

RECEIVED

OCT - 2 1997 Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

In the Matter of)	
)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.)	CC Docket 97-21
)	
Federal-State Joint Board on Universal Service)	CC Docket 96-45

COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION ON PETITION FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA")¹ hereby submits its comments on the petition for reconsideration filed jointly by Comcast Cellular Communications, Inc. ("Comcast") and Vanguard Cellular Systems, Inc. ("Vanguard")² in the above-captioned

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² Petition for Reconsideration of Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc. in CC Dkt. Nos. 97-21, 96-45 (filed Sept. 2, 1997) ("Joint Petition"). Notice of the Joint Petition was published in the Federal Register on September 17, 1997, at 62 Fed. Reg. 48868.

Handwritten signature and date: 07/11

proceeding.³ PCIA strongly endorses adoption of a number of the Joint Petitioners' proposals for revisions in the *Order's* policies. In particular, the Commission must take into account the real world business effects on telecommunications carriers of its universal service calculation and collection procedures, provide much greater guidance on the components of the Form 457, and afford greater representation to the wireless industry on the USAC board of directors.

I. INTRODUCTION AND SUMMARY

As a trade association representing the interests of wireless telecommunications carriers, many of which are small businesses, and all of which are involved in a fiercely competitive marketplace, PCIA believes that the Joint Petitioners have raised a number of significant issues that warrant serious consideration by the Commission. If the Commission reconsiders certain aspects of its *Order*, as sought by the Joint Petitioners, its universal service program will operate more in tune with business realities and will be more fair to the wireless industry, while remaining equally effective in providing affordable telecommunication services consistent with the statutory goal.

In particular, the Commission can conform its program to significant business planning needs by changing the timing of the calculation of contribution factors from quarterly to annually to the greatest possible extent. Such a change will more closely align the Commission's funding cycle with the manner in which businesses must budget their resources, thereby making it less

³ *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board On Universal Service*, CC Dkt. Nos. 97-21, 96-45, FCC 97-253 (July 18, 1997) (Report and Order and Second Order On Reconsideration) ("*Order*"). The *Order* was published in the Federal Register on August 1, 1997, at 62 Fed. Reg. 41294.

burdensome and more efficient and rational for businesses to plan and make their contributions. The Commission developed its current funding procedures without public comment, and thus failed to take into account mundane but important business considerations. In the future, the Commission should obtain such industry input to ensure that the universal service program develops in a manner that is as consistent as possible with the realities of business administration.

In addition, the Commission should clarify various aspects of its Form 457, including the adoption of policies and procedures to simplify the efforts of CMRS carriers to determine the allocation of revenues between the interstate and intrastate jurisdictions. Numerous clarifications are needed to facilitate the efforts of wireless carriers to remain in compliance with the Commission's rules, and to bring some comparability and equity to the information provided to the Commission and the funds to be collected from CMRS providers.

Finally, the Commission should provide the wireless industry with greater representation on the Universal Service Administrative Company ("USAC") board of directors. While CMRS carriers currently face the same contribution requirements as landline carriers, they have been allotted only one of the seven carrier seats on the USAC Board. Such limited representation is inadequate for an industry that includes cellular, PCS, SMR, and paging providers of all sizes and with varying interests.

II. AN ANNUAL, RATHER THAN QUARTERLY, CALCULATION OF UNIVERSAL SERVICE CONTRIBUTION FACTORS IS MORE CONSISTENT WITH USUAL BUSINESS PRACTICES, AND SHOULD BE IMPLEMENTED

In its *Order*, the Commission established a quarterly calculation of contribution factors and collection mechanism for the universal service fund.⁴ Specifically, the Commission directed USAC to calculate the costs of actual program funding as well as administration — on a quarterly basis — for the high cost, low income, schools and libraries, and rural health care programs.⁵ Once this cost data was approved by the Commission, USAC was directed to “use these projections to calculate the quarterly interstate, intrastate, and international end-user telecommunications revenues contribution factor,” and “bill each contributor for the amount of its contribution.”⁶ Thus, every three months, businesses would be subject to revised universal service contribution requirements.

