

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
FCC Public Notice, Division Announces Release) CC Docket Nos. 97-21, 96-45
of Revised Universal Service Worksheet, FCC)
Form 457)

**THE PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION PETITION FOR RECONSIDERATION**

The Personal Communications Industry Association ("PCIA")¹ hereby petitions for prompt reconsideration of the decision to add a new Line 48 to FCC Form 457. New Line 48 amounts to an unfair double recovery that is inconsistent with Section 254 of the Communications Act of 1934, as amended.² The new scheme contemplated by the *Public Notice* requires contributors to "report the revenues derived from charges assessed on end-users to recover contributions to state or federal universal service support mechanisms."³ These revenues in turn are included in the universal service contribution base used to calculate the universal

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 Messaging 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 47 U.S.C. § 254.

³ FCC Public Notice, *Division Announces Release of Revised Universal Service Worksheet, FCC Form 457, CC Docket Nos. 97-21, 96-45, DA 98-1519, at 2 (July 31, 1998) ("Notice")*.

service contribution obligations of reporting parties.⁴ As discussed below, universal service contributions should not be calculated based on the amounts collected by contributors to meet their funding obligations.

PCIA is concerned that this action was released without opportunity for public comment and without resolution of a pending Petition for Reconsideration and Clarification⁵ filed by PCIA last year. Given the significant long term impact of the Commission's determination to add Line 48, a prompt resolution of this request is necessary. PCIA seeks action by the appropriate level of Commission staff, and believes that a prompt action by the Accounting Policy Division is the appropriate and efficient method of resolving the matter pending further action by the Joint Board and the Commission.

Over twelve months ago, PCIA requested Commission clarification "that those carriers that choose to pass through part or all of their universal service contributions to customers should not include the contribution amounts in the assessment base from which their contribution obligations are calculated."⁶ As described in the *PCIA Petition*, including such contribution amounts in the base is akin to a double recovery. Viewed in another way, the Commission's action effectively and significantly increases the quarterly contribution factors adopted by the Commission.

⁴ See *id.*, *Instructions for Completing the Universal Service Worksheet, FCC Form 457* at 16.

⁵ Personal Communications Industry Association Petition for Partial Reconsideration and Clarification, CC Dkt. No. 96-45 (filed July 17, 1997) ("*PCIA Petition*"). See also Reply of the Personal Communications Industry Association on Petitions for Reconsideration, CC Dkt. No. 96-45 (filed Sept. 3, 1997).

⁶ *PCIA Petition* at 9.

An example illustrates the problem. Assume a carrier receives \$100 in revenues from an end user during the particular reporting period. If the contribution factor for that same period is 10 percent, the carrier's contribution would be \$10. If the carrier concurrently collects its contribution directly from the customer,⁷ the carrier in fact will be deemed to have \$110 in revenues. As a result, the carrier in fact will owe in \$11 in universal service contributions. Accordingly, the amount to be collected from the customer would be increased. That increase in turn would lead to a further increase in the amount to be collected from the carrier — and the spiral would continue.

As discussed in the *PCIA Petition*,⁸ this manner of collecting universal service funds results in a double counting that is inconsistent with Section 254, as well as the Commission's *Report and Order* in this docket.⁹ Moreover, including amounts collected from end users to meet a carrier's universal service funding obligation in its contribution base results in an increase in the effective rate adopted by the Commission. In the example above, although the contribution factor is nominally 10 percent, the Commission's current approach of including universal service collections from subscribers in the contribution base would lead to a factor in excess of 11 percent.

The Commission has recently referred to the Joint Board a number of issues, including an examination of "[t]o what extent, and in what manner, is it reasonable for providers to recover

⁷ PCIA's concern applies whether carriers collect their universal service funding obligations by means of a surcharge or through an increase in service rates.

⁸ *PCIA Petition* at 9-11.

⁹ *Federal-State Joint Board on Universal Service*, FCC 97-157 (May 8, 1997) (Report and Order), *Errata*, (June 4, 1997).

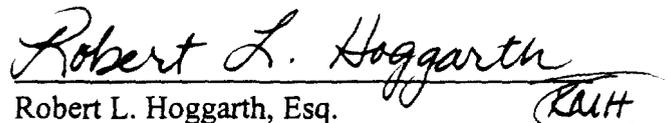
universal service contributions through rates, surcharges, or other means."¹⁰ It is not clear whether the Commission intends for the Joint Board to evaluate whether amounts collected to cover universal service obligations should be included in the contribution base. The Commission has requested the Joint Board to issue its recommended decision on the referred issues by November 23, 1998;¹¹ to date, the Joint Board has not sought comment on the surcharge issue.

For the reasons discussed above, including the new line 48 in the Form 457 is, for the reasons discussed above, inconsistent with the statutory universal service plan, the related policies adopted by the Commission, administrative law, and the public interest. The Commission should promptly act on PCIA's pending request for clarification or reconsideration, and should delete the new line 48 from Form 457.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION**

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¹⁰ *Federal-State Joint Board on Universal Service*, FCC 98-160, ¶ 6 (July 17, 1998) (Order and Order on Reconsideration).

¹¹ *Id.*, ¶ 4.