Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number 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

COMMENTS OF THE CONCERNED PAGING CARRIERS

Harold Mordkofsky
Douglas W. Everette
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW (Suite 300)
Washington, DC 20037
Telephone: (202) 659-0830
Facsimile: (202) 828-5568

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SUMMARY

The Concerned Paging Coalition believes that the Commission should not adopt a connection-based methodology and accordingly should not assess a flat-fee of any amount on the paging industry. The paging industry is characterized by low profit margins, declining subscribership, and bankruptcies. A more than three-fold increase in USF contribution per subscriber will succeed in driving more paging customers away from low-cost communications service and add to the decline of the paging industry.

Second, the CPC believes that the assessment of a flat-fee would violate the Commission's statutory obligations that form the foundation of the universal service system. Unlike the current interstate revenue-based assessment methodology, a flat-fee assessment does not take into account vast per-line revenue disparities among the different types of wireless carriers, and differences in network usage for different types of carriers or services, or even such disparities within one industry. Moreover, a flat-fee involves inappropriate contribution shifting. A flat-fee assessment on the paging industry is inequitable and discriminatory, and therefore appears to specifically violate both the letter and the spirit of both Section 254(b)(4) and Section 254(d) of the Communications Act.

Third, the CPC urges the Commission to retain and lower the interim safe harbor and to also retain the *de minimis* exemption. These contribution factors prevent economic waste and lower administrative costs for the paging industry and for USAC.

Fourth, the Commission should define "connection" to exclude one-way paging and should not require additional reporting requirements.

Finally, the Commission should recognize that the proposed flat-fee assessment would unduly benefit the interexchange industry by inappropriately shifting their contribution burden to the beleaguered paging industry. USF reform should not be at the expense of the paging industry.

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AirCall, Inc., The Beeper People, Inc., Bobier Electronics, Inc., Business Service Center, Inc., Com-Nav Inc., d/b/a RadioTelephone of Maine, Cook Telecom, Inc., Lubbock Radio Paging Service, Inc, Mobile Phone of Texas, Inc., Mobilpage, Inc., Omnicom Paging Plus, LLC, Page-All, LLC, Professional Answering Service, Inc., RCC Inc., d/b/a Radio Comm Co., Redi-

Call Communications Co., Robert F. Ryder d/b/a Radio Paging Service, Salisbury Mobile Telephone, Inc., SEMA-PHOON, Inc, d/b/a R.A Communications, and Starpage, Inc. (collectively, the "Concerned Paging Carriers" or "CPC"), by their attorneys, hereby submit their comments in response to the Commission's *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43 ("*FNPRM*"), released February 26, 2002 in the above captioned proceeding.[1]

I. THE CONCERNED PAGING CARRIERS' INTERESTS

The Concerned Paging Carriers are all Commission licensees in the Paging and Radiotelephone Service, a common carrier radio service, and some of them are also licensed in the private paging service. They meet the definition of "small business" or "very small business" under the Commission's classifications and those of the Small Business Administration.[2] The constituents of the CPC generally provide paging service in small and medium size markets and, for most of them, the reliable service area contours of their licensed radio facilities, i.e., the area where their subscribers typically receive paging service, are confined within a single state. For those carriers, virtually all of the paging messages carried over their radio facilities originate and terminate in the same state. Thus, most of them are basically providers of intrastate telecommunications service.

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[1] The Comment deadline was extended to April 22, 2002, pursuant to Commission *Order* (DA 02-783) (rel. April 8, 2002).

[2] The Regulatory Flexibility Act ("R.F.A.") 5 U.S.C. 601 *et seq.*, and the Small Business Administration define a "small business" in the telecommunications industry as one that has fewer than 1,500 employees and that is not "dominant" in its field of operations. The Commission's spectrum auction rules, 47 C.F.R. §§ 80.1251, 90.1021, 95.816, 90.912, define a "small business" as one having attributable average gross revenues of $15 million or less for the previous three years, and a "very small business" as one having attributable average gross revenues of $3 million or less for the previous three years.

The CPC's subscribers, encompassing a vast array of public safety, business and professional interests, have come to rely on the availability of low-cost, reliable one-way communication service, despite the availability of cellular and broadband PCS in the markets they serve. The constituents of the CPC have survived at a time when the large national paging carriers have experienced serious financial problems from dwindling customer bases which, in some cases, have led to their demise (see below).

