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COMMUNICATIONS DIVISION

**BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.**

In the Matter of)
)
Universal Service Report to) CC Docket No. 96-45
Congress) (Report to Congress)
)

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ respectfully submits these comments in the above mentioned proceeding.² The Commission was directed by Congress to report on the implementation of the universal service program. The report must, *inter alia*, discuss the Commission's decisions regarding the revenue base from which support is derived. CTIA and other wireless carriers have asked the Commission to provide further guidance on several issues regarding how wireless carriers accurately identify the underlying revenue base for universal service

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² See "Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996," Public Notice, DA 98-2 (Jan. 5, 1998).

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contribution, noting that errors and inconsistencies in determining the revenue base will put certain carriers at a competitive disadvantage. The Commission has yet to respond to these concerns. Specifically, the wireless industry seeks clarification as to how carriers should separate interstate and intrastate revenues, address resale issues, report roaming revenues, and how bundled offerings and fraud-related uncollectibles should be treated. Absent quick resolution of these issues, the Commission runs the risk of violating the statutory mandate to assess all telecommunications carriers on an "equitable and nondiscriminatory" basis.³

On September 25, 1997, CTIA filed a Petition for Expedited Consideration in the universal service proceeding.⁴ In its Petition, CTIA raises certain CMRS-specific issues that require clarification to ensure that CMRS providers properly calculate their contribution to the universal service funding mechanisms and adequately recover costs of such obligations. The Petition and the underlying pleadings have still not been addressed by the Commission.

The Petition noted that CMRS providers, unlike many other telecommunications providers, have long provided service without respect to State jurisdictional boundaries

³ 47 U.S.C. § 254(b)(4).

⁴ This second Petition was filed after the Commission failed to address wireless carriers' concerns delineated in an earlier Petition for Reconsideration of the Universal Service Order issued on May 8, 1996.

and, hence, are not able to separate interstate and intrastate revenues as required by the Universal Service Order.⁵ Due to this fundamental difference in how CMRS carriers provide service, the universal service rules regarding contribution and cost recovery, as written, are not workable when applied to CMRS providers.⁶ As a result, different carriers making good faith efforts to comply with the universal service rules may reach different results that will affect their level of universal service fund contribution and competitiveness vis-a-vis other carriers.

In addition to the difficulties in determining the jurisdictional nature of its revenues, the wireless industry has identified some specific issues concerning the treatment of certain revenues. Such issues include the

⁵ See AirTouch Communications Inc. Petition for Clarification and Partial Reconsideration at 11 (filed July 17, 1997); CTIA Petition for Reconsideration and Clarification at 13-18 (filed July 17, 1997).

⁶ The industry has given the Commission explicit scenarios for which it requires guidance, to no avail. For example, in an *ex parte* letter filed on August 29, 1997, CTIA asked the Commission how to treat the following types of calls and services that could fall within the interstate classification: (1) service provided in markets that cover multiple states, such as the New York MSA and adjacent RSAs. CMRS providers serving these markets often do not track the originating and terminating points of the calls, so they cannot tell whether the call is interstate or intrastate; (2) service provided from individual cell sites that cover areas in two or more states; and (3) service provided on calls that begin while the customer is in one state and that end while the customer is in another state. Letter from Randall S. Coleman, CTIA, to Jeanine Poltronieri, FCC (Aug. 21, 1997) ("CTIA Letter"). The industry has suggested that the Commission adopt certain "simplifying assumptions" to address these complexities. See CTIA Petition for Reconsideration and Clarification, at 19-20 (July 17, 1997).

characterization of roaming revenues,⁷ whether simplifying assumptions (e.g., allowing CMRS carriers to back out non-telecommunications features and equipment uniformly based on their stand-alone fair market price) can be adopted in order to simplify the treatment of bundled service offerings,⁸ and the manner in which carriers may recover universal service contributions from existing contract customers.⁹ Without clarification on these and other issues,¹⁰ there is a substantial likelihood that wireless carriers might either over-report or under-report their revenues, causing a huge variance among carriers' contributions.¹¹

Recently, with regard to the treatment of revenues from resellers, the Commission has muddied the waters even more.

