCC 01-145 (July 9, 2001).

[7] *See*, Federal State Joint Board on Universal Service; 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; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, *Further Notice of Proposed Rulemaking* (rel. Feb. 26, 2002) (NPRM).

[8] *See*, NPRM.

contributions.' **ITA** believes that there are two major issues that may arise from a connection-based methodology. First, the courts have decided that Universal Service charges cannot be collected on intrastate revenues, requiring some type of delineation between intrastate and interstate revenues for assessing the contribution, which could be problematic when using a connection-based methodology.'" Second, an inequitable burden could be placed on small entities through the connection-based methodology. The costs associated with compliance arc marginally higher for a small carrier than a large carrier. This discrepancy has led to a *de minimis* exemption that is critical to maintaining the viability of small entities

A. The *De Minimis* Exemption is Necessary to Sustain the Long-Term Viability of Small Entities.

ITA urges the Commission to be cognizant of how critical a *de minimis* exemption is for small entities, Few, if any, would have the capital resources to comply with the requirements for contribution into the Universal Service fund mechanism without significant changes to their cost-of-service. These small entities would no longer be able to provide necessary communications systems to public safety and business users alike, at a lower cost if they needed to pay professionals (*i.e.,* additional lawyers and accountants), in addition to the Universal Service contribution itself. The Commission decided, when formulating the *de minimis* exemption, that "compliance costs associated with contributing to the universal service mechanisms should not exceed the contribution amounts."" **ITA** asks the Commission to continue supporting this standard, realizing the ***de minimis*** exemption allows small entities to provide critical

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[9] *See generally,* Reply Comments of the Industrial Telecommunications Association, Inc., CC Docket **No.** 96-45, (filed May 13, 2002).

[10] ***See,*** Texas Office of Public Utility Counsel, *et al.* v FCC 183 F, 3d 393 (5th Cir. 1999).

[11] **See,** 2001 NPRM at ¶ **31.**

communications, at a reasonable price. Without the *de minimis* exemption for small entities, competition among providers would be significantly suppressed and the availability of much-needed, reliable private wireless systems would decline.

B. Should the Commission Determine that a Connection-Based Methodology is Appropriate, the Mandatory Minimum Contribution Proposal is the Most Equitable for Small Carriers.

The first contribution proposal assesses all interstate telecommunications providers, whose annual revenues are derived from interstate telecommunications greater than $100,000, subject to a mandatory minimum contribution, based on a flat fee for each connection.[12] This approach would be the least burdensome, both financially, due to the *de minimis* exemption, and administratively, for small carriers. Simply stated, the *de minimis* exemption adequately offsets the disproportionately higher costs that would be assessed to small carriers under the mandatory minimum contribution methodology. However, a downside to this proposal is that the methodology used to assess contributions could lead to use of intrastate revenues for assessing Universal Service contributions.

The second methodology proposes to split connection-based contributions between switched transport and access providers.[13] This methodology could be damaging for small entities because it does not allow for a *de minimis* exemption. Administratively, this proposal would be particularly time consuming, as a license would spend additional time and resources determining its category for contribution and its financial obligation. Due to the administrative and financial demands this methodology would put on small entities with limited resources, it

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[12] *See*, NPRM at ¶ 75.

[13] *See*, NPRM at ¶ *86-95*

would be difficult for a small provider to stay in compliance with the Universal Service contribution mechanism itself, much less stay in business.

The third methodology proposes to assess entities by telephone numbers that are assigned to end-users. Private lines and special access lines that do not have numbers would he assigned based on capacity.[14] The NPRM does not provide a detailed plan with this methodology, hut an assessment based on a phone number does not account for any differentiation between intrastate and interstate communications. For most small entities under this approach, it could cost more to maintain compliance with the applicable tules than the actual contribution itself. Without a ***de minimis*** exemption for low volume users and small entities, contributions to the Universal Service fund will he less than the associated administrative costs.

After polling our membership, ITA believes that the first proposal, of the three connection-based methodologies is the most equitable.[15] The financial, as well as the administrative components of the Universal Service Fund mechanism can be mitigating factors in determining whether a small entity providing private, internal communication services will remain competitive. Private wireless entities with interstate telecommunications systems acquire small amounts of revenues from these communications and compliance without a ***de minimis*** exemption would lead to extensive accounting procedures. Therefore, **ITA** believes the mandatory minimum contribution proposal is the best proposal offered in the NPRM. Reporting and compliance could he made easier with a flat fee **per** connection. Additionally, there would be no undue financial burden placed on the small entities due to the ***de minimis*** exemption. **Any**

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14 ***See,*** NPRM at ¶ 96.

15 **See,** NPRM at ¶ 75-85

proposal that does not include some type of *de minimis* exemption will be disastrous for small providers and will negate their ability to compete in the marketplace.

IV. Conclusion

ITA is concerned that small providers will be unduly burdened by changes to the Universal Service Fund mechanism. ITA continues to believe that the most equitable contribution methodology is the status quo, a revenue-based assessment with a *de minimis* exemption. The connection-based proposals could result in legal problems for assessing contributions based on intrastate revenues, but of the three proposed, ITA considers the mandatory minimum obligation proposal the most equitable due to its administrative simplicity and allowable *de minimis* exemption.

Respectfully submitted,

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I, Robin Landis, do hereby certify that on the 28th day of February 2003. I forwarded to the parties listed below a copy of the foregoing Comments of the Industrial Telecommunications Association, Inc. via hand delivery:

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