The constituents of the CPC are not insulated from the intense competition from cellular and PCS carriers, that began in the mid-1980s, and the recent softening of the demand for telecommunications service generally. Nevertheless, despite dwindling profits and narrower profit margins, they have managed to survive at a time when their larger, more well financed rivals in the paging industry have not been so fortunate. These largely family owned and operated businesses, some multigenerational, have managed to retain some measure of customer loyalty because they have strong roots in the communities they serve and they place a great deal of emphasis on providing good customer-oriented service. However, not the least of the contributing factors to their survival is being able to maintain a sufficient price differential between their paging services and the more feature-rich broadband two-way services, so that their subscribers value being able to receive one-way communication services in a cost-efficient manner.

Nonetheless, the paging industry has experienced declining revenues over a number of years as more of its customers migrate to cellular and PCS. Any increase in the cost of providing paging service, regardless of whether the cost is passed on to the subscriber or absorbed by the carrier, is a matter of great alarm and concern to the CPC. Given the sensitivity in the pricing of paging service, it is clear that once the price differential is sufficiently reduced to the point where

subscribers to paging service no longer benefit from its value, as compared with cellular and PCS, the CPC and other similarly situated paging carriers will not be able to survive the abandonment of their services.

It is in this light that the CPC views the Commission's instant proposal that, if adopted, would mean a potentially disastrous increase in the cost of providing paging service. Each new federally mandated assessment against interstate telecommunications carriers or increase in such assessments, such as here involved, brings the constituents of the CPC to the realization that their survival is at stake if such assessments are not reasonably contained. It is for these reasons that the CPC submits the following comments.

II. INTRODUCTION

In the *FNPRM*, the Commission seeks comment on whether to reform the assessment and recovery of universal service contributions by replacing the existing revenue-based system with a system based on the number and capacity of connections provided to a public network.[3] Specifically, the Commission seeks comment on whether paging carries should be assessed a flat monthly charge of 25 cents per connection, i.e., 25 cents per pager per month. The Commission also asks whether the proposals to retain or modify the current universal service contribution system would promote stability, fairness, and efficiency of the universal service contribution system.[4]

The CPC supports the Commission in its efforts to streamline and reform the current method of assessing contributions to the federal universal service fund and recovering contribution costs from end users. The CPC also believes that it is worthy to seek to expand the

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[3] *FNPRM* paras. 31, 34.

[4] *FNPRM* para. 32.

contribution base to help ensure stability of the universal service fund; and it is not opposed to basing contributions to universal service on interstate revenues. However, the CPC vigorously opposes any adoption of a connection-based methodology (or flat-fee) for paging carriers.

III. THE COMMISSION SHOULD NOT ASSESS PAGING UNIVERSAL SERVICE CONTRIBUTIONS BASED ON A FLAT-FEE

The Commission should not assess paging service providers a flat fee for contributions to universal service. Indeed, the Commission recognizes that the unique characteristics of the paging services may not lend themselves to applicability of a connection-based assessment.[5] Accordingly, the Commission seeks comment on whether a .25-cent per-connection assessment on pagers would be an appropriate amount and what impact such an assessment would have on the marketplace and the paging industry.[6]

A. Declining Paging Industry

The paging industry has dramatically declined with the proliferation of cellular and broadband personal communication services and is now at a critical juncture. Today's paging industry is characterized by low profitability, declining subscriber bases and intense competition from other commercial mobile radio services. As a result, the major national paging companies, including WebLink Wireless Inc., MobileMedia Corp., TSR Wireless L.LC.,[7] and Arch Wireless[8] (which controls about 40% of the U.S. paging market) have fallen into bankruptcy. And just recently, Metrocall, the second largest independent paging company announced that it

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[5] *FNPRM* at 39.

