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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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SUMMARY

The Concerned Paging Carriers (CPC) urge the Commission to retain the current revenue-based mechanisms for assessing universal service contributions for small and medium-sized paging carriers offering basic one-way paging service. The Commission's reforms will go a long way to help ensure the predictability and sustainability of the fund. However the Commission should not eliminate the safe harbor for paging carriers. Information necessary to calculate the jurisdictional nature of a paging call is generally unavailable to small and medium sired paginy carriers. They do not control telephone network switching, billing and routing elements, nor do their systems have the technical capability to assess the jurisdictional nature of a paging call. Elimination ofthe safe harbor would negatively impact ***de minimis*** paging carriers and would likely create additional costs for USAC. Moreover, the safe harbor should be reduced for all non-nationwide facilities based paging carriers and further reduced for paging carriers whose reliable service area contours are wholly confined to a single state. The current safe harbor of 12 percent was established prior to recent declines in paging traffic generally and is heavily weighted by nationwide and large regional paging carriers. It is simply unfair to the constituents ofthe CPC and similarly situated paging carriers to burden them with the same 12 percent safe harbor

The CPC vigorously oppose adoption of any one of the three connection-based assessment methodologies for paging carriers. The paging industry is presently characterized by low profit margins, declining subscribership, and even bankruptcies. Each of the connection-based proposals improperly shifts universal service assessments to paging carriers and will succeed in driving more paging customers away from low-cost communications service and add to the decline of the paging industry

Connection-based assessments violate the Commission's statutory obligations that form the foundation of the universal service system. Unlike the current interstate revenue-based assessment methodology, the proposals do not account for 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 The proposals are also inequitable and discriminatory. and therefore appear to violate both the letter and the spirit of both Section 254(b)(4) and Section 254(d) of the Communications Act.

Finally, the CPC opposes the proposed inexplicable five percent decrease in the *de minimis* exemption threshold. Most of the CPC constituents qualify for the ***de** minimis* exemption, and a decrease in the exemption threshold amount means that many of their customers will be suddenly faced with a rate increase that could further prove disastrous. Furthermore, such a decrease would increase administrative costs for both carriers and USAC without justification, Instead, the Commission should raise the threshold to account for the higher billing and administrative costs that small paging carriers face today. Universal service reform should not be at the expense of the paging industry

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COMMENTS OF THE CONCERNED PAGING CARRIERS

Allcom Communications, 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 Communications Service, Inc., Mobile Phone of Texas, Inc., Mobilephone of Humboldt, Inc., 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"[1]), by their attorneys, hereby submit their comments in response to the Commission's *Report and Order arid Secund Further Notice of Proposed Rulemaking,* FCC 02-329 ("Second *FNPRM*"), released December 13, 2002 in the above captioned proceeding.[2]

J. 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 are "small businesses" or "very small businesses" under the Commission's classifications and those of the Small Business Administration.' 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 these 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 CPC has made previous filings in these proceedings. The constituency of the CPC has changed in minor respects from previous filings. The current makeup of the CPC is as shown herein

[2] *See also, Order* (DA *03-203)* (rel. January 24, 2003) extending pleading cycle; *Order and Order on Reconsideration* (FCC 03-20) (rel. January 30, 2003) reconsideration of the definition of "affiliate" and clarification of options for recovery of USF contribution costs by wireless telecommunications providers.

[3] The Regulatory Flexibility Act 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, private 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

The constituents of the CEC 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 customer bases 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, including digital SMS offerings of competing wireless providers, 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 a5 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 continued effort to reform the USF assessment methodology with great concern. **A** misjudgment by the Commission of the adverse impact of these untested proposals on the paging industry would mean a potentially disastrous increase in the cost of providing service, which accordingly, could drive the paging industry to extinction. Each new federally mandated assessment against interstate telecommunications carriers or increase in such assessments, such as potentially 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 comments on the proposal to continue the use of a revenue-based system, with modifications, and on the three proposals based on connection-based methodologies.

