

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Assessment and Collection of Regulatory ) MD Docket No. 06-68  
Fees for Fiscal Year 2006 )

**To: The Commission**

**COMMENTS**

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (BloostonLaw), on behalf of its paging clients licensed in the Part 22 Paging and Radiotelephone Service and the Part 90 Commercial Conventional Industrial/Business Pool Service, hereby submits, pursuant to Section 1.415 of the Commission's Rules, the following comments in the above-captioned proceeding. BloostonLaw urges the Commission to reduce the regulatory fee for paging and other messaging services from \$0.08 per paging or messaging unit to \$.04.

**I. Because the Paging Industry is Declining, Any Increase in the Regulatory Fee Payment Obligation Would be Financially Harmful.**

Over the past decade, the paging industry has dramatically declined from a highly competitive, robust industry in 1996 to an industry that is characterized by low profitability, declining subscriber bases and intense competition from other commercial mobile radio services, including digital cellular, 800 MHz SMR cellular like services and broadband PCS. As a result, several major carriers, including MobileMedia Corp., TSR

Wireless, L.L.C., Arch Wireless, WebLink Wireless, Inc. have declared bankruptcy since the late 1990's. Even MetroCall (the second largest paging carrier in the United States) was forced to seek bankruptcy protection in 2002 in order to survive the downturn in the paging industry. See Communications Daily, 22, 73 (April 16, 2002).

The FCC's reports to Congress confirm that between 1998 and 2000, the growth rate for the sale of paging/messaging units drastically eroded from an increase of 4.4 percent per year to a decrease of 1.1 percent per year, and the average monthly revenue per paging unit decreased significantly as well. Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Sixth Report, 16 FCC Rcd. 1350 at Table 5 (2001). In its 2000 CMRS Competition Report, the Commission found that for calendar year 1999, while two-way mobile telephony providers generated \$41.00 per month per subscriber, average paging carrier revenues had dropped to \$8.00 per subscriber paging unit. Further, the Justice Department (DOJ), in connection with its investigation of the Arch Wireless acquisition of Metrocall Holdings, concluded in November 2004 that paging is a declining industry. DOJ noted that there has been a substantial decrease in the number of pager units from more than 45 million units in 1999 to under 12 million units and that several carriers have gone through bankruptcy. DOJ's investigation noted that in recent years, many paging customers have replaced their one-way pagers with other means of communications, such as cellular or PCS telephony, and that only small market sectors, such as medical professionals, were retaining their pagers. See Department of Justice Antitrust Division Issues Statement on the Closing of its

Investigation of Arch Wireless' Acquisition of Metrocall Holdings, released Nov. 16, 2004. This conclusion is consistent with the Commission's acknowledgement in the captioned NPRM that the CMRS Messaging subscriber base has declined 75.3 percent to 10.1 million subscribers, which figure represents the number of paid subscriber units for FY2005. See Assessment and Collection of Regulatory User Fees for Fiscal Year 2006, Notice of Proposed Rulemaking, (FCC 06-38), Para. 7 and n. 1 (Released March 27, 2006).

Over the past few years, the migration from paging has become even more pronounced as cellular and PCS carrier have added text messaging to their service offerings. As a result, most paging carriers have had to reduce the fee for their service to just a few dollars per month, and yet have still lost a large portion of their customer base.

This dramatic decline in the paging subscriber base and related revenues is being further exacerbated by the FCC's imposition of annual regulatory fees and other unfunded Federal mandates such as the USF. Since the imposition of regulatory fees in FY1993, the paging industry has also been burdened with the requirement to contribute to USF, the Telecommunications Relay Service (TRS) fund, the Local Number Portability (LNP) fund, and the North American Numbering Plan Administration (NANPA) fund. Most recently, paging carriers were required to file a Customer Proprietary Network Information (CPNI) compliance certifications in February 2006, and will likely be under the annual filing requirement that the Commission is expected to adopt. These increasing expenditures and regulatory obligations, when added together, impose a significant

burden on paging carriers charges at a time when the paging industry as a whole is struggling to survive in the marketplace.

The Commission is now asking whether it should maintain the *status quo* with respect to the CMRS Paging/Messaging user fee by keeping the regulatory fee at \$.08 per subscriber unit. For the reasons discussed above, the Commission should not take any step that would result in an increase over last year's regulatory fee. Any increase will only serve to either cause more subscribers to migrate away from paging (if the user fee is passed through to the subscriber) or further shrink already slim profit margins (if the increase is absorbed by the paging carriers), thus threatening the paging carriers' financial viability which would result in a loss of service. Moreover, in light of the further deterioration of paging's position in the market place, the Commission should implement a further reduction in the regulatory fee burden. Because public safety, medical professionals and other businesses rely on paging receivers as a critical means for communications, the risk of further financial harm to the paging industry would not be in the public interest. Accordingly, the Commission should reduce the regulatory fee amount to the FY2000 level (i.e., \$.04 per unit).<sup>1</sup>

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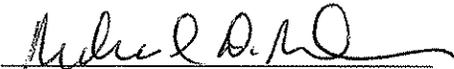
<sup>1</sup> BloostonLaw has evaluated other alternatives to the current regime of collecting regulatory user fees based upon subscribership. Because of the way paging licenses are issued, inasmuch as carriers may have numerous licenses even for relatively small systems, BloostonLaw cannot support a regime that would be based upon a fixed cost per license. This is because for even small carriers, such a fee could potentially be higher than at the current rate of \$.08 per subscriber.

II. Conclusion

For the foregoing reasons, BloostonLaw believes that the Commission should , at a minimum, continue its action of freezing the regulatory fee for CMRS Messaging Services at \$.08 per unit or reduce the regulatory fee obligation to the FY2000 level per subscriber unit.

Respectfully submitted,

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