PCIA agrees with the Joint Petitioners that, under the procedures adopted in the *Order*, “businesses will have no ability to budget their contributions for the next fiscal year, and will not even be able to predict . . . their universal service obligation from quarter to quarter.”⁷ This introduces unacceptable levels of uncertainty into the business planning and budgeting process. Because the quarterly contribution amounts could dramatically change from quarter to quarter, businesses will have no ability to engage in rational planning or to ensure that they are fulfilling

⁴ *Order*, ¶ 45.

⁵ *Id.*, ¶ 46.

⁶ *Id.*, ¶¶ 46, 49.

⁷ *Joint Petition* at 4.

their obligations and fiduciary duties to their shareholders. Accordingly, as recommended by the Joint Petitioners, the Commission should immediately begin to calculate the high cost/low income fund contribution factors on an annual basis. After one year of experience, the schools and libraries fund likewise should be converted from quarterly calculations to annual determinations. Such action will promote efficiency and minimize unnecessary business disruption.

In addition, calculation of contribution requirements on an annual basis is, as pointed out by the Joint Petitioners, far more conducive than quarterly determinations to careful review and audit by affected entities.⁸ Under the revised scheme proposed by Petitioners, interested parties will have more adequate time to review the magnitude of the universal service fund, its rate of increase, and the associated administrative costs. As a result, this process will more effectively help to ensure the universal service fund is being efficiently administered and to contain contribution amounts to only the levels required.

Like the Joint Petitioners, PCIA is very troubled that “[t]he critical details of how universal service fund contributions were to be assessed, collected and billed, were established and released without public notice and comments.”⁹ As a result, the Commission failed to take into account real world business considerations significantly impacted by the plan adopted in the *Order*. The calculation of contribution factors on a quarterly basis is not a trivial detail. Therefore, affected entities should have had an opportunity to comment on the details of the

⁸ *See id.* at 6.

⁹ *Joint Petition* at 8-9.

Commission's policies for calculating and collecting universal service contributions in order to ensure the Commission considered practical business considerations.

III. THE AMBIGUITIES CONTAINED IN FORM 457 MAKE IT EXTREMELY DIFFICULT FOR WIRELESS PROVIDERS TO OFFER CONSISTENT DATA

PCIA further agrees with the Joint Petitioners that, from the perspective of a wireless service provider, Form 457 is extremely ambiguous in a number of respects.¹⁰ PCIA has previously pointed out that the Form 457 simply does not take into account factors unique to CMRS operations.¹¹ Because of the interstate nature of their service areas, the mobile nature of their customers, and other reasons, it is difficult for wireless providers consistently to differentiate between interstate and intrastate revenues. This difficulty in separating revenues is exacerbated by the fact that wireless service providers — unlike LECs — do not keep their accounts in accordance with the Uniform System of Accounts.

As PCIA has previously demonstrated, the Commission should adopt simplified procedures — perhaps based on the telecommunications relay services process — to aid CMRS providers in calculating the jurisdictional allocation of revenues.¹² Also, the Commission must resolve the numerous uncertainties regarding proper completion of the Form 457 that still remain. Wireless carriers continue to grapple with questions as to whether they have properly

¹⁰ *Id.* at 10.

¹¹ *See Reply of the Personal Communications Industry Association on Petitions for Reconsideration*, CC Dkt. No. 96-45, at 9-10 (filed Sept. 3, 1997).

¹² *Comments of Personal Communications Industry Association on Petitions for Reconsideration*, CC Dkt. No. 96-45, at 13-15 (filed Aug. 18, 1997)

completed the form. In the interest of streamlining the process for further submissions, the Commission should begin now to solicit comment about the Form 457 and to make appropriate revisions in order to consider the factors relevant to all segments of the telecommunications industry that are required to complete the form.

As with the Joint Petitioners, PCIA is concerned that the information recently submitted on the Forms 457 is not consistent and comparable, due simply to the many unresolved questions involving preparation of the form for CMRS operations. As a result, universal service contributions will not be equitably collected. This fact underscores the need for the Commission to begin now to remedy the deficiencies in the Form 457.

