Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	**CC Dkt. 01-92**
	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF ALLIED NATIONAL PAGING ASSOCIATION ("ALLIED") ON THE "MISSOULA PLAN"

Respectfully submitted,

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I. INTRODUCTION

For some forty years, Allied has represented the interest of paging service providers.[1] Such providers are "telecommunications carriers" as defined under the Telecommunications Act of 1996 (the "Act"), and, as such, are subject to the rights and obligations imposed by the interconnection provisions of Sections 251-52 of the Act. These include the obligation to terminate calls originated by ILECs, CLECs, and ISPs, and the right to be compensated for the additional costs incurred in doing so. Paging service providers also have the right to connect directly or indirectly to the rest of the PSTN on either a Type 1 or Type 2 basis.

Since the sponsors of the Missoula Plan (the "Plan") do not come close to representing a consensus of the telecommunications industry, Allied anticipates that other parties will subject the Plan to detailed analysis. Accordingly, Allied will confine itself to the points which bear most directly upon the paging industry. Thus:

- The Missoula Plan purports to include paging carriers in its provisions, but fails to consider the impact of a proposal that could effectively put them out of business.
- The Recovery Mechanism proposes a per pager surcharge of $1.27/month, in place of the approximately $.10 now being paid under current federal universal service

[1] Although paging continues to offer advantages in terms of superior coverage, greater building penetration, and cost efficiency, with the advent of broadband cellular and PCS, the paging customer base has decreased, particularly in the consumer sector. Allied estimates that there are approximately 8.5 to 10 million paging units now in service, with users concentrated in critical government services, health care, and emergency response organizations.

programs. Such a charge would violate the competitive neutrality provisions of the Act and would effectively surcharge intrastate revenues, which would also be contrary to the Act.

- The Missoula Plan, by allowing smaller ILECs to require direct end office connections, would deprive paging carriers and their customers of the efficiencies of Type 2 connections.
- The Missoula Plan would violate the Act by allowing smaller ILECs to evade their obligation to compensate paging carriers for transporting and terminating land-to-pager calls.

II. COMMENTS

A. The Missoula Plan Purports to Include Paging Carriers in its Provisions, but Fails to Consider the Impact of a Proposal Which Could Effectively Put Them Out Of Business

There are only two references to paging in the 175-plus page Plan and exhibits. One reference includes paging terminals as "MSCs" for purposes of establishing a CMRS carrier's "Edge." Plan, page 45. The other is a footnote (Plan, Exhibit 2, note 15) which acknowledges that paging customers would suffer adverse effects from the proposed Recovery Mechanism, and that the Plan may therefore "overstate slightly the total benefits enjoyed by the complete universe of telecommunications customers."

Had the authors actually quantified the impacts on paging, they would not have so cavalierly dismissed them as "slight." Indeed, the actual impact would threaten the continued existence of the industry. For example, current average revenue per paging unit today approaches $8 per month. The added $1.27 proposed by the Plan would increase end user rates by almost 16% [2] (compared to an increase of less than 3% of a $45 monthly cellular or ILEC bill).[3]

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[2] As discussed below, paging customers currently pay approximately $.10 a month in Federal Universal Service fees. Although even that number may be inappropriate given the current reality faced by the paging industry, it is only a fraction of the proposed $1.27 charge anticipated by the Missoula Plan.

[3] Exhibit 1 to the Plan, in talking about "average" wireless bills, assumes monthly charges ranging between $30 and $99 per unit. Conventional wireline bills range between $30 and $70. These revenue figures should be compared to the $8 typically charged for unlimited service to a paging unit. Given this gap, any shift from a revenue based model to a number or connection based model would have a disproportionate impact on paging customers.

There are other impacts as well. Like other interconnected services, paging requires locally rated numbers. With the proliferation of ILEC rate centers (nearly eight hundred in California, for example), carriers are entirely dependent on the ability to collect incoming calls at a small number of tandem locations. The proposal to require end office connections to Track 2/3 ILECs, and to shift resulting charges to terminating carriers not only violates the Act, but also would have a direct adverse impact on the financial viability of paging carriers. The same is true of the suggestion that Track 2/3 carriers should pay termination compensation only for intra-exchange, rather than for intra MTA calls.

Proponents of the Missoula Plan try to show that the benefits and burdens of their proposal are evenly spread among industry segments. They assure us of their "conservative assumptions," and that customers in each segment would profit overall from their reform. However, their Exhibit 1 ("The Missoula Plan Will Result in Lower Telephone Bills") gets to this result only by betting on wildly increased demand where prices for access services are to be reduced, and by studiously ignoring the possibility of decreased demand where costs (of facilities, transit services, and revenue recovery) are to be increased.

In the end, the Plan is designed to protect one industry segment (conventional wireline ILECs) at the expense of others. The adverse impact on the paging industry is particularly dire.

B. The Recovery Mechanism Would Violate the Competitive Neutrality Provisions of the Act and Would Effectively Impose a Surcharge on Intrastate Revenues.

Section 254(d) of the Act requires that universal service support mechanisms be equitable, nondiscriminatory, and "competitively neutral."[4] It also bars the Commission from surcharging intrastate revenues on intrastate traffic.[5]

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[4] Section 254(d) of the Act requires, in part, that:

> "[e]very telecommunications carrier that provides interstate telecommunications shall contribute, on an *equitable and non-discriminatory basis*, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service." (emphasis added).

