

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Review –)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
Of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	CC Docket No. 92-237
Numbering Plan and North American)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket No. 98-170
)	
To: The Commission, <i>en banc</i>		

COMMENTS OF
AMERICAN ASSOCIATION OF PAGING CARRIERS
ON FURTHER NOTICE OF PROPOSED RULEMAKING

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SUMMARY OF AAPC's POSITION

Converting USF assessments for paging carriers to a flat, per pager charge would be a desirable modification of the USF contribution structure, if implemented appropriately. However, in AAPC's view, the proposed charge of \$0.25 per pager per month is grossly excessive and unjustified, and inconsistent with statutory requirements. This is so because, depending upon the basis used, it constitutes between a 350% and a 5,000% percent increase in contributions for an industry whose subscriber base has remained relatively stable since the current contribution system was established in 1997, and which is not part of the "technology substitution" identified by the Commission for other components of the wireless carrier industry. The increase also is disproportionately larger than the increase proposed for industry sectors said to be stimulating the technology substitution.

Accordingly, should the Commission decide to convert to a per pager charge, it should adopt a fee not exceeding \$0.005 per month for traditional one-way pagers, and a fee not exceeding \$0.20 per month for advanced messaging units with delivery confirmation or response capabilities. Additionally, the Commission should maintain the current \$10,000 per annum *de minimis* exemption from contributions; and, if it adopts a monthly per unit fee, it should experiment with a monthly billing system for paging carriers.

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AMERICAN ASSOCIATION OF PAGING CARRIERS
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AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its comments in the captioned proceedings to the Federal Communications Commission, in response to the Commission’s Further Notice of Proposed Rulemaking and Re-

port and Order (FNPR), FCC 02-43, adopted February 14, 2002 and released February 26, 2002, and published at 67 Fed. Reg. 11268 (March 13, 2002). As its comments in response to the FNPR, AAPC respectfully states:

Background

In this consolidated proceeding, the Commission seeks comments on various proposed changes to the manner in which it assesses carrier contributions to the Universal Service Fund (USF), including contributions by paging carriers, and the manner by which carriers may recover those costs from subscribers. Of particular interest to AAPC, the Commission proposes to replace the current system of assessing contributions by paging carriers based upon the amount of end user interstate revenues derived from paging services. The Commission proposes instead to establish a flat charge of \$0.25 per pager per month initially, which carriers may, but are not required to, pass through to their subscribers. The Commission also inquires whether the current *de minimis* exemption for contributions of less than \$10,000 per annum should be maintained.

AAPC is a newly organized national trade association representing the interests of paging carriers throughout the United States. AAPC's web site address is www.pagingcarriers.org. It is currently conducting its initial membership drive and will formally inaugurate operation at the Southeastern Communications Association Wireless Forum 2002 in Myrtle Beach, South Carolina, May 29-31, 2002. However, the proposed modification to the USF contributions by paging carriers obviously has a direct and substantial impact on AAPC's constituency; and AAPC thus deems it important to submit its comments in the proceeding notwithstanding that it is still in the initial organizational phase of operation.

Summary of Position

AAPC's position, in summary, is that converting assessments to a flat, per pager charge could be a useful and desirable modification of the USF contribution structure. Nonetheless,

AAPC respectfully submits that the proposed charge of \$0.25 per month is grossly excessive and unjustified, and inconsistent with statutory requirements. Accordingly, should the Commission decide to convert to a per pager charge, the Commission should adopt a charge for traditional one-way pagers not exceeding \$0.005 per unit, per month, and should establish a separate charge of approximately \$0.20 per unit, per month for advanced messaging units, *i.e.*, units providing message delivery confirmation or response capability. The Commission also should maintain the current \$10,000 per annum *de minimis* exemption from contributions; and, if it adopts a monthly per unit fee, it should experiment with a monthly billing system for paging carriers.

Comments on Proposals

At the outset, it may be useful to emphasize that the Commission is required by the Communications Act to establish carrier contributions to USF on an “equitable and nondiscriminatory basis”. 47 U.S.C. §254(d). The Commission has determined that this requires the contribution structure, *inter alia*, to be established on a “competitively neutral” basis.¹ Moreover, as determined by the United States Court of Appeals, the Commission is forbidden by Section 254 from including intrastate revenues in the calculation of universal service contributions.²

In this regard, determining the “interstate” revenues of a paging carrier for purposes of calculating USF contributions is particularly difficult. Under the Communications Act, a page is an interstate communication if, at the time a page is transmitted, the calling party who originates the page is located in a different state than the person who receives the page. *See* 47 U.S.C. §153(22) (definition of “interstate”). This may occur because the calling party places an inter-

¹ *See Federal-State Joint Board on Universal Service (Report and Order)*, 12 FCC Rcd 8776, 9206-9209 (FCC 1997), *aff’d in part, rev’d in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), cert. den. 2000 WL 684656 (S. Ct. May 30, 2000) (hereinafter the *Universal Service Order*).

