

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

In the Matter of )  
 )  
Assessment and Collection ) MD Docket No. 02-64  
of Regulatory Fees for )  
Fiscal Year 2002 )

To: The Commission, *en banc*

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

AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its comments in the captioned proceeding to the Federal Communications Commission, in response to the Commission's Notice of Proposed Rulemaking (NPRM), FCC 02-92, adopted March 22, 2002 and released March 27, 2002, and published at 67 Fed. Reg. 17325 (April 10, 2002). As its comments in response to the NPRM, AAPC respectfully states:

Background

In this proceeding the Commission seeks to modify its Schedule of Regulatory Fees for Fiscal Year (FY) 2002 in order to collect the sum of \$218,757,000 mandated by Congress, a sum which is approximately 9.3% more than the amount Congress designated for recovery through regulatory fees for FY 2001. Of particular interest to AAPC, the Commission proposes to derive the fee to be paid by paging carriers (CMRS Messaging Services) by first applying a factor of 1.093 to the FY 2001 revenue estimate of \$1,625,054, yielding an aggregate revenue requirement for FY 2002 of \$1,776,184. The Commission then proposes to divide the FY 2002 revenue requirement by an estimated 23.6 million FY 2002 payment units, *i.e.*, units in active service as of

December 31, 2001. This mathematical exercise would result in a regulatory fee for paging carriers of \$0.08 per unit. The Commission provides no explanation for the source of the estimated 23.6 million FY 2002 payment units other than to say generally that it is “[b]ased on Wireless Telecommunications Bureau estimates.”<sup>1</sup>

By contrast, for FY 2001, paging carriers paid a regulatory fee of \$0.05 per unit in active service as of December 31, 2000. The fee proposed for FY 2002 thus represents a *60% increase* in fees paid by paging carriers in a single year. The FY 2001 calculation was based on an estimated 30.0 million FY 2001 payment units and an FY 2001 revenue requirement of \$1,625,054.<sup>2</sup> The estimate of 30.0 million payment units for FY 2001 likewise was explained as being “[b]ased on Wireless Telecommunications Bureau estimates.”<sup>3</sup>

Similarly, in FY 2000, paging carriers paid a regulatory fee of \$0.04 per unit in active service as of December 31, 1999, unchanged from FY 1999. The FY 2000 fee calculation was based on an estimated 38.9 million FY 2000 payment units and an FY 2000 revenue requirement of \$1,508,171.<sup>4</sup> The estimate of 38.9 million payment units for FY 2000 was explained as being “[b]ased on industry estimates of the number of units in operation.”<sup>5</sup>

Accordingly, while the revenue requirement for paging carriers has increased a total of \$268,013 or 18% from FY 2000 to FY 2002, the actual fee paid by paging carriers would *double* from \$0.04 per unit to \$0.08 per unit. For all practical purposes, this disproportionate increase in

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<sup>1</sup> NPRM at Attachment B, p. 37.

<sup>2</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2001 (Report and Order)*, 16 FCC Rcd 13525 (FCC 2001), at Attachment C (“*FY 2001 Regulatory Fees*”).

<sup>3</sup> *Id.* at Attachment B.

<sup>4</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2000 (Report and Order)*, 15 FCC Rcd 14478 (FCC 2000), at Attachment C (“*FY 2000 Regulatory Fees*”).

<sup>5</sup> *Id.* at Attachment B.

fee would be solely the function of the fact Wireless Telecommunications Bureau has made otherwise undisclosed estimates over the years that FY 2002 payment units would be only 23.6 million, compared to its estimated total of 30.0 million payment units in FY 2001 and its estimated total of 38.9 million payment units in FY 2000.

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](http://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 substantial increase in regulatory fee for paging carriers proposed by the Commission for FY 2002 obviously has a direct and substantial adverse 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 the regulatory fee for CMRS Messaging Services should be *reduced* to no more than \$0.04 per unit in active service as of December 31, 2001, rather than increased to \$0.08 per unit. This is so because the Bureau's estimates of paging units in service are inconsistent with, and materially lower than, the Commission's own annual reports to Congress. When reasonable estimates of FY 2002 payment units are made, the appropriate fee level for CMRS Messaging Services reduces to no more than \$0.04 per unit.

#### Comments on Proposed CMRS Messaging Services Fee

As noted above, the computed regulatory fee for paging carriers is largely driven by the number of estimated paging units in service used to divide into the revenue requirement for such units. However, the data used for this purpose simply cannot be squared with the data contempo-

raneously published by the Commission in its annual reports on the state of CMRS competition. For example, for calendar year 2000, the Commission reported to Congress that there were 45.3 million paging units in service, based on data provided by the The Strategis Group.<sup>6</sup> In virtually the same breath, however, for purposes of calculating regulatory fees, the Commission estimated that there were only 30.0 million paging units in service as of December 31, 2000.<sup>7</sup> That is a 50% variance with not even an acknowledgment of the difference, much less a suitable justification.

Similarly, for calendar year 1999, the Commission reported to Congress that there were 45.8 million paging units in service, again on the basis of data provided by the Strategis Group.<sup>8</sup> Yet, for purposes of calculating regulatory fees, the Commission had just finished estimating that there were only 38.9 million paging units in service as of December 31, 1999. Even more incongruously, data reported to Congress showed a relatively slight decline of 500,000 units in service (1.1%), from 45.8 million units in 1999 to 45.3 million units in 2000. However, for purposes of calculating regulatory fees, the Commission estimated a decline of 8.9 *million* paging units in service, from 38.9 million units in service in 1999 to 30.0 million units in service in 2000.

