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

In the Matter of )  
 )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )

COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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**COMMENTS OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association (“PCIA”)<sup>1</sup> hereby submits these comments in response to the Memorandum Opinion and Order (“*Order*”) and Further Notice of Proposed Rulemaking (“*Further Notice*”) adopted by the Commission on October 22, 1998 in the above-captioned proceeding.<sup>2</sup> The *Order* established interim “safe harbor” percentages designed to assist wireless telecommunications providers in reporting interstate wireless telecommunications revenues for purposes of completing the FCC’s universal service worksheet, FCC Form 457. The *Further Notice* solicits commenters’ views on a number of issues related to

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<sup>1</sup> PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA’s Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 MHz 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 FCC licensees.

<sup>2</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 98-278 (rel. Oct. 26, 1998) (Memorandum Opinion and Order and Further Notice of Proposed Rulemaking) (“*Safe Harbor Order and Further Notice*”).

the formulation of final (*i.e.*, non-interim) procedures for wireless providers to use to allocate end-user revenues between intrastate and interstate jurisdictions.

## I. SUMMARY

PCIA's comments address several issues raised in the *Further Notice*. In particular, as discussed in detail below:

- ◆ PCIA supports the adoption of final, non-interim rules establishing optional safe harbor percentages for purposes of reporting wireless interstate allocations in connection with universal service reporting requirements. Commission pronouncement of optional safe harbor percentages may serve an important purpose by reducing the amount of uncertainty wireless carriers, particularly small and medium-sized wireless businesses, face in attempting to gauge their universal service payment obligations.
- ◆ To avoid further confusion and reporting discrepancies, PCIA suggests that the optional safe harbor percentages be as simple and easy to apply as possible. The Commission should not establish sub-category percentages based on the geographic area in question or use an MTA-by-MTA approach for MTA-based licensees.
- ◆ In PCIA's view, it is critical that any safe harbor percentages adopted by the Commission be truly optional. Carriers that (1) have determined and can demonstrate interstate allocations that are significantly different from the safe harbor percentages; or (2) are readily able to allocate their interstate and intrastate end-user telecommunications revenues on the basis of their own books, should be permitted to report interstate revenue percentages outside the safe harbor, provided that appropriate documentation is available on request to the Commission or the Administrator of the Universal Service Fund.
- ◆ PCIA urges the Commission to exercise caution, in this proceeding and elsewhere, to ensure that its policies do not inadvertently deter carriers from establishing that the interstate traffic they generate falls outside the safe harbor percentage.
- ◆ In view of the confusion surrounding proper completion of the universal service worksheets filed to date, PCIA asks the Commission to recognize the good faith efforts of wireless carriers in preparing these forms. Good faith errors or omissions should not be subject to harsh enforcement action.
- ◆ Finally, PCIA urges the Commission to use the structure adopted in the *Telephone Number Portability* context for purposes of deciding the safe harbor percentages available to various SMR operators. The approach set forth in the *Telephone Number Portability* proceeding accurately distinguishes between those SMR systems that

compete with offerings provided by cellular and PCS licensees and those SMR systems that do not.

PCIA respectfully submits that, by formulating its policies in a manner consistent with these recommendations, the Commission will provide sufficient and accurate guidance to the majority of wireless carriers, while having sufficiently flexible policies to recognize that the use of safe harbor percentages may not be appropriate for all wireless telecommunications providers.

## II. BACKGROUND

As discussed in the *Order*, the Commission's universal service worksheet requires contributors to list their revenues by service category and, within those categories, to enter the percentage of interstate and international revenues.<sup>3</sup> In response to this latter requirement, several wireless providers sought clarification on how to identify their revenues as interstate or intrastate, given that most commercial mobile radio service ("CMRS") calls function without regard to state boundaries.<sup>4</sup> The *Order* seeks to provide interim guidance on this point by establishing "safe harbor" percentages that the Commission believes reasonably approximate the percentages of interstate wireless telecommunications revenues generated by several categories of wireless telecommunications providers.<sup>5</sup>

According to the Commission, wireless providers that avail themselves of the interim safe harbor percentages may assume that the FCC will not review or question the data underlying their reported percentages.<sup>6</sup> If a provider elects to report a percentage of interstate

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<sup>3</sup> *Id.*, ¶ 6.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*, ¶ 11.

