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

REPLY COMMENTS OF THE CONCERNED PAGING CARRIERS

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 reply comments in the above captioned proceeding[1] to respond to certain issues raised in parties' initial comments.

I. INTRODUCTION

CPC is gratified to find that the overwhelming majority of commenters in this proceeding agree with its initial comments. They uniformly urge the Commission to reject the idea of moving to a fixed, connection-based USF assessment methodology. Moreover, all of the paging service entities filing comments in this proceeding have demonstrated to the Commission that, as applied to the paging industry, the proposed flat monthly charge of 25-cents per connection, i.e., 25-cents per-pager per-month should not be adopted. As stated in its comments, CPC believes that the assessment of a flat-fee involves inappropriate contribution shifting, is inequitable and discriminatory, and violates both Section 254(b)(4) and Section 254(d) of the Communications Act.

The basis upon which the proposed 25-cents per pager flat fee rests is the unsupportable theory that small and midsized paging companies must now contribute more to USF because interexchange carriers believe that the best solution to maintaining the USF fund is to relieve themselves of the USF burden by shifting it to the rest of the communications providers in this country. Whether it is true that the cellular and PCS mobile phone interstate usage has increased over the 15 percent safe harbor level or that national paging carriers interstate usage is at the 12

[1] *Further Notice of Proposed Rulemaking and Report and Order*, FCC 02-43 ("*FNPRM*"), released February 26, 2002.

percent level,[2] it is a fact for the CPC constituents, that the average one-way paging interstate revenue is much less than 12 percent, and is much closer to one percent. Accordingly, if a per-connection methodology is adopted, the one percent figure should be the starting point for the calculation of the per-pager flat fee assessment for USF contribution. However, based on the record in this proceeding, the clear majority of the commenters urge the Commission to retain the revenue-based USF assessment methodology. USF reform should not be at the expense of the paging industry. No one disputes that.

II. THE PAGING INDUSTRY UNANIMOUSLY REJECTS THE 25 CENT PER PAGER PER MONTH ASSESSMENT

1. The Proposed Fees Are Too High

As the Commission recognizes, the unique characteristics of paging services may not lend themselves to applicability of a connection-based assessment.[3] As noted by CPC, the unique nature of small and mid-sized paging providers certainly do not lend themselves to applicability of such an assessment. The paging industry has dramatically declined with the proliferation of cellular and broadband personal communication services.[4] Paging companies also face a relatively 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. 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 (current average of $0.07 per pager to $0.25 per pager) would only serve to depress the industry even more. We agree with

---

[2] Arch Wireless, Inc. at 10.

[3] *FNPRM* at 39.

[4] CPC comments at 5. *See also,* Arch at 12 noting the declining paging revenue base and increasing intermodal competition.

Nextel that the Commission cannot overlook the different elasticities of demand in considering revisions to USF assessments.[5]

All of the paging service commenters, as well as other commenters, agree with CPC that if the Commission adopts the per connection methodology, the 25 cent-per-pager-per-month assessment is too high. For example, in perfect alignment with CPC's observation that the interstate service provided by small and mid-sized one-way paging carriers is no more than about one percent of total revenues, the American Association of Paging Carriers argues that the fee for paging service providers should not exceed 0.5 cent per unit per month.[6] The Allied Personal Communications Industry Association of California argues that the proposed connection based assessment would disproportionately increase the USF burden on paging carriers by 257%, far more than cellular carriers (117%) or other types of carriers.[7] Verizon Wireless also noted that the three-fold increase was "especially discriminatory…on the paging industry, which is also struggling in the face of intermodal competition."[8]

Alternatively, and regardless of whether the Commission adopts a per-connection assessment, CPC recommended that the safe harbor percentage be lowered to about one percent, which approximates CPC constituents interstate use and also converts to about 171,327 connections.[9] In this way, CPC believes that the Commission's USF assessment rules would then be correctly aligned with Section 254(d), which requires contributions to be based on interstate telecommunications services.

---

[5] Nextel Communications at 23.

[6] AAPC at 3, 6-7, 10 advocating a $0.005 fee for non-nationwide traditional one-way paging units and a separate and higher fee for advanced messaging units.

[7] Allied at 4.

[8] Verizon Wireless at 7.

[9] CPC comments at 15-16 [($10,000/.06808)/.01] / [($8.00*12 months)].

2. Competitive Neutrality Requires The Commission To Not Adopt The Proposed Per-Connection Assessment

CPC agrees with the commenters that the Commission's policy of competitive neutrality requires the Commission to not adopt the proposed connection-based assessment. For example, Allied states that such an assessment is not competitively neutral, demonstrating that as a unit of measurement for USF contribution, a "connection" bears no relationship to interstate revenues.[10] This is especially true for the numerous small one-way paging companies serving niche rural markets. Unlike other wireless providers that can bundle multiple services in a connection (including paging services), one-way paging providers do not offer such bundles; and accordingly, a flat-fee disproportionately negatively impacts their bottom line and ability to continue to offer their services.[11] Obviously, it would be unfair to assess a small or mid-sized one-way paging company with $5,000 in revenues the same amount that another paging carrier with the same number of pagers but which offers two-way service, internet access and messaging with revenues of $50,000. Yet this is precisely what happens under a per-pager per-month flat fee.

