PCIA Personal Communications Industry Association

EX PARTE OR LATE FILED

March 31, 1997

RECEIVED
APR 2 1997
FCC MAIL ROOM

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 200
Washington, DC 20554

RE: *Ex parte* notification
Docket No. 96-45

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Pursuant to § 1.120(a)(2) of the Commission's Rules, this letter notifies the Commission that the parties listed below met with Commissioner James Quello and Rudy Baca, Esq. of Commissioner Quello's staff, on Friday, March 28, 1996 to discuss issues related to the above referenced matter.

The parties included: (1) Mr. Jay Kitchen of the Personal Communications Industry Association ("PCIA") and (2) Mr. Mark Golden of PCIA.

The enclosed attachment was distributed to all parties attending this *ex parte* meeting and provides a complete summary of the issues discussed. Kindly contact me directly with any questions.

Sincerely,

Angela E. Giancarlo

Angela E. Giancarlo, Esq.
Manager, Industry Affairs

Attachment

No. of Copies rec'd 0
List ABCDE

• 500 Montgomery Street • Suite 700 • Alexandria, VA 22314-1561 •
• Tel: 703-739-0300 • Fax: 703-836-1608 • Web Address: http://www.pcia.com •

PCIA Personal Communications Industry Association

RECEIVED
APR 2 1997
FCC MAIL ROOM

PCIA POSITION IN JOINT BOARD PROCEEDING ON UNIVERSAL SERVICE

- The Personal Communications Industry Association (PCIA) filed comments and reply comments in CC Docket No. 96-45.

- PCIA believes the Commission's universal service fund must be equitably funded, narrowly targeted, and technologically neutral.

  - Funding universal service at levels in excess of the minimum required amounts will adversely affect consumers and telecommunications competition
  - The Commission should use forward-looking costs to form the basis for carrier reimbursement calculations. Use of forward-looking costs would shrink the universal service fund, ensure competitive neutrality, and be consistent with the pro-competitive, deregulatory goals of the *Telecommunications Act of 1996*.
  - Universal service support should be limited to a single line to a customer's primary residence
  - Minimizing the size of the universal service fund should be adopted as an additional guiding principle

- Because CMRS is inherently an interstate service, CMRS carriers should be required to contribute only to the federal universal service support fund, and can be required to contribute to a state universal service fund only at such time as CMRS services serve as a substitute for land line telephone exchange service for a substantial portion of the communications within such state.

- Carriers should be permitted to recover their universal service contributions by way of an explicit end user surcharge separately listed on a customer's bill.

- The Commission must carefully design the contribution requirements to be imposed on telecommunications carriers that fully accounts for competitive considerations. Equitable considerations make it appropriate to exempt messaging providers from contributing to the fund or else to reduce their proportionate contributions.

• 500 Montgomery Street • Suite 700 • Alexandria, VA 22314-1561 •
• **Tel:** 703-739-0300 • **Fax:** 703-836-1608 • **Web Address:** http://www.pcia.com •

RECEIVED
APR 2 1997
FCC MAIL ROOM

Testimony of Jay Kitchen
President
Personal Communications Industry Association

Hearing on Universal Service

Subcommittee on Communications
Committee on Commerce, Science & Transportation

United States Senate

March 19, 1997

Testimony of Jay Kitchen
President

Personal Communications Industry Association

Hearing on Universal Service

Subcommittee on Communications
Committee on Commerce, Science & Transportation

United States Senate

March 19, 1997

Good morning. I am Jay Kitchen, President of the Personal Communications Industry Association ("PCIA"). PCIA is the largest wireless telecommunications trade association in America. We represent a host of wireless technologies, most notably personal communications services("PCS")and paging. I want to thank Chairman Burns and Senator Hollings as well as the rest of the members of the Subcommittee for allowing PCIA the opportunity to testify at today's hearing on universal service.

