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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)

Proposed Revision of Maximum)
Collection Amounts for Schools)
and Libraries and Rural Health)
Care Providers)

Public Notice
CC Docket No. 96-45/
DA 98-872

COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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May 22, 1998

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The Cellular Telecommunications Industry Association ("CTIA")¹ submits its Comments in the above-captioned proceeding.²

Discussion

While CTIA has supported the Commission's efforts to meet the statutory requirements of Section 254,³ the present inquiry is premature in light of the related matters still pending before the Commission and imposes unreasonable burdens on CMRS

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, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Common Carrier Bureau Seeks Comment on Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care Universal Service Support Mechanisms, Public Notice, CC Docket No. 96-45, DA 98-872 (released May 13, 1998) ("Notice") (along with its written comments, CTIA is submitting an electronic version via diskette to Sheryl Todd).

³ 47 U.S.C. § 254(h)(1)(B).

providers. CTIA, along with other CMRS providers, has requested further guidance from the Commission regarding the revenue base from which contributions to all universal service programs should be based. The Commission has repeatedly moved forward with its universal service programs without addressing these important issues. CTIA takes issue with the Commission's proposal to raise the contribution levels for the schools and libraries and rural health care support mechanisms before it resolves the pending matters that are of great import to wireless carriers.

On several occasions the wireless industry has requested clarification as to how CMRS carriers should separate their interstate and intrastate revenues.⁴ Specifically, on September 25, 1997, CTIA filed a Petition for Expedited Consideration requesting immediate action to ensure that carriers properly calculate their contributions and are able to adequately recover their payments.⁵ As noted in the Petitions and Comments on the matter, CMRS providers, unlike other carriers operating under traditional jurisdictional models, have long provided service without regard to jurisdictional boundaries.⁶

⁴ Although the universal service programs addressed in the Notice do not, at the moment, require carriers to separate their revenue base into its interstate and intrastate components, it is unreasonable for the Commission to raise the contribution level of any program until these issues are finally resolved.

⁵ Under the Commission's Universal Service Order, carriers are required to separate calls into interstate and intrastate jurisdictions for contribution purposes. Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 12 FCC Rcd. 8776 at ¶ 833 (1997).

⁶ See CTIA Petition for Reconsideration at 12 (filed July 17, 1997); Letter of Randall S. Coleman, Vice President for

The Commission's response to these requests has been to establish ad hoc, generalized principals which are inadequate and have had the effect of distorting prices among competitive carriers. In the Order on Reconsideration, the Commission concluded that carriers such as CMRS providers, which cannot derive jurisdictional separations on their books of account, "may provide on the Worksheet good faith estimates of these figures. . . . [T]he action we take represents an interim solution to a problem that will be addressed more comprehensively in a forthcoming order on reconsideration. . . ." ⁷ This interim solution has been in effect for more than nine months, forcing carriers to make payments into the universal service programs while they await the Commission's action. ⁸

Without Commission guidance, and despite good faith efforts to comply with the Commission's rules, each carrier has

Regulatory Law, CTIA, to Associate Chief, Wireless Telecommunications Bureau (August 21, 1997).

⁷ Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal State Joint Board on Universal Service, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, CC Docket Nos. 97-21, 96-45, 12 FCC Rcd. 12444 at ¶¶ 21-22 (1997) (emphasis added).

⁸ CTIA supports the adoption of a proxy model as a means of establishing a uniform revenue base for intrastate and interstate calculations. This proxy model should be available for use by all CMRS carriers on an interim basis pending final resolution of the separations issue. In the event that a carrier's estimation varies significantly from the thresholds established in the proxy model, carriers should be entitled to submit, or the Commission may request, information necessary to explain the deviation. See Letter of Brian Fontes, Senior Vice President for Policy and Administration, CTIA, to Attorney Advisor, Accounting and Policy Division (May 21, 1997).

interpreted its obligations under the universal service worksheet under different assumptions.⁹ The competitive consequences of the Commission's ambiguity are self-evident; CMRS carriers who over-report (*i.e.* pay more into the fund than required) will be at a competitive disadvantage *vis-à-vis* CMRS carriers who interpret the worksheet in a manner that results in under-reporting. As carriers pass along to consumers their universal service contribution charges, each carrier will be recovering universal service contributions from its customer base at different rates.¹⁰ This distorting effect on marketplace competition is unwarranted and can be easily resolved through decisive Commission action. Until such action, however, the Commission should not undertake efforts to raise CMRS providers' contributions to the universal service program.

The Commission's conclusion that a reduction in access charge contributions will match the increase in funding for the universal service programs disregards the significance the proposed increase will have on those carriers which do not pay access charges.¹¹ Increased contributions by carriers such as

⁹ See CTIA Petition for Expedited Consideration at 4 (filed September 25, 1997).

¹⁰ Effectively, the Commission's policy has permitted each carrier to decide its own universal service contribution rate. If competitive carriers are subject to different cost models for services, it is clear that the charges for such services should be proportionately affected.

¹¹ The Bureau itself acknowledges that almost twenty percent of the contributors to the universal service program do not pay access charges. Notice at 3, n.16. Thus a reduction in access charges will not affect their revenue streams. The vast majority of those carriers which would not be affected by reduced access charges are competitive carriers such as

CMRS providers, which do not reap the benefit of reduced access charges, will likely be recovered from subscribers. Thus, the Commission's policy is directly responsible for increasing consumer prices in the competitive CMRS market, which is otherwise characterized by declining prices. The Commission's policy not only increases the cost of wireless service and threatens to reverse the decline in prices which has stimulated the growth and acceptance of services, but also causes consumers of such services to unfairly bear the burdens of the increase in funding universal service. Stated differently, the current proposal singles out CMRS subscribers who will be one of the few classes of users to realize an increase in their universal service fees while also stifling price competition among wireless carriers and between other service providers.

Conclusion

The Commission's proposal to increase carrier contributions to the schools and libraries and rural health care support mechanisms once again ignores the impact that such universal service policies are having on CMRS providers. While CTIA appreciates the need to adequately fund these programs consistent with Congress' mandate in Section 254, the Commission should also take steps to resolve the pending matters which are impacting the competitive operation of the CMRS market. Moreover, the notion

CMRS providers and CLECs. Adoption of a funding mechanism which requires competitive carriers to disproportionately shoulder the burdens of universal service would be contrary to the Commission's policies which seek to foster technology neutral regulatory regimes and increased competition.

that any increase in contribution levels will be offset (and transparent to consumers) because of a reduction in access charges disregards the fact that CMRS carriers and their subscribers do not pay access charges in the first place. Until these pending matters are resolved, it is unreasonable for the Commission to request greater contributions from CMRS providers.

Respectfully submitted,

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May 22, 1998

CERTIFICATE OF SERVICE

I, Rosalyn Bethke, hereby certify that, on 22 May 1998, copies of the foregoing "Comments of The Cellular Telecommunications Industry Association" were served by hand delivery upon the following:

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