II. THE COMMISSION SHOULD RETAIN THE REVENUE-BASED SYSTEM

The CPC supports the Commission in its efforts to retain the revenue-based method of assessing contributions to the federal universal service fund by the fair and efficient streamlining of its recovery mechanisms set forth in its *Report and Order*. Its well-reasoned fundamental changes to the current revenue-based contribution system will go a long way to help ensure the predictability and sustainability of the fund. To promote competitive neutrality and to simplify the assessment and recovery of universal service contributions, the Commission has required such contributions to be based on contributor-provided projections of collected end-user

interstate and international telecommunications revenues, instead of historical gross-billed revenues.[4]

The CPC accordingly urges the Commission to retain the revenue-based assessment mechanism. **As** discussed in these comments, the three connection-based alternatives are discriminatory and disproportionately burdensome as applied to CPC's constituent paging companies Moreover, the Commission's concern that the revenue-based system is dependent on the ability of contributors to distinguish between telecommunications and non-telecommunications revenues is a non-issue for small paging carriers that offer traditional one-way paging services.

A. The Commission Should Retain a Safe Harbor

In the *Second FNPRM*, the Commission seeks comment on whether paging carriers are able to determine their actual interstate end-user telecommunications revenues and whether the 12 percent safe harbor should be abolished.' **As** an initial matter, the CPC supports the Commission's decision to retain the safe harbor concept for paging carriers, but with certain modifications. Since the Commission's 2001 *Notice of Proposed Rulemaking*,[6] the consensus of the paging commenters has been that not only should the safe harbor for non-nationwide paging carriers be retained, but that the safe harbor should be reduced from 12 to 1 percent. Moreover, as the Commission noted in its *7th Report*, the subscribership and revenues of the paging industry

[4] *Second FNPRM* ai paras 28-39

[5] *Second FNPRM* para. 68.

[6] *Notice of Proposed Rulemaking*, FCC 01-145, released May 8, 2001

have continued to decline.[7] With this background, it is curious why the Commission once again is asking whether a paging safe harbor is still needed.

In the *Second FNPRM*, the Commission recognized that many CMRS providers have the technology to identify the jurisdictional nature of a call. However, the Commission did not eliminate the safe harbor for such providers, acknowledging that not all providers are able to provide a precise calculation of their interstate telecommunications revenues.[8] This is an important point, because even with actual data evidencing the likelihood that CMRS providers could accurately estimate their interstate revenues, the Commission still retained the CMRS safe harbor. In circumstances where such data is unavailable, the case for retaining a safe harbor is much more compelling. **As** discussed below, most, if not all small and medium-sized paging carriers do not have any way to assess the jurisdictional nature of a paging call; and, therefore, the paging safe harbor is essential for any universal service assessment mechanism

Information necessary to assess the jurisdictional nature of a paging call is unavailable and therefore makes such reporting virtually impossible for most paging carriers, especially the CPC. After the *TSR Wireless* decision,[9] the calling data that some paging companies received through their LATA-wide DID and reverse billing arrangements with telephone companies were no longer passed through to the paging carrier. Since paging carriers do not control telephone network switching, billing, routing, and other elements of telecommunications traffic, and because small paging systems do not have the technical design to capture such information, they are unable to determine where a paging call originates. Likewise, paging carriers cannot force

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[7] *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*, Seventh Report FCC 02-179 (rel. July **3,** 2003)("*Seventh Report*").

[8] *Id.* at para. 22.

[9] *TSR Wireless v. U S West* (FCC 00-194)(rel. June 21, 2000).

the local exchange carriers with which they interconnect to provide them with such data (if it exists).

Moreover, in most cases, the paging system's reliable service area contour ("RSAC") does not match up with the geographic area of a telephone rate center boundary." And for small regional paging carriers operating within a Major Economic Area that may approach or even cross state lines, the traffic may be completely local in nature due to the location of the transmitters and points of interconnection with the local exchange carrier. Also, because most non-national paging customers rarely request service beyond SO to 100 miles, customers in large geographic states, such as Texas and California will rarely, if ever, receive an out-of-state page.

Identification of the origination and termination points of a call made to a pager is very difficult if not impossible for small paging carriers." There presently exists no cost-effective technological mechanisms for determining where paging calls originate and terminate. Accordingly, it would be extremely inefficient and burdensome, if not impossible, for the CPC constituents to determine precisely the proportion of calls that are interstate. The safe harbor must be retained as it preserves efficiency by eliminating the need for paging carriers to attempt a precise determination of the proportion of their interstate calls. Such determinations, even if technically possible, would be prohibitively expensive for paging carriers that are today operating on very slim profit margins. The safe harbor provides a convenient and cost effective

[10] The RSAC of a paging station is generally defined in the Commission's Rules. See, e.g., 47 C.FR. § 22 537(c) for determining the RSAC of a VHF station in the Paging and Radiotelephone Service.