<sup>6</sup> *Id.*

telecommunications revenues that is less than the applicable safe harbor percentage, the *Order* directs that provider to document the methodology used and make the underlying information available to the FCC or USF Administrator on request.<sup>7</sup> The interim safe harbor percentage established for cellular, broadband PCS, and digital SMR providers is 15 percent of their total cellular, broadband PCS, or digital SMR revenues.<sup>8</sup> The interim safe harbor percentage established for paging providers is 12 percent of their total paging revenues.<sup>9</sup> The interim safe harbor percentage established for analog SMR providers is one percent of their total revenues derived from the provision of analog SMR service.<sup>10</sup>

In respects relevant here, the *Further Notice* portion of the proceeding seeks comment on a variety of issues concerning the formulation of final rules governing universal service contributors' allocation of revenues between intrastate and interstate jurisdictions. The Commission tentatively concludes that it should provide specific guidance to assist contributors in identifying interstate revenues rather than relying on good faith estimates.<sup>11</sup> The Commission also tentatively concludes that it should establish a fixed percentage of end-user wireless telecommunications revenues to be reported by wireless telecommunications providers on the universal service worksheet.<sup>12</sup> In this connection, the Commission tentatively determines that it should establish different percentages based on the type of provider, as was done in the interim

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, ¶ 13.

<sup>9</sup> *Id.*, ¶ 14.

<sup>10</sup> *Id.*, ¶ 15.

<sup>11</sup> *Id.*, ¶ 17.

<sup>12</sup> *Id.*, ¶ 18.

guidelines, and seeks comment on the appropriate percentages to be specified, on a permanent basis, for each category.<sup>13</sup> PCIA offers the following comments on these issues.

**III. PCIA SUPPORTS THE AVAILABILITY OF OPTIONAL SAFE HARBOR PERCENTAGES FOR PURPOSES OF REPORTING WIRELESS INTERSTATE ALLOCATIONS IN CONNECTION WITH UNIVERSAL SERVICE REPORTING REQUIREMENTS**

PCIA supports the adoption of optional safe harbor percentages so that wireless telecommunications providers may more easily report interstate end-user revenues on universal service worksheets. It is important to note at the outset, however, that PCIA's support of the Commission's interim safe harbor percentages is an accommodation for administrative ease and in no way suggests PCIA believes that these numbers reflect actual or factual percentages of interstate versus intrastate telecommunications traffic. As observed in the *Further Notice*, several benefits flow from the ability to choose specific, FCC-pronounced, safe harbor percentages.<sup>14</sup>

For example, adoption of such guidelines offers those carriers that wish to avail themselves of the pre-established percentages some certainty with respect to the likely amount of their universal service contributions. The ability to use a percentage defined by the Commission as acceptable and consistent with FCC rule requirements is especially critical for small and medium-sized wireless businesses that have limited resources and benefit from FCC guidance concerning their quarterly universal service contributions. Accordingly, PCIA urges the Commission to establish optional safe harbor percentages and to allow wireless

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<sup>13</sup> *Id.*, ¶ 19.

<sup>14</sup> *See id.*, ¶ 17.

telecommunications providers to use those percentages in reporting interstate revenues in a manner similar to the approach developed for interim use.

As a related matter, PCIA notes that, in the *Further Notice*, the Commission solicits comment on “whether it would be competitively neutral, equitable, and economically efficient to require wireless telecommunications providers to contribute to the universal service support mechanisms on the basis of a flat fee per voice grade access line or voice grade equivalent, rather than as a percentage of their revenues.”<sup>15</sup> PCIA strongly urges the Commission to refrain from replacing the existing contribution methodology with a mechanism based on a flat fee per voice grade access line or voice grade equivalent at this time. Without knowing the specifics of any proposal to this effect, it is impossible to assess its impact on wireless carriers. If, however, the underlying goal of such a change is the facilitation of administratively simple revenue reporting, PCIA believes that, for present purposes, the availability of optional safe harbor percentages appropriately accomplishes this objective.

#### **IV. THE OPTIONAL SAFE HARBOR PERCENTAGES SHOULD BE SIMPLE AND EASY TO APPLY**

The *Further Notice* asks whether the Commission should establish different percentages within each category of provider rather than establishing a single percentage for each category of provider. Under this approach, the Commission would establish various percentages within each category of provider in an effort to take into account the fact that wireless operators providing service in smaller states may experience more interstate traffic than carriers providing service in areas composed primarily of large states.<sup>16</sup> Relatedly, the *Further Notice* seeks comment on

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<sup>15</sup> See *id.*, ¶ 26.

<sup>16</sup> *Id.*, ¶ 24.

Comcast's recommendation that the level of interstate telecommunications revenues reported by wireless operators whose license territories are established on the basis of Major Trading Areas ("MTAs") be determined on an MTA-by-MTA basis.<sup>17</sup>

Although these proposals may offer certain benefits to particular carriers, PCIA urges the Commission to keep the safe harbor percentages as straight-forward and easy to apply as possible. Establishment of sub-categories based on the area of the country served or an MTA-by-MTA approach will not, in PCIA's view, necessarily result in greater accuracy and in all likelihood, will create more confusion. A better approach is to make the safe harbor truly optional and to allow carriers sufficient latitude in the use of independent studies or other mechanisms to demonstrate interstate revenue percentages that fall outside the safe harbor figure.

