

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review – Streamlined)	CC Docket No. 98-171
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)	CC Docket No. 90-571
Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American Numbering)	CC Docket No. 92-237
Plan and the North American Numbering Plan Cost)	NSD File No. L-00-72
Recovery Contribution Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116

**Comments on the
Initial Regulatory Flexibility Analysis and
Notice of Proposed Rulemaking of the
Office of Advocacy, U.S. Small Business Administration**

The Office of Advocacy of the United States Small Business Administration (“Advocacy”) submits these Reply Comments to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* (“NPRM”),¹ in the above-captioned proceeding. The Commission is proposing several means of reforming how the Commission assesses carrier contributions to the universal service fund (“USF”) and how carriers may recover these costs from their customers. Most notably, the Commission proposed assessing

contributions on current projected revenues instead of historical gross-billed revenues, and the Commission proposed assessing contributions on a flat-fee basis, such as a per-line or per-account charge, instead of on a percentage of interstate revenue. The Commission also proposed possible restrictions as to how carriers can recover their USF contributions reimbursement. Furthermore, the Commission proposes removing the contribution exception for *de minimis* carriers.

Advocacy agrees with commenters that the Commission should continue to assess contributions on a percentage of historical interstate gross-billed revenues. Advocacy sees some value to the consumer in creating a uniform charge for USF reimbursement but does not believe that the Commission should regulate the amount of the charge. Further, Advocacy strongly supports maintaining the exception for *de minimis* carriers.

I. Advocacy Background

Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305² to represent the views and interests of small business within the Federal government. Advocacy's statutory duties include serving as a focal point for concerns regarding the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating these proposals to the agencies.³ Advocacy also has a statutory duty to monitor and report to Congress on the Commission's compliance with the Regulatory Flexibility Act of 1980,⁴ as amended by the SBREFA, Subtitle II of the Contract with America Advancement Act.⁵

The RFA was designed to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.⁶ 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.⁷ The RFA does not seek preferential treatment for small businesses. Rather, it establishes an analytical requirement for determining how public issues can best be resolved without erecting barriers to competition. To this end, the RFA requires the FCC 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 disproportionate burden on small entities.⁸

II. The Commission Should Continue to Base USG Assessment on Historical Gross-Billed Revenue.

The NPRM contained two proposals that would modify how carriers' base their contribution to the USF. First, the Commission sought comment on whether to assess contributions based on current or projected revenues instead of historical gross-billed revenue.⁹ Second, the Commission proposed basing contributions on collected revenues instead of gross-billed revenues.¹⁰ Advocacy agrees with commenters who recommend against adopting either of these modifications, because of the potential for a detrimental impact on small carriers.

In the NPRM, the Commission stated that it previously concluded that USF assessments based on gross-billed, end-user telecommunications revenues was competitively neutral, easy to administer, and eliminates economic distortions.¹¹ Advocacy supports this conclusion and agrees with commenters who found no reason for the Commission to alter its earlier decision.¹² Rather, Advocacy is concerned that basing USF contributions on current or projected revenues will increase reporting requirements for small carriers. In its comments, the Universal Service Administrative Corporation ("USAC") states that moving to a methodology based on current

revenues would require the number of revenue filings to increase.¹³ Advocacy is concerned that the increased reporting requirements would have a disparate impact on small businesses, because they have fewer accounts over which to spread the cost. These companies bring competition to the marketplace and all the benefits associated with competition.

Advocacy also agrees with commenters that there is an incentive to underreport on projected revenues.¹⁴ A dollar is worth more today than tomorrow and so it is in the entities' interest to defer payments as far into the future as possible. To correct this tendency, the Commission will have to adopt a true-up mechanism which will add a layer of reporting and cost for small carriers. Even with a true-up mechanism, it is not clear that the carrier's incentives would change appreciably.

USAC proposes penalties or additional fees for carriers that significantly underreport.¹⁵ Advocacy believes that if the FCC goes this route there must be some sort of audit mechanism to determine if the carrier is a bad actor or simply made an error in their prediction. Otherwise, these penalties might unfairly be applied to innocent parties. Just like reporting requirements, audit mechanisms would add substantial costs to the process for small businesses.