[6] *Id.*

[7] Mike Dano, *Study of Paging History May Show Future Wireless Do's and Don'ts*, RCR Wireless, June 4, 2001, at 6. TSR Wireless has since been liquidated.

planned to file for bankruptcy protection by the end of April, citing the downturn in the paging sector.[9]

As the Commission is aware, based on figures compiled in 2001, between 1998 and 2000, the percentage change in growth of paging/messaging units drastically decreased from 4.4 percent to -1.1 percent and the average monthly revenue per unit decreased as well.[10] We are inclined to believe that both the number of paging/messaging units and the monthly revenue per unit here declined even further in 2001. For the carriers comprising the CPC, the average monthly revenue per unit is closer to $8.00 per unit or less than $20.00. Accordingly, paging companies face a high elasticity of demand and realistically cannot increase their charges to their subscribers, by even 25 cents each per month, without fear of losing more customers. Today, the demand for paging services is very price-sensitive and assessing a flat fee which, is on average more than three times the current universal service assessment would only serve to depress the industry even more. For the CPC, the increase would be even more dramatic since many of its constituents qualify for the *de minimis* exemption.

Moreover, despite the fact that some paging carriers, particularly the large national carriers, have attempted to roll out advanced messaging services such as mobile e-mail, text messaging, and Internet access, today, one-way messaging accounts for almost all of a paging

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8 Ricardo Roberts, *Arch Could Audaciously Be Seeking Deals Sinking Paging Co. Misses Coupon, but Could Still Be Readying Bid for Metrocall,* Mergers and Acquisitions Report, July 23, 2001. Arch acquired PageNet, which had also filed for Chapter 11 bankruptcy.

9 *See Communications Daily*, 22, 73 (April 16, 2002).

10 *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350 at Table 5 (2001).

carrier's revenues.[11] Factors such as high equipment costs, competitive pricing and lending fears prevent many paging carriers from expanding into two-way messaging.[12] Moreover, small and mid-sized paging carriers do not have the economies of scale and scope to enable them to make the costly switch to two-way paging service.

B. Assessment on a Revenue Basis Is Required

The current revenue-based assessment methodology has previously been found to be equitable, non-discriminatory, competitively neutral, and relatively easy to administer.[13] The proposal to assess universal service contributions on a flat-fee basis would violate the Commission's statutory obligations that form the foundation of the universal service system. Specifically, Section 254(b)(4) of the Communications Act requires "all providers of telecommunications services [to] make an equitable and nondiscriminatory contribution" to universal service; and Section 254(d) requires "[e]very telecommunications carrier that provides interstate telecommunications services to contribute, on an equitable and nondiscriminatory basis" to universal service. This means that any recovery mechanism that the Commission adopts must "measure the amount of interstate telecommunications services provided by each carrier,"[14] and not violate the "equitable and nondiscriminatory" tenets of Sections 254(b)(4) and Section 254(d).

Additionally, the Commission's 2000 CMRS Competition Report illustrates that in 1999, mobile telephony providers generated about $41 per month per subscriber while all paging

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[11] For example, one-way messaging appears to account for about 90% of Arch's revenues. See supra note 7.

[12] Even large paging operators have been unable to rapidly expand into two-way messaging.

[13] *Federal-State Joint Board on Universal Service*, Report and Order 12 FCC Rcd 8776, 9206-09 (1997).

[14] *NPRM* at para. 17. *See also*, 47 USC 254(d).

carriers generated only about $8 per month per subscriber.[15] Furthermore, the Commission's 2001 CMRS Competition Report finds that mobile telephony users are tying up the network for longer periods of time and that in 2000, mobile telephone providers generated about $45 per subscriber per month, or a 15% increase over 1999.[16] Accordingly, a flat-fee assessment on the paging industry is inequitable and discriminatory, and therefore appears to specifically violate both the letter and the spirit of both Section 254(b)(4) and Section 254(d). Unlike the current interstate revenue-based assessment methodology, a flat-fee assessment does not take into account vast disparities among the revenues generated per line, and differences in network usage for different types of carriers or services, or even such disparities within one industry.

Moreover, as between the largest and smallest paging companies, a revenue-based system can more accurately approximate both network usage[17] as well as identify the local service nature of the smaller paging carriers. Indeed, the inequity is exacerbated when low-volume and low-income paging customers have to pay a disproportionate universal service contribution.[18] Given the disparities such as these, it would be inequitable to assess universal service fund contributions based on a methodology other than revenues, which more closely approximates network usage and customer utility from use of the network.

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[15] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Fifth Report, 15 FCC Rcd 17660 at 17746 (2000) ("2000 *CMRS Competition Report*").