² *Texas Office of Public Utility Counsel v. FCC, supra*, 183 F.3d at 446-448.

state call to a local paging system (*i.e.*, a paging system that provides radio signal coverage only within a single state); or it may occur because the signal coverage of an integrated paging system crosses one or more state lines, and the person receiving a page happens to be in a different state than the calling party placing that particular page. Under Section 254, only revenues realized by paging carriers from either of those limited classes of communications are properly subject to USF contributions.

By contrast, if the calling party and the receiving party are located in the *same* state when a page is transmitted, the page is an intrastate communication,³ and revenues from such communications may not properly be considered for purposes of computing USF contributions.

Charges for paging service typically are assessed as flat, monthly recurring charges, sometimes with overcall charges if usage exceeds a stated limit, without any distinction based upon whether particular communications are jurisdictionally interstate or intrastate in character. Thus, in order to make a fair allocation of otherwise undifferentiated monthly paging service revenues between the interstate and intrastate jurisdictions for USF contribution purposes, paging carriers heretofore have employed some method of estimating the proportion of actual paging communication traffic over their systems that is jurisdictionally interstate.

As the Commission has previously acknowledged, at least implicitly, such an estimate simply is not possible with any precision based upon traffic records typically maintained by a paging company.⁴ Accordingly, the Commission in 1998 established an interim, optional “safe

³ *See id.* This is so even if the call is routed to an out-of-state terminal before its transmission, or even if, as happens with satellite control facilities, the paging transmission itself is routed out of state prior to reaching the base station transmitter that completes the communication to the paging receiver. *Id.*

⁴ With the interconnection arrangements currently utilized by the industry, paging carriers are provided calling party information only for units that are assigned toll-free numbers such as 1-800-NXX-XXXX. However, customers with such numbers are likely to have a higher percentage of interstate communications than the “typical” paging customer. Even so, the available data from such arrangements suggests that only approximately *one percent* of the toll-free paging calls originate on an interstate basis. *See Advanced Paging, Inc., et al., Joint Comments in Re-*

harbor” of 12% for use by paging carriers in allocating their revenues between the interstate and intrastate jurisdiction.⁵ Nonetheless, comments filed in response to the interim “safe harbor” pointed out that it is appropriate, if at all, only for the handful of public, nationwide paging companies and not for the local and regional companies comprising the majority of the paging industry participants.⁶ For the local and regional paging companies, a “safe harbor” of one percent should be established, the same benchmark established for analog SMRS licensees.⁷

Against this background, the Commission now proposes to establish a USF contribution for paging carriers of \$0.25 per pager per month, in lieu of a contribution of 6.808% (currently) of interstate revenues. As the Commission itself acknowledges, the current contribution level using the interim “safe harbor” allocation of 12% for interstate revenues translates into a contribution of approximately \$0.07 per pager per month.⁸ On the other hand, a more realistic allocation of 1% appropriate for non-nationwide paging companies translates into a contribution of approximately \$0.005 per pager per month.⁹ Thus, depending upon the frame of reference em-

sponse to Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at pp. 3-4 (January 11, 1999) (the “Joint Comments”).

⁵ *Federal-State Joint Board on Universal Service (Memorandum Opinion and Order and Further Notice of Proposed Rulemaking)*, 13 FCC Rcd 21252, 21258-59 (FCC 1998).

⁶ Joint Comments, *supra*. Indeed, AAPC respectfully submits that the original flaws in the Commission’s analysis identified in the Joint Comments have magnified in the intervening years. This is so because the proportion of the total paging subscribership represented by the local and regional paging carriers has increased during that time. *See, e.g., Sixth Annual Report on CMRS Competition*, 16 FCC Rcd 13350 (FCC 2001), at Table 6, p. D-8 (In 1997 Arch, Metrocall and Weblink and merged companies served 25.3 million units out of a reported industry total of 43.2 million, or 59%. In 2000, those same companies served 20.4 million out of a reported industry total of 45.3 million, or 45%). Therefore, the 12% “safe harbor” established in 1998 is even less accurate today than it was at the time it was established.

⁷ *Id.*

⁸ FNPR at ¶59 & n. 145.

⁹ Using the Commission-endorsed average paging bill of \$8.00 per month (FNPR at ¶59 & n. 145), which AAPC also believes is reasonable as well for non-nationwide paging companies, times a 1% interstate allocation, times a 6.808% contribution factor, results in a contribution of \$0.005 per pager per month.

ployed, the Commission's proposal amounts to somewhere between a *three and a half-fold* and a *fifty-fold increase* in the USF contribution for paging carriers.