One of the principle reasons for the Commission's proposal to use current or predicted revenue instead of historical revenues is to eliminate concerns about the interval between the reporting of revenues and assessment of the contributions.¹⁶ The Commission raises the issue that basing contributions on historical revenues could disadvantage carriers with declining revenues while benefiting new entrants,¹⁷ and at least one commenter supports this proposition.¹⁸

Advocacy strongly supports a level playing field for competition. However, if there is a minor advantage given to new entrants, it is a benefit to new competitors coming into the market. We want to promote competition. If the new entrants do get any advantages, it is a transitory

problem. Because the FCC reduced the reporting time to six months from a year,¹⁹ new entrants are contributing to the USF in a relatively short time. Therefore, the competitive disparity is short lived, while the reporting mechanisms necessary to cure this disparity are expensive and indefinite. In addition, if the Commission switches to assessing USF contributions on projected revenue, small business entrants would be paying contributions based on revenue they do not have and may never earn. This would act as a barrier to entry and would also be contrary to the Telecommunications Act of 1996 which requires the Commission to lower market entry barriers.²⁰

If the FCC needs to take any steps in this regard, it could reduce the interval between assessment and accrual of USF contributions obligations to an even shorter time, if possible, rather than formulate an entire new reporting structure.

III. The Commission Should Continue to Base USF Assessments on Interstate Revenue

In the NPRM, the Commission proposes assessing USF contributions on a flat-fee basis, based on the carrier's current line counts or number of accounts. Under this system, the amount of the per-line or per-account charge would be the same regardless of the level of interstate revenue or traffic associated with a given line or account.²¹ After carefully studying the proposal, Advocacy has determined that it could potentially affect two different small business groups – small business consumers and small business carriers.

a. Impact on Small Business Carriers

The statistical data on telephone usage we need to evaluate the impacts on these groups is not readily available. The Commission did not include any information in the NPRM, and Advocacy contacted many offices at the FCC and found that no office collects information on small business telecommunications usage. Advocacy also contacted industry groups as well, and

neither the RBOCs nor the small ILEC trade associations collect this sort of information.

However, FCC does provide some insight on the small carrier effects in its most recent biannual report, *Trends in Telephone Service*, released December 2, 2000.²² We also have information from a 1997 survey by the California Small Business Association and Advocacy to help understand any potential consumer impacts.²³

The FCC report indicates that there is a strong overall relationship between the number of lines and number of long-distance minutes used by carriers. The small long-distance carriers represent 15 percent of the direct dial minutes and 13 percent of the access lines.²⁴ While far from a perfect measure this would seem to indicate that in the aggregate, small long-distance carriers would not be negatively affected under the per-line option but we need information at the firm level to understand effects which could vary significantly at that level.

There is reason to believe that impacts could be significant at the firm level. Advocacy agrees with commenters that the flat-fee proposal has administrative difficulties and would add complexity to the USF contribution mechanism. Two commenters pointed out that line-sharing significantly complicates the issue, as many lines have multiple carriers providing service over a single line.²⁵ If there are only a few carriers involved (e.g., 2 – one local, one long distance), agreement may be achievable. However, as the number of carriers per line grows – either through line sharing or churn – transaction costs will increase, and there is increasing incentive and opportunity for a carrier not to pay its USF contribution for that line and “free ride.” It is clear that disputes will arise between carriers and some will go unresolved. How does FCC intend to resolve these disputes? What if any role will the court play in such disputes and will that change the cost of service? What happens to the USF as a whole when a large amount of contributions are mired in dispute? The answer to these questions will require additional

reporting mechanisms, which will add costs to small businesses and further hamper competition.

b. Impact on Small Business Consumers

We have relatively better information on the consumer effects from a survey of 500 small businesses with long-distance telephone service. In that survey, we found that increases of 100 percent or more in monthly charges (local and long-distance) could result in significant adverse effects on small businesses. To try to understand the consumer effects under a per-line alternative therefore, we calculated the percent change in costs (relative to the status quo) by firm and grouped firms by the magnitude and direction of the effect. The results are as follows.

Pct. Change in Cost	Relative Frequency
100 or more	0.24
50 to 99	0.07
0 to 49	0.14
0 to -49	0.26
-50 to -99	0.29
Total	1.00

While 24 percent of the respondents would experience significant adverse impacts (i.e., their contribution could increase by 100 percent or more) under the per-line alternative, more than 50 percent would experience savings. Thus, the burden is shifted from small businesses with many minutes of long-distance service but few lines to those with few minutes but many line, which is consistent with the concerns of other commenters.²⁶ The FCC has indicated that low volume consumers may also be low income customers, and it may not be in the public interest to adopt a regressive provision.

IV. The Commission Should Not Limit USF Contribution Recovery

The Commission states in its NPRM that it is concerned that some carriers may be imposing more than an equitable share of costs on certain classes of customers in order to recover its full contribution to universal service.²⁷ FCC points to inter-exchange carriers that

imposed residential line item fees in excess of the contribution factor as evidence.²⁸

Advocacy is not convinced that fees that are set higher than the contribution factor is necessarily a significant cause for concern. There are administrative costs involved in contributing to USF and costs which will vary by firm. Small carriers may have higher administrative costs on a per-account basis because they tend to have fewer accounts over which to spread those costs. Rural carriers may have higher administrative costs than urban carriers because it costs more to administer the same services in more remote areas.