[16] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350 (2001) ("2001 *CMRS Competition Report*").

[17] Two-way paging uses more network resources than one-way, and accordingly, is priced higher than one-way.

[18] See *FNPRM* para. 49.

The CPC also believes that a per-line assessment would violate sections 254(b)(4) and 254(d) because setting the baseline contribution at 25 cents per unit without a mechanism for adjustment, based on industry revenues and/or actual interstate use, would be arbitrary and capricious. Undoubtedly, the calculation of such revisions would be prohibitively costly.[19]

Furthermore, the CPC notes that the 25 cent per-connection assessment on pagers was initially proposed by the "USF Coalition"[20] It is likely that none of the USF Coalition members considered the unique nature and impact of a per-connection fee on the paging industry, especially for one-way paging companies. Instead, the self-interested interexchange carriers' proposal appears designed to maximize their profits by dramatically reducing their USF contributions while at the same time, dramatically increasing the paging industry's contribution. Specifically, under the fee-based mechanism, the overall mobile wireless provider USF contribution would increase from 14 percent to 24 percent whereas the overall interexchange carrier contribution would decrease from 63 percent to about 56 percent, or lower, depending on how a "connection" is defined. Moreover, whereas the mobile wireless industry would face roughly a two-fold increase[21] (from $0.46 to $1.00 per unit), the proposed per-connection 25-cent flat fee for paging carriers would disproportionately impose more than a <u>three-fold</u> increase[22] (from $0.07 to $0.25 per unit). To make a bad situation even worse, for the average paging carrier comprising the CPC, with average monthly revenues of approximately $8.00 per

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[19] Such revisions would also be an inefficient use of the scarce resources of small and mid-sized paging companies because they would be required to change their accounting practices.

[20] *FNPRM* note 90, a group of self-interested rational wealth maximizers (the e-commerce Telecommunications Users Group, AT&T and WorldCom).

[21] *FNPRM* at para. 59. The Commission staff indicated that mobile wireless providers (excluding paging providers) currently contribute approximately $0.46 per connection. *Id.*

[22] *Id.* The Commission staff indicated that pager providers currently contribute approximately $0.07 per pager.

unit, a monthly amount of 25 cents per unit would amount to a rate increase of at least 3.125 percent without any increase in the value of the service provided. A rate increase of that magnitude would be expected to cause a further migration of CPC's paging subscribers. The only alternative would be for paging carriers to absorb the USF assessment, which could prove to be fatal in an industry that is presently existing on very slim profit margins. The burden of universal service fund contributions should not be shifted onto paging carriers with disproportionately lower revenues per subscriber, especially when the paging industry is in decline.

Any per-line assessment fee would be arbitrary and violate the tenets of sections 254(b)(4) and 254(d) because a flat-fee based assessment mechanism does not recognize differences between nationwide paging and other CMRS carriers, on the one hand, and local paging companies on the other; and is therefore completely disassociated with the jurisdictional nature of local paging service. The end-user revenues of local paging carriers (comprised of small and mid-sized companies) are almost exclusively intrastate, falling below the Commission-established 12 percent safe harbor. For a local paging carrier, whose facilities are all contained in a single state, very few calls originate from out-of-state and virtually all calls terminate in a single state. However, the paging industry does not have an economic way of determining where calls originate, hence the 12 percent safe harbor. Nationwide paging carriers and other CMRS providers are more generally interstate in nature, due both to the geographic areas they serve; as well as their offerings of two-way services. Accordingly, because a flat-fee assessment is disassociated with the jurisdictional nature of various CMRS providers, a "one-approach-fits-all"

mechanism would be grossly unfair for small and mid-sized one-way paging carriers. Federal universal service contributions should not be derived from local, intrastate revenue.[23]

C. Inappropriate Shifting

Flat-fee assessments will necessarily involve a paging industry averaging process that is an inadequate substitute for actual revenues. This is so because low volume paging customers, who tend to be lower income as well, will end up subsidizing high volume customers, since both sets of customers would be assessed the same universal service contribution. Flat-fee assessments, as shown above, also unfairly shift more than an equitable share of carrier contributions to those consumers who receive virtually all local pages. A carrier that adopts policies that shift more than a disproportionate share of the cost of contributions onto certain customer classes violate the "just and unreasonable" component of Section 201(b)[24] of the Communications Act and the "unreasonable discrimination in charges" component of Section 202(a).[25] Forcing a paging carrier to do so by requiring the carrier to collect a flat-fee assessment unrelated to interstate telecommunications only substitutes one wrong act for another.