IV. THERE MUST BE GREATER CMRS REPRESENTATION ON THE USAC BOARD

In its *Order*, the Commission directed NECA to establish a USAC Board that “will represent a cross-section of industry and beneficiary interests.”¹³ The Commission then specified that the interests of telecommunications carriers would be represented by three ILEC representatives, two IXC representatives, one CLEC representative, and one CMRS representative.¹⁴ PCIA joins with the Joint Petitioners in arguing that a board where six of the seven carrier representatives are from landline entities hardly constitutes a representative “cross-section of industry.”¹⁵

¹³ *Order*, ¶ 33.

¹⁴ *Id.*

¹⁵ *Joint Petition* at 7-8.

The Commission's actions highlight the less than fair treatment to which the wireless industry has been subject throughout this proceeding. In particular, when the Commission was looking to entities to fund universal service, the wireless industry was made a "full partner," and CMRS providers were required to pay the same percentage of their retail revenues into the fund as landline carriers.¹⁶ This "full partnership" was even extended to paging providers, which, as pointed out by PCIA, will never be eligible to receive universal service funding because they are technically incapable of providing the core elements of universal service.

When, however, it comes time to offer CMRS providers seats on the USAC Board, the wireless industry is once again treated as less than equal, and given only one of seven carrier seats. As pointed out by PCIA in an earlier *ex parte* filing, this single seat is plainly inadequate to represent the broad and sometimes divergent interests of cellular, PCS, SMR, and paging providers.¹⁷ For example, with the current composition of the USAC Board, neither the paging industry, with annual revenues exceeding \$4 billion and 45 million subscribers, nor the SMR industry, with over \$530 million in annual revenues and 2.3 million subscribers, have a representative voice. The Commission should take steps to ensure that the USAC Board includes one or more representatives that understand and can explain the issues specific to paging, SMR, and other CMRS industries, instead of shutting out their unique perspectives. Accordingly, the Commission should reconsider its decision, and in order to provide the wireless industry with

¹⁶ See *Federal State Joint Board On Universal Service*, Report and Order, CC Dkt. 96-45, FCC 97-157, ¶¶ 772, 804 (May 8, 1997).

¹⁷ See Letter to Chairman Reed E. Hundt, from Jay Kitchen, President of PCIA (Sept. 18, 1997).

representation commensurate with its contribution requirements and broad interests, increase the number of wireless representative seats on the USAC Board.

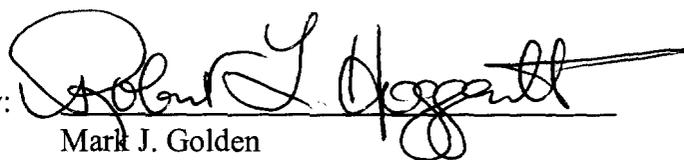
V. CONCLUSION

Consistent with the views expressed above, the Commission should modify its universal service program. Such modifications will result in a program that is equally effective, but more responsive to the needs of business entities in general and the wireless industry in particular.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION**

By:



Mark J. Golden

Robert L. Hoggarth, Esq.

Angela E. Giancarlo, Esq.

PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

500 Montgomery Street, Suite 700

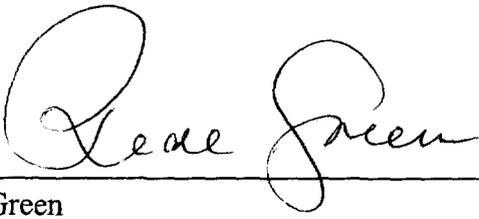
Alexandria, VA 22314-1561

October 2, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 1997, I caused copies of the foregoing
Comments of Personal Communications Industry Association on Petition for Reconsideration to
be mailed via first-class postage prepaid mail to the following:

Leonard J. Kennedy
Laura H. Phillips
Christine H. Burrow
Raymond G. Bender, Jr.
J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW, Suite 800
Washington, DC 20036



Rede Green