[11] In the typical paging system, calls are transmitted over all of the system's transmitters simultaneously, unlike cellular and PCS systems where the calls are transmitted initially by a single cell. There is accordingly no way of knowing in the typical paging system where a call is terminated, i.e., received by the end user,

method for paging carriers to assess their interstate revenues and should be retained, but with the modifications discussed below

B. Elimination of the Safe Harbor Would Negatively Impact *De Minimis* Carriers

Another reason why the Commission should not eliminate the safe harbor is because it would negatively impact carriers who qualify for the *de minimis* exemption and could inappropriately create additional costs for USAC.[12] The current *de minimis* mechanism is tied to the safe harbors. Section 54.708 of the Commission's rules requires telecommunications providers to contribute to the universal service support mechanism for a given year only if their contribution for that year is more than $10,000.[13] Paging carriers currently complete the worksheet associated with the USF 499 Form to determine whether they qualify for the *de minimis* exemption For example, using "Figure 1" of the current 499-Q, a paging carrier can quickly determine whether it is *de minimis* by comparing its quarterly revenues to the *de minimis* contribution threshold. Using the current safe harbor, the threshold is calculated as follows: ($10,000/0.095) / (safe harbor of 12%) / 4 quarters = $219,298.00. Accordingly, by comparing its quarterly revenue to this amount, a paging carrier can quickly determine whether it qualifies for the *de minimis* exemption.

The reason this calculation is simple and cost effective for paging carriers is because they do not have to determine the jurisdictional nature of their customers' paging calls. As previously discussed, the precise determination of whether a call that terminates to a pager is interstate is not technically or economically feasible for the constituents of the CPC. Elimination of the safe harbor would therefore result in the CPC having to make what would basically be educated

[12] See *infra* **p.** 20.

[13] 47 C.F.R. § 54.708

estimates of customer calling usage and/or to create and analyze periodic customer surveys. The simple solution is to retain the safe harbor concept.

C. The **Safe Harbor** Should **Be Lowered**

On average, small and medium size paging carriers will always handle proportionately fewer interstate calls than the large national paging operators; and, therefore, a reduced safe harbor should be in place for the smaller paging carriers. The current safe harbor for paging carriers adopted by the Commission in 1998, was based on the average percentage of interstate revenues reported by paging carriers in 1997, and was heavily weighted by the large regional and nationwide carriers.[14] In fact, the percentage appears to have been derived from data submitted by only 104 paging and messaging entities responding to the *NECA II Order*.[15] Accordingly, the Commission's continued reliance on the 12 percent safe harbor as applied to non-nationwide paging carriers is simply unfair to smaller carriers whose interstate revenues are nowhere near 12 percent of total revenues.[16] Moreover, as the Commission is well aware, 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

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[14] *Interim CMRS Safe Harhor Order,* 13 FCC Rcd 21252 at 21259-60 para. 14. ("*Safe Harhor Order*").

[15] *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service,* CC Docket Nos. 91-21, 96-45, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12444 (Aug. 15, 1997) *("NECA II Order"); Letter* from Lisa I. Harter, USAC, to Brad Wimmer, FCC, C.C. Docket No. 96-45 (dated May 28, 1998).

[16] See Section D

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. The safe harbor for non-nationwide facilities based carriers should be reduced to no more than six percent to take into account the fact that the 12 percent figure was weighted primarily by nationwide and large regional carriers.

As the Commission is aware. paging licenses are now granted based upon geographic areas, namely Major Economic Areas (for the 900 MHz band) and Economic Areas (for the lower bands)." To retain these geographic area licenses, the carriers must comply with the Commission's buildout requirements.[18] Most of the constituents of CPC operate one-way systems whose RSACs are wholly contained within a single state. For these carriers, all of their calls are terminated within that state. The only way for any of those calls to be jurisdictionally interstate in nature is for the call to originate outside that state. Accordingly, as a threshold matter, one of the two components in the determination of whether a call is intrastate or interstate, namely, where the call is terminated, is eliminated for these carriers. If the paging system's RSAC is confined to a single sate, all calls, by definition, terminate in that state.