D. Gradualism

The Commission should recognize the importance of the principle of gradualism as it has in the past. For example, Feature Group A and B discounts were provided primarily to foster the continued development of interexchange competition.[26] The Commission also created the

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[23] See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 448 (5th Cir. 1999).

[24] 47 U.S.C. § 201(b).

[25] 47 U.S.C. § 202(a).

[26] *See Access Charge Reconsideration*, 97 FCC 2d at 728; *Access Charge Second Reconsideration Order*, 97 FCC 2d at 861; *Third Reconsideration Order*, 101 FCC 2d at 1229.

enhanced service provider ("ESP") exemption from access charges,[27] recognizing that the ESP industry needed stability in a time of rapid change; that "any alternative...should minimize disruptive effects on ESPs;" and that the exemption provided substantial benefits to ESPs while not imposing new burdens on other ratepayers.[28] The CPC believes that these principles, as applied to the paging industry, should guide the Commission's decision to not adopt a per-connection assessment for paging carriers. The paging industry now requires stability, as demonstrated by the recent number of bankruptcies. Moreover, small and mid-sized paging carriers do not, on average, contribute to the USF because of the *de minimis* exemption. Thus, ratepayers would not be burdened if the per-connection charge were not applied to such carriers.

IV. THE COMMISSION SHOULD RETAIN AND LOWER THE INTERIM SAFE HARBOR FOR CALCULATING THE PERCENTAGE OF PAGING COMPANIES' INTERSTATE REVENUES

No matter which assessment methodology the Commission ultimately adopts, it should retain and reduce the safe harbor provision[29] for calculating the percentage of paging companies' interstate revenues. The Commission adopted the 12 percent safe harbor in 1998 based on the average percentage of interstate paging revenues reported by paging providers for 1997.[30] This figure was heavily weighted by the large regional and nationwide paging carriers. The experience of the CPC constituents is that their interstate revenues, while not easily or

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[27] *See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631 (1988)

[28] Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture 4 FCC Rcd 3983 (paras. 27-32) (rel. May 9, 1989).

[29] *See Interim CMRS Safe Harbor Order*, 13 FCC Rcd at 21259-60 para. 14. ("*Safe Harbor Order*").

[30] *Id.*

economically measured, is considerably less than 12 percent of total revenues. Moreover, as this comment demonstrates, the paging industry has declined since 1997. Nevertheless, small and mid-sized paging carriers continue to offer basically one-way paging services to customers that do not need or want to pay for cellular or PCS mobile phones, or who want to reduce their costs of "staying in touch" by having a pager as well. As the paging industry changes in response to the growth of cellular and Internet-enabled PCS devices, the realization has been that the services of small and mid-sized paging carriers have become more and more localized, and therefore focused on niche markets. Accordingly, the current 12 percent safe harbor provision should be reduced to about one percent to more closely align with current interstate usage of small and mid-sized paging carriers.

Thus, the proposed flat-fee assessment does not recognize the fact that small and mid-sized paging carriers carry very little interstate traffic, and derive virtually the vast majority of their end-user revenues from intrastate communications. As the Commission stated in the *Safe Harbor Order*, the "percentage of interstate telecommunication revenues derived from the provision of paging services may vary according to the amount of local service versus nationwide service that a paging carrier provides."[31] And under the current revenue based system, a paging carrier is permitted to report less than 12 percent of its revenues as interstate.[32] Put simply, a flat-fee based assessment, which assumes that all pagers are used to receive interstate calls, is not only inconsistent with the jurisdictional nature of local paging service, but without a reduced safe harbor, the inequity would be greatly magnified.

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[31] *Safe Harbor Order* at para. 14.