For identical reasons, the Commission should not mandate the use of traffic studies to determine the percentage of interstate telecommunications revenues.<sup>18</sup> Traffic studies are complicated and costly and will defeat the purpose of the safe harbor. If, however, a particular carrier wishes to implement an independent traffic study to demonstrate its interstate telecommunications revenues outside the safe harbor, it should have the option of doing so.

**V. WIRELESS CARRIERS MUST HAVE A REASONABLE OPPORTUNITY TO PREPARE THEIR OWN STUDIES AND, THEREFORE, SAFE HARBOR PERCENTAGES MUST BE OPTIONAL**

In the *Further Notice*, the Commission asks whether wireless telecommunications providers should have the option of using a Commission-established percentage of interstate wireless telecommunications revenues or using their own data collection procedures to

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, ¶ 23.

demonstrate the percentage of revenues derived from interstate calls.<sup>19</sup> In this connection, the Commission observes that, “[a]llowing carriers to choose between these two options, rather than requiring all wireless providers to use the Commission-established percentage, may be preferable for wireless providers that are able, without substantial difficulty, to distinguish their interstate revenues.”<sup>20</sup>

In PCIA’s view, it is essential that any safe harbor percentages established by the Commission be truly optional. It is likely that a number of wireless telecommunications providers will have interstate allocations that differ significantly from the safe harbor percentages. For example, in some areas of the country, an exceedingly small percentage of a wireless provider’s revenues may be interstate. A wireless provider that can readily allocate its interstate and intrastate end-user telecommunications revenues on the basis of its own books or other legitimate means should be permitted to report interstate revenue percentages outside the safe harbor. In addition, carriers must be given sufficient flexibility to design and/or purchase specific software or other similar tracking systems that fit their particular corporate model. Thus, it is critical that the Commission avoid imposition of rigid requirements governing the types of studies or other data to be used by those wireless providers that opt not to use the safe harbor guidelines, provided that such telecommunications providers agree to make the appropriate documentation available to the Commission or the Administrator of the Universal Service Fund upon request.

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<sup>19</sup> *Id.*, ¶ 25.

<sup>20</sup> *Id.*

For similar reasons, PCIA opposes explicit adoption of the “simplifying assumptions” discussed in the *Further Notice*.<sup>21</sup> An individual carrier clearly should have the flexibility to pursue any reasonable mechanism it may choose, including any of the “simplifying assumptions” discussed in the *Further Notice*, to demonstrate that its interstate telecommunications revenues fall outside the safe harbor percentage. PCIA does not believe, however, that it is necessary or appropriate at this time for the Commission to delineate simplifying assumptions to be applied to particular sets of wireless service providers.

Relatedly, PCIA urges the Commission not to mandate the use of independent studies or other methodologies. To do so would become costly and complicated and would effectively deter wireless telecommunications providers from pursuing an independent option. In this same vein, PCIA does not believe it is necessary to require wireless providers seeking to report interstate telecommunications percentages outside the safe harbor figure to obtain a waiver.<sup>22</sup> Imposition of a waiver requirement will deter wireless operators from selecting this option because of the associated costs as well as the burdensome nature of the waiver process. Moreover, such a requirement is wholly unnecessary if wireless providers are required to make documentation supporting their reported revenue allocation available for examination by the Commission and the Universal Service Fund Administrator. In short, adoption of a waiver requirement would burden licensees, the Commission staff, and the Fund Administrator for no identifiable purpose and without producing any concomitant benefit.

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<sup>21</sup> See *id.*, ¶¶ 27-39.

<sup>22</sup> See *id.*

**VI. THE COMMISSION SHOULD GIVE WIRELESS CARRIERS AN OPPORTUNITY TO CORRECT ANY ERRORS OR OMISSIONS FOUND ON UNIVERSAL SERVICE WORKSHEETS FILED PRIOR TO ESTABLISHMENT OF THE INTERIM SAFE HARBOR PERCENTAGES**

The *Further Notice* expressly acknowledges that wireless providers have faced extreme difficulty in attempting to identify their revenues as intrastate or interstate.<sup>23</sup> Until establishment of the interim safe harbor percentages, wireless carriers had no formal guidance in apportioning their revenues. In light of the confusion surrounding these issues, PCIA urges the Commission to look leniently on errors made by wireless carriers on universal service worksheets filed prior to the adoption of the interim safe harbor percentages. Wireless operators that have attempted to devise good faith estimates but that are found, for one reason or another, to have miscalculated their interstate telecommunications revenues should not be subject to harsh enforcement actions but instead should be given an opportunity to correct such problems.