When it is possible for calls to terminate in more than one state, this at least doubles the mathematical probability that a call will be jurisdictionally interstate. Stated differently, the safe harbor for carriers whose RSACs are confined within a single state should be reduced to less than half of the safe harbor for all paging carriers generally. Summarizing, the safe harbor for all non-nationwide facilities based paging carriers should be reduced to no more than six percent, with the exceptions of those carriers whose RSACs are confined to a single state; and, as to those

[17] 47 C.F.R. § 22.503.

[18] 47 C F.R. § 22.503(k)

carriers, the safe harbor should be reduced to no more than one percent, to more closely align with current interstate usage.

D. Traffic Data

Because paging carriers did not submit traffic studies or other data to support assertions that the safe harbor should be lowered, the Commission should not infer that the safe harbor is not needed or should not be reduced. Due to the problems discussed above, it is not economically feasible for the CPC constituents to conduct traffic studies and/or perform statistical research and analysis regarding the jurisdictional nature of calls delivered to their paging systems.

However, one CPC constituent operating a small regional paging service noted that (1) when paging companies were first directed to contribute to universal service, they provided data to the Personal Communications Industry Association (PCIA), formerly a national trade association of paging carriers, indicating that no more than 1.5 to 3 percent of paging calls were interstate; *(2)* that, about the same time (before their LATA-wide dialing arrangement with the telephone company ended), well over 94 percent of their pager calls originated from within the LATA serving the user; and (3) that for several hundred 800 numbers associated with users in small cities, less than about two percent (excluding erroneous calls) originated outside the state.

Another CPC constituent analyzed a recent monthly bill (chosen at random) associated with the use of 800 numbers by its paging subscribers. The analysis shows 10,585 in-state calls to toll-free numbers; 7,183 calls to local numbers tied to toll-free numbers; and 3,806 out-of-state calls to toll free numbers. Thus, only about 17.6 percent (3,806121,574) of the calls related to toll-free numbers were interstate. However, during the sample month, a total of 633,464 paging calls were made. Accordingly, only 3.4 percent (21,5741633,464) of all calls were related to 800

numbers Because subscribers must pay more for 800 paging service than for local-only paging service (so that callers do not incur toll charges), it is not unreasonable to expect the proportion of interstate 800 paging calls to be much higher, probably in the range of 50-70 percent The unexpectedly low 17 6 percent figure reveals that even the vast majority of 800 paging calls, which in this case were only about 3 4 percent of the total calls, are predominately local in nature Using these figures, it would be safe to estimate the interstate calls at about one-half of one percent (1 7 6 percent of 3 4 percent)

III. The Commission Should Not Adopt a Connection-Based System

In the *Second FNPRM*, the Commission seeks comment on the impact of imposing a connection-based assessment on the paging industry as part of the solution to reform the assessment and recovery of universal service contributions. 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 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 adoption of any one of the three connection-based (or flat-fee) proposals for paging carriers.

A. Declining Paging Industry

The Commission should not assess paging service providers a flat fee derived from a connections-based contribution scheme. Indeed, the Commission previously recognized in this

proceeding that the unique characteristics of the paging services may not lend themselves to applicability of a connection-based assessment."

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 largely characterized by low profitability, declining subscriber bases and intense competition from other commercial mobile radio services. **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.I percent; and the average monthly revenue per unit decreased from $28 85 to $22 29.[20] Again, these figures appear to be heavily weighted by revenue reports from nationwide and large regional carriers, including providers of two-way paging service. For the constituents of the CPC, the average monthly revenue per unit is substantially less During 2001, paging carriers faced even more financial difficulties resulting from continuing decline in demand for one-way pagers."

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 carriers generated only about $8 per month per subscriber.[22] The *Seventh Report* indicates that since 1999, the average CMRS revenue per unit has increased *to* $47.37, an increase of 20

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[19] *Further Notice of Proposed Rulemaking arid Report and Order,* para. 39 (FCC 02-43) (rel., February 26, 2002).

[20] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect Io Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350 at Table 5 (D-7)(2001).

[21] *Seventh Report* at p. 65

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

percent.[23] Furthermore, mobile telephony users are tying up the network for longer periods of time as their subscribers use their wireless phones longer, up 51 percent between 2000 and 2001.[24] One-way paging network use is only a fraction of the holding times of typical voice traffic.[25] Importantly, however, the number of wireless connections appears to be leveling off, and for wireline carriers, is actually declining.[26] It seems that just when per unit wireless revenues have increased, and when line counts have plateaued, or decreased, some industry leaders propose switching from revenue-based assessments to connection-based assessments, potentially avoiding, or shifting contributions *to* other industry segments in an *ad hoc* manner.