[32] *Id.*

V. THE COMMISSION SHOULD RETAIN THE *DE MINIMIS* EXEMPTION

In the *FNPRM*, the Commission seeks comment on whether a *de minimis* exemption should be created if a per-connection mechanism is adopted.[33] The CPC believes that the Commission should retain the existing *de minimis* exemption if the revenue-based assessment is retained for paging carriers and create a new *de minimis* exemption if a per-connection mechanism is adopted. The exemption helps minimize the administrative burden placed on both the small and mid-sized paging carriers and USAC.

A. The *De minimis* Exemption Prevents Waste

Congress authorized the Commission to exempt a carrier or class of carriers that provide interstate telecommunications services from contributing to the USF when the carrier's activities "are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be *de minimis*."[34] The Commission has determined that the purpose of the *de minimis* exemption was to prevent waste resulting from requiring contributions to USF when the administrative costs of collecting these contributions exceed the required contribution amounts. While the Commission initially considered only the costs of its universal service administrator's cost of collection (USAC), it shortly thereafter expanded the scope of the *de minimis* exemption rule to encompass the administrative costs of both USAC and the carriers potentially required to contribute to the USF, establishing the exemption for those carriers whose annual contribution would be less than $10,000.[35]

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[33] *FNPRM* at para. 68.

[34] 47 U.S.C. Sec. 254(d).

[35] 47 CFR 54.708; Federal-*State Joint Board on Universal Service,* Forth Order on Reconsideration in CC Docket No. 96-45; Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72 paras. 801-5 (1997).

B. The *De minimis* Exemption Lowers Administrative Cost

The CPC believes that a per-connection assessment would increase administrative costs to the Commission's universal service administrator, USAC, and, therefore leave less universal service support for those carriers and customers that need such support. For example, USAC estimated that if the *de minimis* exemption were to be eliminated, the collection and processing fees would exceed $500,000 annually, and could be higher.[36] USAC also indicated that "[m]oving from a revenue-based universal service contribution to one based on a flat end-user fee would create significant administrative hurdles."[37] Moreover, small and mid-sized paging companies would also be forced to incur a new administrative expense and investment in resources in order to modify its current accounting systems if a flat-fee assessment is adopted. Therefore, the Commission should not increase the administrative burdens already placed on small and mid-sized paging carriers and USAC by eliminating the *de minimis* exemption.

C. The *De minimis* Exemption Conversion

If the Commission decides to adopt the per-connection assessment, then the Commission should convert the $10,000 *de minimis* exemption to an equivalent number of connections. Using the Commission's figures, the revenue-based $10,000 *de minimis* exemption, based on a safe harbor of 12 percent, converts to 12,751 connections.[38] Moreover, the safe-harbor of one percent, as advocated in these comments, converts to 171,327 connections.[39] Accordingly, if the Commission decides to adopt the per-connection assessment, then it should create a *de minimis* exemption for those paging carriers serving no more than 12,751 pagers with the figure graduated

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[36] Comments of USAC at 18.

[37] USAC Comments June 25, 2001 p. 16, reiterated at USAC reply at 13.

[38] [($10,000/.06808)/.12] / [($8.00*12 months)].

[39] [($10,000/.06808)/.01] / [($8.00*12 months)].

up to 171,327, on a proportional basis, for safe harbor figures between 12 percent and one percent.

VI. THE COMMISSION SHOULD DEFINE "CONNECTION" TO EXCLUDE ONE-WAY PAGING

The Commission seeks comment on defining a "connection" as a facility that provides an end user with independent access to a public network, and how to define "public network" for the purpose of a connection-based assessment.[40] The CPC proposes that one-way paging should be excluded from the definition of a "connection." First, because of the nature of the service, all of the traffic flows in one direction from landline to mobile user. And while the public network is used by a caller to deliver a page, the network cannot be used by the paged party to respond or otherwise interact with the caller. Therefore, both parties do not receive the same beneficial use or utility of the public network as two-way callers do. Moreover, one-way paging service calls use the public network for only a small fraction of the amount of time that two-way callers do, and, as previously mentioned, rarely do small and mid-sized paging company customers receive interstate calls. Accordingly, the Commission should exclude one-way paging service from the definition of a connection.

Second, when the Commission originally adopted the current revenue-based universal service assessment, it specifically rejected a per-line approach because it would have to establish line-equivalency ratios, which could be difficult to administer, and which would not be competitively neutral.[41] Now, the Commission believes that a connection-based approach may not require equivalency ratios because access to the public network should be the determining

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[40] *FNPRM* at paras. 41, 42 respectively.