As a result, paging carriers clearly were overcharged in both FY 2000 and in FY 2001; and the estimates used for FY 2002 are therefore obviously flawed and invalid as well. That is, the regulatory fee for FY 2000 should have been \$0.03 rather than \$0.04, based on 45.8 million units in service and a revenue requirement of \$1,508,171. Similarly, for FY 2001, the regulatory fee should have been \$0.04 rather than \$0.05, based upon 45.3 million units in service and a

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<sup>6</sup> *Sixth Annual Report on CMRS Competition*, 16 FCC Rcd 13350 (FCC 2001), at Table 5 (“*Sixth Annual Competition Report*”). The Commission released this report to the public on July 17, 2001.

<sup>7</sup> *Fiscal Year 2001 Regulatory Fees*, *supra*, at Attachment C. This Report and Order was released to the public on July 2, 2001.

<sup>8</sup> *Fifth Annual Report on CMRS Competition*, 15 FCC Rcd 17660 (FCC 2000), at Table 9. This report was released to the public on August 18, 2000.

revenue requirement of \$1,625,054. Moreover, given that the estimated payment units for FY 2000 and FY 2001 are so materially flawed, no credit whatsoever can be given to the FY 2002 estimate of a decline in units in service from 30.0 million as of December 31, 2000 to 23.6 million as of December 31, 2001.

AAPC obviously does not know the source of the errors in the Bureau's estimates, but it is likely that the Bureau has confused the recent experience of the handful of large public paging companies with the experience of the paging industry as a whole. That is, in 1999, for example, according to the Commission's annual report, Arch, Metrocall and Weblink and merged companies served 24.5 million paging units out of an industry total of 45.8 million, or 53.5% of the industry total.<sup>9</sup> However, the Commission further reported that by 2000, those same companies served only 20.4 million units out of an industry total of 45.3 million, or 45.0% of the industry total.<sup>10</sup> In other words, although the subscriber base for the paging industry as a whole remained essentially static from 1999 to 2000, according to the Commission's report to Congress, the handful of large public members of the industry lost 17% of their subscriber base, falling from 24.5 million units in service in 1999 to 20.4 million units in service in 2000.

During that same period of time, the Bureau estimated for regulatory fee purposes that the industry as a whole served only 38.9 million units, and that it would lose 8.9 million units in the aggregate by 2000. Accordingly, and wholly apart from the fact that the estimates in each case were materially lower than the Commission's own data reported to Congress for the same period, it is reasonable to infer that in making its estimates for calculating the regulatory fee, the Bureau simply extrapolated the experience of the large public companies and applied it, erroneously, to the paging industry as a whole. In other words, the Bureau erroneously estimated as a

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<sup>9</sup> *Sixth Annual Competition Report, supra*, at Table 6.

<sup>10</sup> *Id.*

decline in subscribers by the paging industry, when in fact the industry actually experienced a realignment of the subscriber base between the handful of large public companies and the privately held local and regional paging companies.

Given that the Bureau's last two estimates were so obviously flawed, there is no reasonable basis whatsoever for crediting its current estimate of only 23.6 million payment units for FY 2002. Accordingly, in the absence of more current and more authoritative data, the Commission should continue to use the data of 45.3 million units in service reported to Congress for calendar year 2000. The revenue requirement of \$1,776,184 divided by 45.3 million payment units would thus result in a fee of \$0.039 per unit, or not more than \$0.04 per unit in active service as of December 31, 2001.

In this regard, AAPC points out that establishing the fee at \$0.04 per unit would still leave a considerable margin for error in the estimate of units in service. For example, even assuming that the industry as a whole lost 10% of its subscriber base between 2000 and 2001, that would still leave 40.8 million units in service as of December 31, 2001.<sup>11</sup> In turn, the revenue requirement of \$1,776,184 divided by 40.8 payment units still equals \$0.044, or a fee of \$0.04 per unit.

During FY 2001 and FY 2000, the Commission reduced the fee imposed on mobile telephone units based on errors in its estimates of units in service pointed out by CTIA.<sup>12</sup> The Commission should do no less here. Similarly, the Commission has acknowledged that when anomalies result from its fee calculation methodology, the public interest dictates that appropri-

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<sup>11</sup> 10% of 45.3 million = 4.5 million. 45.3 million – 4.5 million = 40.8 million.

<sup>12</sup> *Fiscal Year 2001 Regulatory Fees, supra*, at ¶26; *Fiscal Year 2000 Regulatory Fees, supra*, at 37.

ate adjustments be made.<sup>13</sup> In this case, in addition to the documented errors in the estimates used to calculate the fee for CMRS Messaging Services, the fact that paging carriers have been significantly overcharged for at least the past two years warrants a compensating adjustment in the public interest for the fee imposed for FY 2002.

#### Conclusion

The Commission should not increase the regulatory fee for CMRS Messaging Services from \$0.05 to \$0.08 per unit for FY 2002 as proposed. Instead, for the reasons stated above, the Commission should *reduce* the fee by at least 20%, from \$0.05 to no more than \$0.04 per unit in active service as of December 31, 2001.

Respectfully submitted,

AMERICAN ASSOCIATION OF  
PAGING CARRIERS

By: s/ Kenneth E. Hardman

*Its Attorney*

MOIR & HARDMAN  
1015 – 18<sup>th</sup> Street, N.W., Suite 800  
Washington, DC 20036-5204  
Telephone: (202) 223-3772  
Facsimile: (202) 833-2416  
[kenhardman@worldnet.att.net](mailto:kenhardman@worldnet.att.net)

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<sup>13</sup> *Fiscal Year 2000 Regulatory Fees, supra*, at ¶37.