**VII. THE SAFE HARBOR PERCENTAGES APPLICABLE TO DIFFERENT TYPES OF SMR PROVIDERS SHOULD FOLLOW THE STRUCTURE ESTABLISHED IN THE *TELEPHONE NUMBER PORTABILITY* PROCEEDING**

PCIA agrees with the Commission's intent to separate the SMR operations of companies such as Nextel and Southern Company from traditional SMR operation for purposes of establishing a safe harbor percentage. There is a valid reason for this separation. Virtually all PCIA member SMR operators utilize interconnected service as an "add-on" to the primarily dispatch service offering. Such operators simply do not have sufficient capacity to offer competitive interconnect service. Interconnect calls on traditional analog systems are typically not duplex in nature, in that both parties cannot talk simultaneously as with a traditional landline

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<sup>23</sup> *Id.*, ¶ 6.

telephone or cellular unit. Instead, the interconnected radio usually operates in half-duplex mode. Although there are some full duplex interconnect radios in operation, full duplex operations simply consume too much capacity on a traditional dispatch-oriented SMR system.

PCIA is, however, concerned with the Commission's simplistic distinction between Nextel and Southern Company's operations and those of traditional SMR dispatch systems. At first blush, referring to one operation as "digital" and one as "analog" would seem appropriate. However, as traditional SMR operators replace old equipment, newer equipment typically has some component that is digital in nature. For example, new equipment for traditional SMR operation may have digital signal processing ("DSP"). However, DSP equipment does not add capacity or make the system a substitute for a mobile telephone system.

In addition, PCIA understands that there are digital transmission technologies for small SMR systems that will become available in the near future, such as Dynamic Channel Multicarrier Architecture ("DCMA"). However, while DCMA is a digital transmission technology, and could potentially be used by a company with sufficient capacity to compete in the mobile telephone business, the fact is that no SMR operator other than Nextel or Southern Company has sufficient capacity (even with a digital signaling protocol) to compete with cellular and PCS.

PCIA urges the Commission not to impose impediments or disincentives to SMR operators contemplating the upgrade of their systems to advanced architecture. To help prevent such a result, PCIA suggests that the Commission adopt a structure similar to that used in the *Telephone Number Portability* proceeding, wherein the Commission stated that:

[T]he best indicator of an SMR provider's ability to compete with wireless and wireline providers in the two-way, real-time voice market is whether the provider's system has in-network switching capability. This switching capability would allow an SMR provider to hand-off calls seamlessly as subscribers move between sites in the service area, and

would allow the provider to "reuse" the same frequency in different portions of the service area, as cellular and PCS systems do. Thus, the provider would be able to compete in the market for two-way, real-time voice services, while carriers who lack switching capability would not be competitive in this market.<sup>24</sup>

On this basis, the Commission concluded in the *Telephone Number Portability* proceeding that only those SMR systems that hold geographic area licenses or are incumbent SMR wide-area licensees and "offer real-time, two-way switched voice service that are interconnected with the public switched network, and utilize an in-network switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls" are included in the definition of "covered CMRS providers" obligated to provide number portability.<sup>25</sup> This same straightforward and well-established test should be used in determining the optional safe harbor percentages available to various SMR providers for purposes of reporting wireless interstate allocations in connection with universal service reporting requirements.

### VIII. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to adopt final rules establishing optional safe harbor percentages to be available for use by wireless carriers in reporting interstate telecommunications revenues on the universal service worksheet. Commission pronouncement of safe harbor percentages serves a number of important purposes and will likely reduce the uncertainty faced by wireless providers in attempting to estimate these figures. It is essential, however, that use of the safe harbor percentages be truly optional. A wireless carrier must be able to maintain the option of either choosing the Commission-recommended guideline or

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<sup>24</sup> *Telephone Number Portability*, CC Docket No. 95-116, RM 8535, FCC 98-275, ¶ 52 (Second Memorandum Opinion and Order on Reconsideration) (rel. Oct. 20, 1998).

<sup>25</sup> *Id.* at ¶ 55; see also 47 C.F.R. § 52.21(c).

utilizing its own independent mechanism for reporting interstate revenues, provided that it agrees to make the relevant documentation available to the Commission and the Administrator of the Universal Service Fund on request.

In addition, for purposes of determining the safe harbor percentages available to various SMR systems, PCIA urges the Commission to use an approach to distinguish SMR systems similar to that formulated in the *Telephone Number Portability* context. This approach accurately separates those SMR systems that are capable of competing with cellular and broadband PCS systems from those that are not, and does so in a manner that will neither chill technical innovation by nor impose a discriminatory universal service factor on traditional dispatch SMR operators.

Respectfully submitted,

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