3. Section 254 of the Act Requires Equitable and Nondiscriminatory USF Assessments

CPC and most other commenters demonstrate that the proposed per-connection assessment violates Section 254 of the Communications Act. A regime which imposes a flat fee irrespective of whether the paging carrier provides any interstate service is clearly inequitable and discriminatory. As CPC and Teletouch argued in their comments, the per-pager per-month flat fee violates the letter and the spirit of both Section 254(b)(4) and Section 254(d)[12] Unlike

---

[10] Allied at 5.

[11] *See* Allied at 6, forcing carriers to compete with a "hand tied behind their back."

[12] CPC at 8; Teletouch at 4-7.

the current interstate revenue-based assessment methodology, a flat-fee does not take into account vast disparities among the revenues generated per line, and the differences in network usage of different types of carriers or services, or even such disparities among carriers within one industry. As Arch Wireless, Inc. noted,[13] it makes no sense to move to a per connection regime that must ultimately be based on revenues. Clearly, a mechanism which imposes burdens among carrier classes without regard to the effect on the demand for such services should not be adopted by the Commission.

III. LACK OF RECORD EVIDENCE REQUIRES THE COMMISSION TO NOT ADOPT A MONTHLY PER PAGER ASESSMENT

1. Unsupported evidence from Per-Connection Proponents

The Coalition for Sustainable Universal Service spent nearly 100 pages to plead its case to the Commission. However, its basis for the monthly 25-cent per-pager fee was scantly addressed in one short paragraph.[14] There, the Coalition appears to base its position on the Commission's *Sixth Report*,[15] which indicated growth of high revenue advanced paging services and the existence of some low-priced paging services. However, the *Sixth Report* should not be used to justify the 25-cent assessment. Unlike the Commission's previous Reports, the *Sixth Report* "includes only an unweighted average of one-way and two-way paging revenues, which are not compatible."[16] As applied to one-way paging providers, the proposed 25 cent assessment cannot be justified on such slim comparisons.

---

[13] Arch at 5.

[14] USF Coalition at 65.

[15] *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.

[16] Arch at 9, note 24.

Moreover, while it appears that some new growth from advanced service offerings in the paging industry (along with bankruptcies) is evidenced, typical one-way paging service providers do not offer such services to their customers, who neither want nor need to pay for such services. Accordingly, the Coalition's hypothesis that a monthly 25 cent per pager per month assessment reflects the paging industry's unique situation[17] is flatly wrong as overbroad; and it makes no sense as applied to small and mid-sized one-way paging carriers. Without record evidence that a monthly 25-cent per-pager assessment is even remotely supported, CPC agrees with Arch that adoption of such a high USF assessment would be arbitrary and capricious and would not withstand judicial scrutiny.[18] Therefore, the Commission should not assess CPC's constituents a 25 cent per month flat fee if it decides to adopt a per-connection assessment mechanism.

IV. DE MINIMIS EXEMPTION SHOULD BE RETAINED

The d*e minimis* exemption should be retained if the Commission decides to adopt a per-connection assessment mechanism. However, CPC believes that the *de minimis* exemption would need to be increased for its constituents if a monthly 25 cent flat fee is assessed. This is so because such a fee would not distinguish between nationwide and regional paging providers that have larger geographic coverage areas, offer one and two-way services, and correspondingly provide more in the way of interstate paging services and the small and mid-sized one-way only paging carriers that have smaller geographic service areas, offer primarily one-way service and provide very little in the way of interstate service. In order to satisfy the mandate of Section 254(d), either the flat-fee would have to be reduced to about 0.5 cent per month, per pager, as suggested by AAPC, or the *de minimis* exemption would have to be correspondingly increased.

---

[17] USF Coalition at 65.

[18] Arch at 2-4, 7-9.

Noteworthy in this regard is the fact that even the Coalition submits that the Commission may permissively devise a formula that leads to some carriers paying nothing.[19]

V. SAFE HARBOR SHOULD BE RETAINED OR LOWERED

The CPC, other paging commenters, and commenters generally agree that the safe harbor provision for the paging industry should be retained or lowered. While NTCA asked the Commission to eliminate the wireless carrier safe harbor percentages, CPC believes that it is clear from the context of its comments that NTCA does not *per se* oppose a safe harbor for paging service providers.[20] Verizon Wireless also urges the Commission to retain the safe harbor for paging carriers.[21] Moreover, CPC believes that because the Commission's 12 percent interim safe harbor was based on the average percentage of interstate revenues reported in 1997, and was heavily weighted by the large regional and nationwide paging carriers, it should not now be used on a permanent basis. Because the CPC constituents offer one-way paging in primarily small geographic areas with little in the way of interstate service, the interim safe harbor should be lowered for small and mid-sized paging carriers to about one percent.[22]

VI. THE COMMISSION SHOULD REFER THE MATTER TO THE JOINT BOARD

CPC believes that because, and as suggested by the majority of the commenters, that adoption of a per-connection assessment would entail a significant change to the USF, the Commission should refer the issue to the Joint Board. Such referrals are routinely made, and

---

[19] USF Coalition at 90.