AAPC respectfully submits that *no* increase in contributions by paging carriers can be justified, much less the enormous increase which a contribution of \$0.25 per pager per month would represent. First of all, the FNPR provides no justification whatsoever for the proposed fee of \$0.25 per pager per month, and, as noted previously, the proposal is grossly in excess of current contribution levels. The figure evidently originated in some fashion with the USF Coalition;¹⁰ even so, it remains wholly unexplained and unjustified.

Moreover, none of the factors cited by the Commission as possibly warranting changes in the contribution levels for other lines of communications businesses justifies any change with respect to paging carriers. For example, the Commission asserts generally that "the growth of Commercial Mobile Radio Service (CMRS)¹¹ appears to be causing a significant migration of interstate telecommunications services from wireline to mobile wireless providers" and that "mobile service is becoming a substitute for traditional wireline services such as payphones and second lines to the home,* and there is a small but growing number of customers who have substituted mobile wireless for their primary residential lines." FNPR at ¶11. (*Footnote omitted). The Commission also goes on to assert that "many customers are using their mobile service rather than interexchange service to make long distance calls", and concludes that "[i]n some areas, such 'technology substitution' has begun to erode revenue from interexchange services, which is currently the primary contribution source for universal service funding". *Id.*

¹⁰ See Letter from Patrick H. Merrick, Esq., AT&T, to Magalie Roman Salas, Federal Communications Commission, CC Docket No. 96-45, filed November 14, 2001.

¹¹ The paging services provided by paging carriers are classified as CMRS under the Commission's rules and policies.

None of these considerations has any relevance to paging service. Unlike the dramatic growth experienced in mobile telephony, aggregate paging units in service have remained relatively stable or have declined somewhat since the current USF contribution system was adopted in 1997.¹² Equally important, paging customers cannot use their service to substitute for traditional wireline telephone service. Thus, whatever force “technology substitution” might have in another context, it does not justify any increase in relative contributions to USF by paging carriers.

Similarly, the Commission adverts to “marketplace developments” since 1997 which, in its view, “have blurred the distinctions between interstate/intrastate and telecommunications/non-telecommunications revenues on which the current contribution system is based,” asserting that “carriers increasingly are bundling services together . . . such as by offering flat-rate packages that include both local- and long-distance services.” FNPR at ¶12. Again, this is a phenomenon of mobile telephony, not paging, and whatever force the consideration might otherwise have it does not justify increasing the relative USF contribution by paging carriers.

Given the absence of any plausible justification for an increase in the relative USF contribution by paging carriers, the inference is inescapable that the Commission in fact is proposing to now base the contributions of paging carriers in substantial part on their *intrastate* service revenues. Such an action, of course, is explicitly contrary to the Fifth Circuit’s prior determination that the Act prohibits the inclusion of intrastate revenues in the calculation of universal service contributions.¹³

¹² See, e.g., *Sixth Annual Report on CMRS Competition, supra*, at Table 5, p. D-7 (reporting 45.3 million paging units in service nationally in 2000, 45.8 million in 1999 and 45.1 million in 1998) and *Fifth Annual Report on CMRS Competition*, 15 FCC Rcd 17660 (FCC 2000) at Table 9, p. C-13 (reporting 43.2 million paging units in service nationally in 1997).

¹³ *Texas Office of Public Utility Counsel v. FCC, supra*, 183 F.3d at 446-448.

The proposed fee of \$0.25 per pager per month also is inconsistent with the statutory requirements in other ways, because it plainly is neither “equitable” to paging carriers nor “nondiscriminatory”. Accepting the Commission’s own analysis, for the sake of argument, the “average” contribution by a paging carrier will increase from \$0.07 per pager per month to \$0.25 per pager per month, an increase of 286% for an industry whose subscriber base has remained relatively stable for the past few years, according to the Commission’s own reports.¹⁴ By contrast, the contribution for mobile telephony providers, whose estimated subscribership increased from 55.3 million in December 1997 to 109.5 million in December 2000,¹⁵ would increase from \$0.46 per unit per month to \$1.00 per unit per month, or only 117% percent. It is impossible to understand, and the Commission has not attempted to explain, how it is “equitable” and “nondiscriminatory” to impose nearly a three-times larger increase on an industry whose subscriber base has plateaued since 1997, than on a companion industry experiencing dramatic growth during the same period.

The inequitable treatment of paging carriers can be further illustrated by the fact that the average monthly revenue per unit for mobile telephony is \$45.27, almost five times the \$8.00 average monthly revenue for a paging unit, according the Commission’s analysis.¹⁶ Nonetheless, the contribution for a mobile unit would be slightly more than doubled, while the contribution for the paging unit would be substantially more than *tripled*.¹⁷ Stated somewhat differently, the current average contribution of \$0.46 per month for mobile telephony and \$0.07 per month for pag-

¹⁴ Note 12, *supra*.