Paging companies also face a high elasticity of demand and realistically cannot increase charges to their subscribers, including USF assessments, without fear of losing more customers. This fact that wireless services are extremely susceptible to changes in demand has recently been presented to the Commission.[27] As Nextel explained, every $1.00 of assessment costs wireless operators $0.50 in marginal profit and the economic welfare loss would be $0.63.[28] And for the paging industry, the economic losses would be at least as high, and most likely higher. Because paging industry revenues have continued to decline, imposition of flat-fees would certainly force more paging carriers to exit the industry. Small and mid-sized paging carriers do not have the economies of scale and scope to withstand additional contribution obligations. Moreover,

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[23] *Seventh Report* at p. 22

[24] *Id.*

[25] *Ex Parte* of Weblink Wireless, Inc, CC Docket No. 96-45 (November 22, 2002) (The transmission of a 90-character message takes only about 300 milliseconds of airtime).

[26] *Local Telephone Competition: Status as of June 30, 2002, Industry Analysis and Technology Division Wireline Competition Bureau, December* 2002 (Table 11, showing declining rates of subscriber growth); *Trends in Telephone Service. Industry Analysis and Technology Division Wireline Competition Bureau, May* 2002 (Table 8.1, access lines declining 4.7%).

[27] *Ex parte* of Nextel, filed December 4, 2002.

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 carrier's revenues Factors such as high equipment costs, competitive pricing, and lending fears prevent many paging carriers from expanding into two-way messaging.[29]

B. Revenue-Based Assessment **Is Required**

The current revenue-based assessment methodology has previously been found to be equitable, non-discriminatory, competitively neutral. and relatively easy to administer.[30] Connection-based proposals, assessing universal service contributions on a flat-fee basis, 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,"" and not violate the "equitable and nondiscriminatory" tenets of Sections 254(b)(4) and Section 254(d).

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[28] *Id.* at 9, 13

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

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

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

A connection-based assessment on the paging industry is inequitable and discriminatory. and therefore violates 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 ofcarriers or services, or even such disparities within one industry.

For example, as noted by the Commission in the *Seventh Report*, "[o]ther mobile data providers in addition to paging carriers offer paging service. For instance, most digital mobile telephone handsets include a paging component or Caller ID feature.,."[32] The *Seventh Report* also concludes that SMS provides users the ability to send and receive text messages to and from mobile handsets, and has become increasingly popular, growing to 250 billion messages sent worldwide in 2001.[33]

Theses services are clearly paging substitutes. Moreover, most carriers' SMS charges are incurred in addition to monthly voice and/or wireless Web service plan fees.[34] Therefore, SMS service appears to fit the definition of "connection" in the same way that one-way and two-way pagers fit the definition.[35] However, it appears that no industry group has advocated that the same per-connection charge placed upon paging calls be assessed on such SMS services. For example, under the first proposed approach, the mobile handset would be assessed $1 .00 per month for its telephone function, and an additional $0.10 to $0.20 per month for its paging

[32] *Seventh Report* at 67

[13] *Id.* Apparently Verizon Wireless has reported SMS traffic up to 4 million messages per day

[34] *Id.* at 68

[35] See *Second FNPRM* at para 76

component. Under the second proposed approach, and an additional $0.215 to more than $0.80'" ascribed to one-way and two-way pagers should apply to SMS customers as well.

While CPC does not advocate new assessments on CMRS providers (although the principles of competitive neutrality might suggest such assessments), the point is made that the connection-based proposals discriminate against paging carriers and should not be adopted. The best mechanism for assessing universal service contributions continues to be the current revenue-based system. Revenue-based assessments capture the increased value of a particular service by simply assessing a fixed amount on the revenue generated by those services.