However, it is possible that some carriers may be mislabeling universal service charges as something else or using “complex calculations” to hide these charges. If information is the problem, then the Commission’s solution to require carriers who recover their USF contributions through charges to end users to do so in a single line-item designated as “Federal Universal Service Charge” seems reasonable.²⁹ However, if FCC intends to limit carrier charges to recover USF contributions, Advocacy agrees with AT&T that the contribution factor should be adjusted to allow carriers to offset their own USF administrative billing expenses.³⁰ Since this will result in every carrier having a slightly different USF rate, the single rate for all USF charges will not exist and simplicity to the consumer will be lost. Therefore, Advocacy does not believe that the public interest is served by regulating the level of the charge that would be put on the customer’s bill.

V. The Commission Should Retain the *De Minimis* Carrier Exemption

The NRPM sought comment on whether to eliminate the *de minimis* exception for carriers with less than \$10,000 in universal service mechanisms.³¹ Advocacy strongly agrees with commenters that support retaining the *de minimis* carrier exemption.³²

In an earlier proceeding, the Commission concluded that carriers whose USF compliance

costs exceeded their contributions amounts would be exempted from contributing to the fund.

Therefore, the Commission exempted carriers who contributed less than \$10,000 to the USF.³³

Advocacy has seen no evidence that the Commission should reverse this decision. Instead, there are many reasons why the exemption should be retained or even increased. As OPASTCO points out, the reporting burden has increased from one time per year to four-times per year, raising compliance costs for small carriers.³⁴ In addition, USAC states that raising the cost raises the administrative costs for them because smaller carriers require a disproportionately greater amount of administrative resources.³⁵ Advocacy supports both of these comments and urges the Commission to retain the *de minimis* exception.

Conclusion

For the reasons stated above, Advocacy agrees with commenters that the Commission should continue to assess contributions on a percentage of historical interstate gross-billed telecommunications revenues. Further, the Commission should not restrict how carriers recover their USF contributions, and the exception for *de minimis* carriers should be maintained.

Sincerely,

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¹ *In the matter of* Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking*, CC Docket No. 96-45, et al, FCC 01-145 (rel. May 8, 2001).

² *Id.*

³ 15 U.S.C. § 634(c)(1)-(4).

⁴ Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. § 601 et seq.).

⁵ Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. § 612(a)).

⁶ 5 U.S.C. § 601(4)-(5).

⁷ *See generally*, Office of Advocacy, U.S. Small Business Administration, *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies*, 1998 (“*Advocacy 1998 RFA Implementation Guide*”).

⁸ 5 U.S.C. § 604.

⁹ NPRM, para. 19

¹⁰ NPRM, para. 22.

¹¹ NPRM, para. 18.

¹² Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), to the *Notice of Proposed Rulemaking* in CC Dkt. No. 96-45, at 3 (June 25, 2001).

¹³ Comments of the Universal Service Administrative Company, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 96-45, at 9-10 (June 25, 2001).

¹⁴ OPASTCO Comments at 4; USAC Comments at 12.

¹⁵ USAC Comments at 12.

¹⁶ NPRM, para. 23

¹⁷ NPRM, para. 19.

¹⁸ Comments of AT&T, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 96-45, at 9-11 (June 25, 2001).

¹⁹ *See, generally*, *Federal-State Board on Universal Service, Petition for Reconsideration filed by AT&T*, CC Dkt. No. 96-45, FCC 01-85, Report and Order on Reconsideration (rel. March 14, 2001).

²⁰ 47 U.S.C. § 257.

²¹ NPRM, para. 25.

²² *See* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend200.pdf.

²³ California Small Business Association National Business Telephone User Poll Toll Study, April 12, 1997.

²⁴ If the “other” category (every company other than AT&T, MCI WorldCom, and Sprint) in table 10.10 of the report (footnote 1), represents small long-distance carriers, the five-year average of residential market share in terms of access lines is 13 percent and for direct-dial minutes, it is 15 percent.

²⁵ Comments of the National Telephone Cooperative Association, to the *Notice of Proposed Rulemaking* in CC Dkt. No. 96-45, at 3 (June 25, 2001); OPASTCO Comments at 6.

²⁶ OPASTCO Comments at 5.

²⁷ NPRM, para. 1-6

²⁸ *Id.* at para. 5

²⁹ NPRM Para. 42.

³⁰ AT&T Comments at 10.

³¹ NPRM, para. 21.

³² NTCA Comments at 3, OPASTCO Comments at 8.

³³ NPRM, para 31.

³⁴ OPASTCO Comments at 8.

³⁵ USAC Comments at 18.