Mr. Chairman, all Americans share the laudable goals of universal service, however implementation of the universal service provisions of the Telecommunications Act carry enormous implications for all telecommunications providers and is of critical importance to the wireless industry.

We strongly believe that in order to best serve the public interest, any universal service program must be **equitably funded and narrowly targeted.**

I believe the forecast for the wireless industry is bright if the FCC properly implements the Telecommunications Act of 1996 ("Act").

Under the Act, paging and PCS providers are required to make an "equitable and non-discriminatory" contribution to the Universal Service Fund. Paging companies, under the Telecommunications Act passed last year, are not eligible for funding. To be deemed eligible, a telecommunications carrier must provide two-way voice telephony with a host of additional services throughout a large geographic area. Furthermore, a new entrant, like PCS, is highly unlikely to satisfy these requirements anytime soon. Mr. Chairman, this is *not* equity.

Paging companies should not have to pay hundreds of millions of dollars per year into a program from which they will not receive any funding. Any contribution on the part of paging providers should reflect this reality. Paging contributions should be reduced by the FCC in order to ensure that the level of contributions to the Universal Service fund is equitable and non-discriminatory.

Unlike many of the telecommunications providers this Committee is used to dealing with, the paging industry by its very nature is characterized by very narrow operating margins

and simply cannot afford to direct much of its operating capital into the Universal Service Fund. The paging industry is made up of hundreds of very small paging companies and even the largest paging companies do not have the revenue to pay millions of dollars into the Universal Service Fund, however worthy the cause may be.

Mr. Chairman, the situation in the PCS industry is no less unique. It is not just amazing to me, but to many on Wall Street that the government would impose such payments on the PCS industry. The very industry that we look to bring competition and lower rates to the American people. Astonishingly, the same industry that has recently paid billions of dollars at auction to the federal government for their licenses. It is understandable, Mr. Chairman, that many of these companies do not have the working capital to pay millions of unrecoverable dollars into a Universal Service Fund.

Congress was particularly concerned that the PCS industry be open to small businesses. However, these same small PCS "C-block" auction companies still owe billions of dollars to the federal government for their spectrum. Many of these companies are having serious difficulty raising funds in the debt or equity markets due in no small measure to the impending financial burden of the Universal Service Fund

payment. As a consequence, the Universal Service Fund payment as envisioned by the Joint-Board may well cripple this most promising industry.

Mr. Chairman, the PCS industry is fulfilling its promise to the American people by spending billions of dollars trying to build out their networks across the country. Their scarce resources should be spent building these networks thus providing advanced, reasonably priced, secure wireless communications to the American consumer.

Mr. Chairman, it seems to me that the promised goal of the Act was to bring lower rates and choice through competition to America's telecommunications consumers. It would seem therefore that government policy should strongly encourage these new entrants, but certainly, at the very least, it should not endanger their ability to fulfill these promises.

It might be understandable for such a contribution if it were recoverable. However, the Joint-Board recommendations would not allow telecommunications companies to recover the cost of Universal Service Fund payments from their subscribers. I can think of no other way to describe this but as a "hidden tax" on telecommunications companies. The Universal Service Fund charges should be recoverable through an end-user surcharge on our customers' bills. Some of our member

payment. As a consequence, the Universal Service Fund payment as envisioned by the Joint-Board may well cripple this most promising industry.

Mr. Chairman, the PCS industry is fulfilling its promise to the American people by spending billions of dollars trying to build out their networks across the country. Their scarce resources should be spent building these networks thus providing advanced, reasonably priced, secure wireless communications to the American consumer.

Mr. Chairman, it seems to me that the promised goal of the Act was to bring lower rates and choice through competition to America's telecommunications consumers. It would seem therefore that government policy should strongly encourage these new entrants, but certainly, at the very least, it should not endanger their ability to fulfill these promises.