[20] NTCA at 5-8 relying on CTIA survey results which do not include paging and discussing revenues minutes of mobile phones. *See also* United States Cellular Corporation comments at 9-10 accepting a safe harbor elimination in the context of mobile phones as opposed to pagers.

[21] Verizon at 18.

[22] There presently exists no cost-effective mechanism for determining precisely where paging calls originate and terminate (except perhaps for 1-800-NXX-XXXX calls); hence the need for a safe harbor that realistically reflects actual interstate usage.

there is no basis for an exception to be made here. Accordingly, CPC respectfully disagrees with Sprint's assertion that the Commission independently, and without review by the Joint Board, reform the USF mechanism.[23] CPC believes that any proposed fundamental shift in USF recovery should be examined by the Joint Board before acted on by the Commission.

1. Alternative Joint Proposal Still Needs Adjustment

Regarding the SBC and BellSouth Joint Proposal, while CPC believes it may be an improvement over the pure connection-based proposal of the USF Coalition for the sustainability of USF, the CPC constituents maintain, for the same reasons raised in its comments and these replies, that a per-connection mechanism is inequitable, discriminatory, and violates Section 254 of the Communications Act. As applied to the paging industry, the Joint Proposal relies on the same one-size-fits-all faulty premise as did the USF Coalition's proposal. For example, the Joint Proposal makes the generalization that higher bandwidth services should receive a larger allocation of the contribution because they represent more interstate telecommunications and more revenue.[24] Accordingly, the Joint Proposal assigns one-way paging a numerical value of ".5 capacity unit," where 1 unit is equivalent to either up to 64 Kbps capacity, or for Asymmetrical, up to 6 Mbps, or 9 times the numerical value for Centrex.[25] Moreover, while SBC correctly asserts that its proposed "capacity unit tiers" are similar to the multiline business connection tiers discussed in the Commission's FNPRM, the Commission appropriately never referred to pagers as multi-line business connections. The CPC believes that one-way pagers should not be classified as multiline business connections, and certainty not assigned a numerical capacity unit value on par with 32 Kbps or 3 Mbps Asymmetrical bandwidths. One way pagers

[23] Sprint at 21.

[24] SBC comments at 10.

[25] *Id* at 10-11.

do not function anywhere near these capacity limits. Nevertheless, the CPC would not object to the Commission's referral of the Joint Proposal to the Joint Board for further consideration of its other aspects.

VII. CONCLUSION

The proposed 25-cent per pager per month assessment is an inappropriate amount and would have a devastating and negative impact on the paging industry. The Commission should continue to rely on the current revenue-based assessment methodology which has previously been found to be equitable, non-discriminatory, and competitively neutral.

Respectfully submitted,

THE CONCERNED PAGING CARRIERS

By: _____/s/ Harold Mordkofsky_____
Harold Mordkofsky

_____/s/ Douglas W. Everette_____
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

Dated: May 13, 2002

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing "Reply Comments of Concerned Paging Carriers" were delivered via First Class U.S. mail on this 13th day of May, 2002 to the persons listed below:

Kenneth E.Hardman
MOIR & HARDMAN
1015 - 18th Street, N.W., Suite 800
Washington, DC 20036
AAPC

Laura H. Phillips
Laura S. Gallagher
Drinker Biddle & Reath LLP
1500 K Street NW Suite 1100
Washington, DC 20005
Nextel Communications, Inc.

John T. Nakahata
Michael G. Grable
Harris, Wiltshire & Grannis LLP
1200
Washington, DC 20036
Coalition For Sustainable Universal Serv.

David M. Wilson
Leon M. Bloomfield LLP
1901 Harrison Street, Suite 1630
Oakland, CA 94612
Allied

John T.Scott III
Anne E. Hoskins
Verizon Wireless
1300 I Street N.W. Suite 400 West
Washington, D.C. 20005

Marybeth Banks
H. Richard Juhnke
Jay C. Keithley
401 9th Street, N.W. #400
Washington, D.C. 20004
Sprint Corporation

L. Marie Guillory
Daniel Mitchell
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
NTCA

Dennis M. Doyle
Arch Wireless, Inc.
1800 West Park Drive
Westborough, MA 01581

Peter M. Connolly
Holland & Knight LLP
2099 Pennsylvania Ave, N.W.
Washington, DC 20006
United States Cellular Corp.

Jeffry A. Brueggeman
Gary L. Phillips
Paul K. Mancini
1401 Eye St. N.W. Suite 1100
Washington, D.C. 20005
SBC Communications Inc.

/s/ Douglas W. Everette
Douglas W. Everette