¹⁵ *Sixth Annual Report on CMRS Competition, supra*, at Table 1, p. C-2.

¹⁶ Compare FNPR at ¶59 & n. 144 with ¶59 & n. 145.

¹⁷ Actually, the increase is far worse than this analysis (which is based upon data accepted by the Commission) reveals. As pointed out above, the *actual* contribution by local and regional companies is more like \$0.005 per pager per month rather than the \$0.07 per pager per month used by the Commission. Therefore, the actual increase resulting from the proposed fee of \$0.25 per pager per month is far more disproportionate that the above discussion illustrates.

ing constitutes 1.0% of the average monthly mobile bill of \$45.27 and 0.9% of the average monthly paging bill of \$8.00. By contrast, the proposed monthly fee of \$1.00 per mobile unit would constitute 2.2% of the average mobile bill of \$45.27, but the proposed monthly fee of \$0.25 per pager would constitute 3.1% of the average pager bill of \$8.00. Even if the Commission could justify *some* increase in relative contribution by paging carriers (which it cannot), it has not and cannot possibly justify the grossly disparate increase for paging carriers compared to mobile telephony.

In short, the phenomenon of “technology substitution” allegedly justifying a relative increase in USF contributions by wireless carriers in general, is attributable, if at all, solely to mobile telephony and the substantial growth it has experienced since the current contribution system was established in 1997. Nonetheless, without any explanation or justification whatsoever, the Commission seeks to impose a disproportionately *greater* increase on paging carriers, who have *not* significantly grown in the aggregate, than it would impose on the segment of the wireless industry said to be causing the “problem” in the first place. Under no circumstances can such a result be said to pass muster under the statutory injunctions of “equitable” and “nondiscriminatory” treatment of paging carriers.

For similar reasons, the proposed fee plainly fails the Commission’s “competitive neutrality” standard. It is well understood that the messaging services offered through digital mobile telephony platforms are directly competitive with the service offerings by paging carriers.¹⁸ Therefore, imposing a disproportionate increase in contribution on the paging carriers cannot be reconciled with the Commission’s objective of “competitive neutrality”.

Having demonstrated above that the proposed fee of \$0.25 per pager per month is unwarranted, AAPC nonetheless emphasizes that the concept itself of a flat, per unit fee could be a use-

¹⁸ *E.g., Fifth Annual Report on CMRS Competition, supra*, at p. 57 (plateau in paging subscriber base caused “largely by heightened competition from cellular and broadband PCS carriers”).

ful modification of the USF contribution structure, if implemented appropriately. This would require translating *current* contribution levels to corresponding per unit fees, without increasing the relative contribution level for paging carriers; and it would entail establishing appropriate subcategories of fees. More specifically, in this regard, AAPC believes that the Commission should establish one fee for traditional one-way only paging units and a separate fee for advanced messaging units, *i.e.*, units with delivery confirmation or response capability.

AAPC believes that the one-way only unit fee should be established initially at \$0.005 per pager per month. As explained above, that is a more accurate translation of the contribution of existing paging carriers who provide one-way service than the \$0.07 figure used in the Commission's analysis. Moreover, establishing the fee at that level would make it feasible for paging carriers to treat the charge as an undifferentiated cost of doing business, if they chose to do, rather than adding a line item charge to their subscribers' bills.

On the other hand, AAPC believes that the fee for advanced messaging units should be established initially at \$0.20 per unit per month. This is derived by assuming an average monthly charge of \$25.00 for advanced messaging service, multiplied by the interim "safe harbor" of 12% interstate revenue (which is facially reasonable for this type of service offering, compared to traditional one-way paging service), multiplied by the current contribution factor of 6.808% (*i.e.*, $\$25.00 \times 0.12 \times 0.06808 = \0.20). Establishing a separate fee at this level would give due recognition to the fact that advanced messaging really is a separate and independently-valued service from traditional one-way paging service.

In any event, AAPC believes that the existing \$10,000 *de minimis* exemption should be maintained. In AAPC's view, the original rationale for having the exemption is still valid and would not be materially altered by the proposed change to a flat, per unit fee.

Finally, if the Commission adopts a flat, per unit fee, AAPC would support experimenting with a monthly billing system for paging carriers, in which the paging carrier “fills in the blank” with the number of units served in the previous month and remits the appropriate fee to USAC. AAPC is uncertain whether such a system ultimately would be less burdensome to paging carriers than the present system, but AAPC believes that it might prove in actual practice to be the case. Therefore, AAPC would support trying it out to see how it works, with the understanding that modifications could be made in the future if expectations are not realized.

Conclusion

The proposed rules in this proceeding should be modified to incorporate the comments set forth above.

Respectfully submitted,

AMERICAN ASSOCIATION OF
PAGING CARRIERS

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