

**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)	CC Docket No. 98-171
American Numbering Plan, Local Number)	
Portability, and the Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	
With Hearing and Speech Disabilities, and the)	CC Docket No. 90-571
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	
Numbering Plan and North American)	CC Docket No. 92-237
Numbering Plan Cost Recovery Contribution)	NSD File No. L-00-72
Factor and Fund Size)	
)	
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
Office of Advocacy, U.S. Small Business Administration
on the Notice of Proposed Rulemaking
and the Initial Regulatory Flexibility Analysis**

The Office of Advocacy of the U. S. Small Business Administration (“Advocacy”) submits these Comments to the Federal Communications Commission (“FCC” or “Commission”) regarding its *Notice of Proposed Rulemaking* (“NPRM”)ⁱ in the above-captioned

proceeding. In the *NPRM*, the Commission is seeking comments on alternative ways of assessing contributions to the Universal Service Fund (“USF”). Currently, the FCC assesses these contributions based on a telecommunications carrier’s interstate telecommunications revenues. The Commission is considering alternatives such as basing the assessment on the number of connections to the interstate telecommunications network, the capacity connected to the interstate telecommunications network, and the number of telephone numbers connected to the interstate telecommunications network. In these Comments, Advocacy identifies proposals in the rulemaking that will have a significant small business impact. Advocacy will continue its outreach to small businesses on these issues and will supplement its filings based on input received from small business on this rulemaking.

1. Advocacy Background

Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305ⁱⁱ to represent the views and interests of small business within the Federal government. Advocacy’s statutory duties include serving as a focal point for the receipt of complaints concerning the government’s policies as they affect small business, developing proposals for changes in Federal agencies’ policies, and communicating these proposals to the agencies.ⁱⁱⁱ Advocacy also has a statutory duty to monitor and report to Congress on agencies’ compliance with the Regulatory Flexibility Act (“RFA”).

The RFA was designed to ensure that, while accomplishing their intended purposes, regulations do not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.^{iv} The major objectives of the RFA are: (1) to increase agency awareness and understanding of the potential disproportionate impact of regulations on small business; (2) to require that agencies communicate and explain their findings to the public and make these

explanations transparent; and (3) to encourage agencies to use flexibility and provide regulatory relief to small entities where feasible and appropriate to its public policy objectives.^v The RFA requires the agencies to analyze the economic impact of proposed regulations on different-sized entities, estimate each rule's effectiveness in addressing the agency's purpose for the rule, and consider alternatives that will achieve the rule's objectives while minimizing any burden on small entities.^{vi}

On August 14, 2002, President George W. Bush signed Executive Order 13272 that requires federal agencies to implement policies protecting small businesses when writing new rules and regulations.^{vii} This Executive Order authorizes Advocacy to provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget.^{viii} It also requires agencies to give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. The agency shall include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.^{ix}

2. Small Business Impacts Contained in the Rulemaking

Advocacy had reviewed the *NPRM* and believes that the Commission has identified in the IRFA the impacts contained in the proposed rule and considered significant alternatives. In particular, the Commission is considering *de minimis* exemptions for contributions for small telecommunications carriers,^x a one-year transition period to allow providers to modify their billing systems,^{xi} and the possibility of assessing contributions on a sliding scale to determine the minimum contribution to the USF.^{xii}

The *de minimis* exemption is a crucial tool in easing regulatory burdens on small businesses. Regardless of the form of Universal Service collection, Advocacy encourages the FCC to retain a *de minimis* exception. A transition period minimizes compliance burdens by giving small businesses time to incorporate the regulatory change into their business plans and absorb any costs. In addition, Advocacy believes that setting contributions on a sliding scale are valuable for easing regulatory burden on small businesses and encourages the FCC to use them, in addition to and not in lieu of the *de minimis* exemption.

As with all Universal Service proceedings, reporting requirements are a major concern and the Commission addresses the impact of reporting requirements in its IRFA.^{xiii} The Commission asks whether or not contributors should report on a monthly basis or less frequently.^{xiv} Advocacy acknowledges that some reporting requirements may be necessary for the FCC to assess the proper contribution to the USF, but encourages the FCC to take every step to minimize reporting requirements.

The Commission is also considering assessing contributions to the USF based upon the capacity of the connections to the interstate telecommunications network.^{xv} This has the possibility of burdening small businesses who are in fields that require substantial use of telecommunications, such as high tech fields. If the Commission chooses this option, Advocacy supports the FCC's use of four different capacity tiers to determine the rate of contribution.^{xvi}

Advocacy does not support the proposal to assess contributions to the USF based upon the the number of telephone numbers that an end-user has connected to the interstate telecommunications network.^{xvii} Many small businesses have telephone lines that are not connected to long distance networks. If those are excluded, as they should be, then the FCC may be better off basing contributions to the USF off of connections to the network.

3. Conclusion

The Office of Advocacy is encouraged by the Commission's attention to regulatory flexibility analysis in this initial proposal. Advocacy urges the Commission to further talk with small business groups and solicit their input, in order to better understand the impact of this rule on all size classes of business in the economy. Advocacy stands ready to assist the Commission's small business outreach efforts and we will be conducting more outreach on this issue and will submit the information to the FCC as it becomes available.

Thank you for your consideration of these matters, and please do not hesitate to contact me or Eric Menge of my staff at (202) 205-6533 or eric.menge@sba.gov if you have questions, comments, or concerns.

Sincerely,

/s/ _____
Thomas M. Sullivan
Chief Counsel for Advocacy

/s/ _____
Eric E. Menge
Assistant Chief Counsel for Telecommunications

/s/ _____
Radwan Saade, Ph. D.
Regulatory Economist

February 28, 2003

cc:

Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan Adelstein
William Maher, Chief, Wireline Competition Bureau
Carolyn Fleming Williams, Director, Office of Communications Business Opportunities
Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs, Office
of Management and Budget

ⁱ *In re* Federal State Joint Board on Universal Service, et alia, *Second Further Notice of Proposed Rulemaking*, CC Dkt. Nos. 96-45, 98-171, 90,571, 92-237, 99-200, 95-116, 98-170, FCC 02-329 (rel. Dec. 13, 2002).

ⁱⁱ Pub. L. No. 94-305 (codified as amended at 15 U.S.C. §§ 634 a-g, 637).

ⁱⁱⁱ 15 U.S.C. § 634(c)(1)-(4).

^{iv} 5 U.S.C. § 601(4)-(5).

^v See generally, Office of Advocacy, U.S. Small Business Administration, *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies*, 2002 (“*Advocacy 2002 RFA Implementation Guide*”), available at <http://www.sba.gov/advo/laws/rfaguide.pdf>.

^{vi} 5 U.S.C. § 604.

^{vii} Exec. Order. No. 13272 § 1, 67 Fed. Reg. 53,461 (2002).

^{viii} *Id.* at § 2(c).

^{ix} *Id.* at § 3(c).

^x *NPRM* at para.134.

- ^{xi} *Id.* at para. 77.
- ^{xii} *Id.* at para. 80.
- ^{xiii} *Id.* at para. 130.
- ^{xiv} *Id.* at para. 74.
- ^{xv} *Id.* at para. 72.
- ^{xvi} *Id.* at para. 82.
- ^{xvii} *Id.* at para. 96.