It might be understandable for such a contribution if it were recoverable. However, the Joint-Board recommendations would not allow telecommunications companies to recover the cost of Universal Service Fund payments from their subscribers. I can think of no other way to describe this but as a "hidden tax" on telecommunications companies. The Universal Service Fund charges should be recoverable through an end-user surcharge on our customers' bills. Some of our member

companies could go out of business or be forced to lay off workers if they are forced to absorb 100% of the Universal Service tax. Certainly, we should have the opportunity to recover such costs and to let our customers know what exactly their paying for.

Mr. Chairman, another major concern I would like to discuss is the overly broad focus of the Joint Board's recommendation for the "schools and libraries fund." As I said at the beginning of my statement, any plan must be narrowly focused to be credible and affordable. We are pleased to see that the Joint Board scaled back the Administration's "E-Rate" proposal, however it is still too expensive and contains a number of unauthorized elements. As you may know, the Joint-Board recommended a $2.25 billion per year fund for advanced telecommunications services for schools and libraries. PCIA believes that this price tag is excessively high. The Universal Service provisions as laid out in Section 254(h) of the Communications Act, never intended for inside wiring for schools and libraries to be funded by Universal Service. In fact, inside wiring was deregulated by the FCC years ago and therefore cannot be a telecommunications service eligible for funding under Section 254. As a consequence, including inside wiring not only increases the size of the fund, it also subjects the fund to legal challenge. Paradoxically, wireless companies will pay for this aspect of the Fund while

its chief beneficiary, internet access providers, will pay nothing.

The educational fund is disproportionately high to the overall Universal Service Fund and will adversely affect consumers through increased rates and decreased competition. I believe that this view is widely shared within the telecommunications industry.

Mr. Chairman, our industry is not alone in our opposition. Across the telecommunications industry, issues of equity, scope, and legality have been raised in this proceeding.

If the last several years of budget battles have taught us anything, it should be that we simply cannot afford to do everything. We must narrow our scope and move forward with reasonable and affordable programs.

Mr. Chairman, we are willing to pay our fair share, but without your help, the wireless industry will not fulfill its competitive promise.

Thank you for the opportunity to testify at today's hearing. I would be happy to answer any of your questions.

NEWS

PCIA Personal Communications Industry Association

For Immediate Release

Contact: Brenda Maxfield
Phone: (703) 739-0300, ext. 3228
PCS #: (703) 861-7171

JAY KITCHEN URGES SENATE TO POSTPONE NEW ENTRANTS' UNIVERSAL SERVICE OBLIGATION FOR 5 YEARS

Alexandria, Va., March 19, 1997-- New wireless entrants who paid for their spectrum at auction should not be required to pay into the Universal Service Fund until five years after receiving their license to ensure their competitive viability, according to Jay Kitchen, President of the Personal Communications Industry Association (PCIA) during testimony today before the Senate Subcommittee on Communications' hearing on universal service.

"The Personal Communications Service (PCS) industry epitomizes the fundamental goals of the Telecommunications Act of competition and lower prices. The short history of PCS has taught us that when PCS service is launched, cellular providers in that market cannot reduce their prices fast enough. This new and robust competition in telephony, however, will be stifled if new entrants, who have already spent billions at auctions, and face the need to invest billions more in the build-out of their networks, are further burdened with universal service fund contributions," said Jay Kitchen, president of PCIA.

Kitchen, on behalf of the wireless telecommunications industry, urged the Senators not to impose universal service obligations on new entrants who pay for spectrum at auction until they have met their build-out requirements and are financially viable.

Kitchen also described the inequities in requiring the paging industry to contribute to the Universal Service Fund. "Paging providers are ineligible to receive funding from the Universal Service Fund, but are forced to contribute. This is clearly inequitable."

PCIA is the leading international trade association representing the wireless communications industry. PCIA members represent the broadest segments of wireless communications, including PCS and paging carriers, ESMR, SMR, and mobile data services as well as communications site managers, equipment manufacturers, technicians and others providing products and services to the wireless industry.

-30-