⁷ See CTIA *ex parte* Letter at 4-5. The industry has sought clarification on whether roaming revenues should be considered interstate in nature and to which system (*i.e.*, the home system versus the visited system) such revenues should be attributed.

⁸ CTIA *ex parte* Letter at 6-7.

⁹ See CTIA Petition for Reconsideration and Clarification at 23-24 (July 27, 1997).

¹⁰ As noted in its Public Notice of October 6, 1997, seven wireless carriers filed petitions for reconsideration of the Universal Service Order. Although some of the issues in these petitions were addressed in the Commission's Fourth Order on Reconsideration, several significant issues still remain unresolved.

¹¹ AirTouch Communications has suggested that CMRS providers, for the time being, be allowed to use the same means to allocate service revenues as those used for the Telecommunications Relay Service ("TRS") program, namely, the use of samples and surrogates. In addition to the articulation of an overall method of allocation, however, the Commission should address the specific scenarios outlined above.

The Commission's resale policies require CMRS providers to make their services available for resale, but do not require resellers to identify themselves or their end user revenues. As a result, CMRS carrier internal billing systems do not identify resellers. In fact, resale customers sometimes use the same customer agreements that are used by other large CMRS customers.¹² The Universal Service Worksheet indicates that facilities-based carriers can exclude resale revenues from their calculations to entities that "can reasonably be expected to contribute to support universal service."¹³ In raising the *de minimus* exemption in its Fourth Order on Reconsideration, however, the Commission specifically stated that resellers that are exempt from contribution requirements (*i.e.*, those that would make a contribution of less than \$10,000 per year) "must be considered end users for universal service contribution purposes. Thus, underlying carriers should include revenues derived from providing telecommunications to entities qualifying for the *de minimus* exemption. . ."¹⁴

Although the Commission notes that "[e]ntities that resell telecommunications and qualify for the *de minimus* exemption must notify the underlying facilities-based

¹² See CTIA *ex parte* Letter at 6; Petition for Reconsideration of Comcast Cellular Communications at 23-24 (July 17, 1997).

¹³ FCC Form 457, Universal Service Worksheet, 12 (revised August 1997).

¹⁴ Fourth Order on Reconsideration at ¶ 298.

carriers from which they purchase telecommunications that they are exempt from contribution requirements," it is unclear to what extent the facilities-based provider is obligated to determine (a) whether a customer is a reseller of telecommunications, and (b) whether a reseller customer meets the *de minimus* exemption.¹⁵ Because of the difficulty of determining whether a specific customer is a reseller, CMRS providers should be permitted to either make a good faith judgment without threat of penalty, or inquire to confirm reseller status for universal service purposes.

CONCLUSION

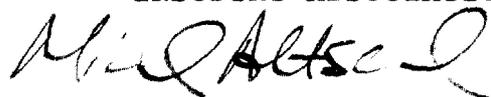
The Commission has worked expeditiously in meeting its tight deadlines on universal service implementation. However, in its haste to get the job done, it should not ignore the many questions that remain unanswered. CTIA urges the Commission to note in its Report to Congress that several issues, including those unique to the wireless industry, must be resolved before the next Universal Service

¹⁵ In addition to the administrative difficulties this requirement creates, the Commission also should be wary of unintentionally affecting larger Commission policies on resale. By requiring the underlying facilities-based carrier to include certain resellers' revenues in its contribution base, the Commission is inadvertently promoting the policy of resale. That is, resellers buy service at a bulk, or wholesale, rate and resell that service at a higher, retail rate to consumers. By imposing a universal service tax on the wholesale price via the facilities-based carrier, the Commission allows the reseller to gain a competitive advantage because it is not forced to pass through what would have been a higher tax on its retail rates.

Worksheet filing is due in order to prevent additional
confusion and inaccuracy.

Respectfully submitted,

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