Moreover, as between the largest and smallest paging carriers, a revenue based system more accurately approximates both network usage" as well as identifies the local service nature of the smaller paging carriers Indeed, the inequity is exacerbated in a connection-based mechanism when the contribution is the same for both low-volume and high-volume pagers; the contribution for the low-volume pager is disproportionate[38] *Also,* the end-user revenues of local paging carriers (comprised of small and mid-sized companies) are almost exclusively intrastate, falling well below the current 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. Given the disparities such as these, it would be inequitable to assess universal service fund contributions based on methodologies other than revenues, which more closely approximates network usage and customer utility from use of the network

[36] *Ex Parte* of SMC, Runs 2-6 (CC Docket 95-45 (October 10,2002)

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

[38] See *FNPRM* para 49

Finally, all CPC constituents have generally found that 25 percent or more of their customers use pagers exclusively for personal. non-business purposes. However, the connection-based proposals do not contemplate such paging demographics. Accordingly, because the connections-based proposals appear to require distinctions to be made between business and personal-use customers for all telecommunications carriers except for paging carriers, competitive neutrality principles are violated. Because a connection-based assessment is disassociated with the jurisdictional nature of paging calls and is not competitively neutral, the "one-approach-fits-all" mechanism is grossly unfair for small and mid-sized one-way paging carriers. Federal universal service contributions may not be derived from local, intrastate paging calls [39]

C. Inappropriate Shifting

Connection-based 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 he assessed the same universal service contribution Connection-based assessments, as shown above, also unfairly shift more than an equitable share of carrier contributions to those consumers who receive virtually all local, intrastate calls **A** carrier that adopts policies that results in a shift of more than a disproportionate share of the cost of contributions onto certain customer classes violates the "just and unreasonable" component of Section 201(b)[40] of the Communications Act and the

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

[40] 47 U.S.C. § 201(b)

"unreasonable discrimination in charges'' component of Section 202(a)[41] Forcing a paging carrier to do so by requiring the carrier to collect a flat-fee unrelated to interstate telecommunications only substitutes one wrong act for another.

IV. THE COMMISSION SHOULD NOT ADOPT ANY OF THE THREE CONNECTIONS-BASED PROPOSALS.

A. Analysis - Connection-Based Methodology With Mandatory Minimum Obligation

Under the first proposed approach, telecommunications carriers providing interstate telecommunications services are subject to a mandatory minimum annual contribution unless the carrier's contribution is *de minimis*.[42] Here, each pager would be assessed a flat fee of $0.10 and $0.20 per month, respectively, for one-way and two-way pagers; and the *de minimis* exemption would be inexplicably decreased by five percent, The adverse impact and the legal impropriety of assessing small and medium sized paging carriers a universal service flat-fee based on connections was discussed in the previous sections of these comments. Considering that paging carriers currently contribute about $0.07 per pager per month,[43] a $0.03 to $0.17 increase per pager per month is potentially devastating to the declining paging industry, facing high demand elasticities and small profit margins. The CPC therefore opposes this proposal

The CPC also opposes the proposed five percent decrease[44] in the *de minimis* exemption threshold Most of the CPC constituents currently qualify for the *de minimis* exemption, and a decrease in the exemption threshold amount means that fewer of its constituents would qualify,

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[41] 47 U.S C. § 202(a)

[42] *Second FNPRM* at para. 75

[43] *FNPRM* at para. 59.

[44] Currently the annual revenue figure qualifying for the *de minimis* exemption, without applying the safe harbor, is set at $10,000/0.095 or $105,263.16.

forcing their customers to be suddenly faced with a rate increase that could prove to be disastrous The change similarly negatively impacts other current ***de minimis*** carriers by requiring them to complete and file each of the Commission's Quarterly USF Reports at additional expense

As recognized by the Commission, the purpose of the *de minimis* exemption is to prevent waste resulting from requiring contributions to USF when the administrative costs of collecting these contributions exceed the contribution amounts The administrative costs of both the carriers and USAC associated with universal service contributions are required to be considered [45] The Commission has not presented any evidence justifying the increase in both the carrier's reporting costs and USAC's administrative costs that would result from the inexplicable decrease in the ***de minimis*** exemption

A decrease in the threshold amount would likely raise USAC's costs, cutting into the small amount of additional universal service funds that would be received. 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.[46] 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."[47] Therefore, the Commission should not increase the financial burdens already placed on small and mid-sized paging carriers and USAC by lowering the ***de minimis*** exemption threshold. If anything, the threshold should be increased

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[45] 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).

[46] Comments of USAC in CC Docket 96-45 at 18 (June 25, 2001)

[41] *Id.* p. 16; reiterated at USAC reply Comments at 13.

CPC constituents are facing ever increasing costs associated with billing due to the fragmentation of the industry as well as the fallout from the *TSR* ***Wireless*** decision Moreover, there are much fewer businesses willing to function as a billing agent for small paging companies Accordingly, the CPC asks the Commission to consider raising the ***de minimis*** threshold by 5 to 10 percent in alignment with the increased costs associated with such reporting.

