

December 1, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, DC 20554

Re: *Ex Parte Presentation*
CC Docket No. 96-45

Dear Ms. Dortch:

On November 30, 2004, Paul Garnett, Director, Regulatory Policy, CTIA – The Wireless Association™ and Ben Almond, Vice President, Federal Regulatory, Cingular Wireless, separately met with David Furth, Jeff Steinberg, and Eugenie Barton of the Federal Communications Commission's ("FCC's") Wireless Telecommunications Bureau, Chris Killion and Sonja Rifken of the FCC's Office of General Counsel, and Cathy Carpino and Carol Pomponio of the FCC's Wireline Competition Bureau. During the meetings, the parties discussed concerns over recent revisions to FCC Form 499-A and Form 499-Q instructions that prohibit Commercial Mobile Radio Service ("CMRS") providers from applying the interim wireless safe harbor to so-called "toll service charges."

A number of Commission orders acknowledge that CMRS carriers lack the ability to precisely determine the jurisdictional nature of mobile wireless calls. The Commission therefore allows CMRS carriers to use traffic studies to approximate their interstate telecommunications revenues or apply a wireless "safe harbor" to report interstate telecommunications revenues. However, the Form 499-A and Form 499-Q instructions require that CMRS providers report the "actual amount of interstate and international revenues" for so-called "toll service charges," rather than just reporting either the "safe harbor" amount or an amount determined by a traffic study.

CTIA noted that the modified Form 499-A and Form 499-Q instructions improperly limit the scope of the wireless safe harbor and will result in recovery practices that are unreasonably expensive, administratively burdensome for carriers, extremely confusing for consumers, and inconsistent with direction provided in Commission orders. CTIA also pointed out that "toll service charges" is a fixed wireline concept that does not apply in the mobile wireless context. Accordingly, CTIA urged the Wireline Competition Bureau to either clarify that "toll service charges" do not include mobile wireless revenues or, to the extent that the Bureau believes that mobile wireless revenues include "toll service charges," modify the Form 499-A and Form 499-Q instructions to make clear that the safe harbor may be applied to so-called "toll service charges." CTIA noted that the Bureau has been delegated authority to modify form instructions to make them consistent with Commission orders.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter, along with all of the materials distributed at the meeting, is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

Paul W. Garnett

Paul W. Garnett

Attachment

cc: David Furth
Jeff Steinberg
Eugenie Barton
Chris Killion
Sonja Rifken
Cathy Carpino
Carol Pomponio

**CMRS PROVIDERS SHOULD NOT BE FORCED TO
REPORT ACTUAL REVENUES FOR “TOLL SERVICE” CHARGES**

- Prohibiting CMRS providers from applying the safe harbor to “toll service charge” revenues is inconsistent with Commission orders.
 - Reporting on a disaggregated basis “actual” intrastate, interstate and international revenues is optional for mobile wireless providers (FCC 98-278 ¶¶ 10-15; FCC 02-329 ¶ 24).
 - The Commission has recognized that mobile wireless providers continue to have difficulties identifying interstate telecommunications revenues for all categories of traffic, even when reporting “actual” revenues (FCC 03-20 ¶¶ 7-8). The Commission therefore permits carriers to conduct traffic studies when reporting “actual” interstate telecommunications revenue.
- Commission orders detailing appropriate universal service contribution recovery practices make clear that the safe harbor applies to all carrier telecommunications revenues (FCC 03-20 ¶ 8 nn. 24, 26). Misapplication of the safe harbor, contrary to Commission orders, will result in recovery practices that are unreasonably expensive, administratively burdensome for the carriers, and extremely confusing for customers.
 - Application of the Telecommunications Reporting Worksheet's misinterpretation of the Commission's orders concerning the wireless safe harbor rate would require wireless carriers to compute their pass-through charges as follows:
[(Total telecommunications revenues) less (intrastate, interstate and international toll revenues) times (contribution factor) times (safe harbor rate)] plus [(interstate and international toll revenues) times (contribution factor)].
- “Toll Charges” is a fixed wireline concept that does not apply in the mobile wireless context.
 - The term “telephone toll service” means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service. 47 U.S.C. § 153(48).
 - The Act’s “toll service” definition only refers to wireline networks where the originating and terminating points of a call are more easily ascertained.
 - Mobile wireless providers generally are not able to determine intrastate, interstate, or international telecommunications revenues on a customer-by-customer or call-by-call basis. FCC 03-23 ¶ 8.
 - As applied to mobile wireless providers, “toll charges” is not defined in the Act, Commission rules, or in the form instructions.
- It therefore may be appropriate for the Worksheet to be amended and/or clarified such that: (1) “toll service charges” do not include wireless revenues; or (2) the safe harbor may be applied to so-called “toll service charges.”