[41] See *FNPRM* at para.44 citing *Universal Service Order*, 12 FCC Rcd at 9210 para. 852.

factor. The CPC respectfully disagrees. No new evidence underpins the Commission's change in how it views the issue, and it should not act without such evidence.

VII. THE COMMISSION SHOULD NOT REQUIRE ADDITIONAL REPORTING

The Commission seeks comment on whether, should it decide to adopt a connection-based methodology, it should increase the reporting frequency for universal contributions. Under this approach, paging carriers would be required to report the number of its connections (paging units) monthly on a new Form 499-M.[42] The CPC opposes any increase in its filing requirements. Small and mid-sized paging carriers do not have the efficiency of scale or scope to economically support the extra burden associated with the collection and filing of 13 reports for universal contribution purposes.

Alternatively, if the Commission decides to adopt procedures that require the filing of a monthly revenue and/or line-count report, then the CPC requests that the Commission also exempt small and mid-sized paging carriers from those reporting requirements. Such filings would impose unnecessary administrative burdens on paging carriers without providing any appreciable benefits to such carriers, most of whom are currently classified as *de minimis* for universal service contribution purposes.

VIII. THE COMMISSION'S PROPOSED FLAT-FEE ASSESSMENT CONTRAVENES POLICIES PROTECTING SMALL BUSINESSES

Congress and the Commission have long recognized that small businesses make up an important element of the U.S. economy.[43] Congress has passed legislation designed to protect

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[42] *FNPRM* at para. 78.

[43] Little more than a decade ago, small businesses produced 43% of the GNP and provided 55% of the nation's jobs. "[B]etween 1969 and 1976, small business created almost two thirds of all new jobs in the national economy." Regulatory Reform: *Hearings Before the Subcommittee on*

small businesses, because of their contributions to universal service and their role in the economy. By imposing a more than three-fold assessment increase on small carriers, the CPC maintains that the application of the flat-rate will frustrate the Congressional goals underlying this legislation.

Congress also passed the Regulatory Flexibility Act for the reason that "unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes."[44] In passing this legislation, Congress found that the harmful effect of unnecessarily burdensome Federal Regulations on small business does not serve the public interest. Because the application of the per-connection assessment would disproportionately impact small and mid-sized paging carriers, through no fault of their own, the CPC submits that the Commission's proposal would contravene the legislative policy underlying the Regulatory Flexibility Act and would not serve the public interest.

IX. CONCLUSION

The Commission should continue to use billed interstate end-user revenue data to assess universal fund contributions for small and mid-sized paging companies, and should therefore not adopt a 25-cent flat-fee mechanism. Flat-fee assessments unfairly burden low volume, one-way paging carriers and their customers. A more than three-fold increase in the USF contribution per subscriber will succeed in driving more paging customers away from low-cost communications service and add to the decline of the paging industry.

Moreover, the CPC believes that a flat-fee assessment would violate the Commission's statutory obligations that form the foundation of the universal service system. A flat-fee does not

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Administrative Practice and Procedure of the Senate Committee on the Judiciary, Part 3, 96th Cong., 1st Sess. 343, 344-45 (1979).

[44] R.F.A. §2(a)(5).

take into account the vast per-line revenue disparities among the different types of wireless carriers and a flat-fee would not be "equitable and nondiscriminatory" for purposes of sections 254(b)(4) and 254(d) of the Act and would involve inappropriate contribution shifting.

The CPC has also shown that the Commission should retain and lower the interim safe harbor, retain the *de minimis* exemption, define "connection" to exclude one-way paging, and should not require additional reporting requirements.

Finally, the Commission should recognize that the proposed flat-fee assessment would unduly benefit the interexchange industry by inappropriately shifting its contribution burden to the beleaguered paging industry. While the large interexchange carriers have demonstrated a decline in their revenues in recent years, we would daresay that the documented declines in revenues in the paging industry are no less severe and life threatening. USF reform should not be at the expense of the paging industry.

Respectfully submitted,

The Concerned Paging Carriers

By: Harold Mordkofsky

Douglas W. Everette

Their Attorneys

Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W.
Washington, DC 20037
Tel. (202) 659-0830
Fax (202) 828-5568

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