Finally, the CPC is opposed to the alternative approaches to the first proposal as they appear to only approximate contributions based on revenues. The first alternative is tied to connections. and therefore is an inappropriate mechanism for assessment of universal service contributions on paging carriers, The second alternative[48] creates tax code-like revenue tiers likely to be subject to gaming and regulatory arbitrage problems, and therefore is not supported by the CPC

B. Analysis - Splitting Connection-Based Contributions Between Switched Transport and Access Providers

Under the second approach, one-way pagers would be treated as one-half of an access connection, and two-way pagers would be deemed to be one access connection. According to SBC's calculations, this means that the average monthly paging contribution of $0.07 per pager increases by an additional $0.215 to more than $0.80[49] for one-way and two-way pagers. **A** rate increase of that magnitude would be expected to cause a further migration of CPC's 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 facing high demand elasticities and existing on very slim profit margins The burden of universal service fund contributions should not be

[48] *Second FNPRM* paras 78-80.

[41] *Ex Parte* of SBC, Runs 2-6 (CC Docket 95-45 (October I0, 2002)

shified onto paging carriers with disproportionately lower revenues per subscriber, especially when the paging industry is in decline The CPC therefore opposes this proposal.

Moreover, the *de minimis* exemption would again be inexplicably decreased by five percent. The CPC opposes such a decrease.

C. Analysis - Telephone **Number-Based** Assessments

Under the third approach, each telephone number associated with a pager would be assessed a universal service fee of some amount as to yet be determined." According to the current number utilization statistics," this approach requires industry contributions as follows: LECs: 70%; CMRS: *26%;* Paging. 4%; IXCs 0%. Use of assigned numbers has little or no relationship to whether that number will be associated with an interstate call. Therefore, assigned numbers should not be used to calculate USF contributions. Although all IXC traffic is interstate telecommunications revenues, and universal service support is required *to* be derived from interstate telecommunications revenues, the IXCs are apparently not required to contribute anything under this approach.

Paging carriers together currently contribute only a very small percentage of the universal service fund, and accordingly to calculate paging contributions, the percentages would have *to* be converted to a lower level by establishing some type of equivalency ratios, or connection-based proxies based on line capacity or some other variable(s) which would be difficult to administer," and which would not be competitively neutral. Another problem with this approach is that because small and medium-sized paging carriers (and other carriers) do not receive large blocks

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[50] *Second FNPRM* paras. 96-99.

[51] *FCC IAD Report Numbering Resource Utilization in the* **United** *States as of December 31, 2001* (Table I).

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

ofnumbers, they are not required to report number utilization statistics to the NANPA. Accordingly, data for such carriers do not exist, and the costs associated with forced reporting would be prohibitive and inefficient. Accordingly, the CPC opposes the proposed telephone number-based assessments scheme.

V. CONCLUSION

The Commission should continue to use revenue-based mechanisms to assess universal fund contributions for small and mid-sized paging companies, and should therefore not adopt any of the proposed connections-based schemes. However the Commission should not eliminate the safe harbor for paging carriers. Information necessary to calculate the jurisdictional nature of a paging call is unavailable to most paging carriers and the elimination of the safe harbor negatively impacts *de minimis* paging carriers and would likely create additional costs for USAC. The safe harbor should be reduced to no more than **six** percent for all non-nationwide facilities based carriers and to no more than one percent for paging carriers who can demonstrate that their reliable service area contours are confined to a single state.

The Commission should be sensitive to the economic composition of the paging industry. characterized by low profit margins and declining subscribership. Each of the connection-based proposals improperly shifts universal service assessments *to* paging carriers and will succeed in driving more paging customers away from low-cost communications service and add to the decline of the paging industry. The proposals are also inequitable and discriminatory, and therefore appear to violate both the letter and the spirit of both Section 254(b)(4) and Section 254(d) of the Communications **Act.**

Finally, the CPC opposes the proposed five percent decrease in the ***de minimis*** exemption threshold. Universal service reform should not be at the expense of the paging industry

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Dated: February 28, 2003

CERTIFICATE OF SERVICE

I, Kelly Laraia, hereby certify that copies of the foregoing "Comments of The Concerned Paging Carriers" were served on this 28th day of February 2003, to the persons listed below:

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