The current revenue based federal scheme has been found to fulfill these statutory criteria. *See Federal-State Joint Board on Universal Service*, CC Dkt. No. 96-45, *Report and Order*, 12 FCC Rcd. 8776, 9206-09, ¶¶ 844-850 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Dkt No. 96-45, FCC 97-157 (rel. June 4, 1997), aff'd in part, rev'd in part, remanded in part sub nom. *Texas Office of Public Utility Counsel v. FCC* 183 F.3d 393 (5th Cir. 1999), cert. denied 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000) ("Universal Service Order").

While the Missoula Plan authors claim not to take sides on the issue of revenue based versus connection based funding mechanisms, their Recovery Mechanism clearly depends on the adoption of a "per number" or "per connection" surcharge of $1.27. This surcharge is the total of a monthly universal service fee of $1.03 and $.24 as a "Restructure Mechanism" plus "Early Adopter Fund Charge." This $1.27 charge would supersede the current revenue-based fee, which currently averages approximately $.10/unit/month for paging carriers.[6]

Allied objects to the Recovery Mechanism on at least three grounds.

__First__, the universal service provisions of the Act (as well as the interconnection provisions of the Act) in no way constitute a guarantee of revenue neutrality to individual carriers. In fact, the principle of "revenue neutrality" seems to be entirely inconsistent with the explicit goals of promoting competition. Other commenting parties will, without question, cover this issue well.

__Second,__ a per number charge violates the neutrality requirement of Section 254(d), particularly as regards paging. Allied demonstrated this in its Comments in Response to the February 26, 2002 Further Notice of Proposed Rulemaking in Dockets 96-45 *et al*. Allied showed that the conversion of the then existing revenue based USF program to a per number surcharge would increase per unit customer charges by more than three times, i.e., from $.07 to $.25/unit/month, an increase far greater than that proposed for any other industry segment.[7] The Commission has thus far kept its revenue-based approach, and has maintained the "safe harbor" for paging, as well as the *de minimis* exemption of 47 C.F.R. Section 51.708.[8]

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[5] *See* 47 C.F.R. § 54.706(b), which requires contributions based on interstate revenues; *see also, Texas Office of Public Utility Counsel v. FCC*, (5th Cir. 1999) 183 F.3d 393, 488.

[6] The $.10 figure is derived by taking the average paging bill of $8.00 and multiplying it by the current paging safe harbor of 12% and then multiplying that by the USF contribution factor of 10.5% for 3rd quarter 2006 (i.e., $8.00*.12*.105 = $.1008.) That same methodology was used by the Commission to determine the average paging contribution in 2002 when the contribution factor was 6.808%. *See In the Matter of Federal-State Joint Board on Universal Service et al, Further Notice of Proposed Rulemaking and Report and Order*, CC Docket No. 96-45 et al. (released February 26, 2002) at ¶ 59 and n. 145.

[7] See Comments Of The Allied Personal Communications Industry Association Of California In Response To Further Notice Of Proposed Rulemaking, CC Docket 96-45 at pp. 4 (filed April 22, 2002) ; see also Comments Of The Allied National Paging Association In Response To Second Notice Of Proposed Rulemaking, CC Docket 96-45 at pp. 23 (filed February 28, 2003).

[8] In 2002, the Commission raised the "safe harbor" factor for most mobile service providers, calculating interstate revenues at 28.5% of revenues, rather than the former 15% of total revenues. The paging "safe harbor" factor remained at 12%. *See In the Matter of Federal-State Joint Board on Universal Service et al, Second Further Notice of Proposed Rulemaking and Report and Order*, CC Docket No. 96-45 et al. (released December 13, 2002) at ¶¶ 21 and 23.

If the arguments of Allied and others were persuasive in 2002, should be all the more persuasive where the proposed increase is to $1.27/number/month, a figure almost thirteen times greater than the current rate. No other industry segment would experience such an increase.

Finally, a "per number" or "per connection" approach to universal service would effectively tax interstate as well as intrastate services offered on the same unit. While such a method might be defensible if there were no practical way to distinguish between intrastate and interstate telephone services,[9] that is not the case here. For years, certain carriers have been able to determine their respective proportions of intrastate and interstate traffic and have paid various federally-imposed and state-imposed surcharges accordingly.[10] For those carriers that cannot easily distinguish the interstate nature of their traffic, the FCC has long used safe harbors to achieve the same end. The proposed method set out in the Missoula Plan, however, makes no effort to distinguish between the intrastate and the interstate nature of a particular carrier's (or industry segment's) traffic and as such is completely contrary to the law.

C. The Missoula Plan, by Allowing Smaller ILECs to Require Direct End Office Connections, Would Deprive Paging Carriers and Their Customers of the Efficiencies of Type 2 Connections.

For decades, paging and other wireless carriers fought for the right to interconnect at the tandem level on ILEC systems.[11] Too often, incumbent LECs have attempted to force paging and conventional mobile carriers to interconnect at every end office where local numbers were "homed" for rating and routing purposes. In the case of paging, insult was added to injury: even though all paging calls are by definition in the land to mobile direction, the ILECs successfully

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Allied notes that the FCC has recently proposed raising the safe harbor for wireless carriers but leaving the safe harbor for paging at its current level. *See In the Matter of Proposed Rulemaking Regarding the Contribution Methodology for Wireless and VoIP Carriers' Contributions to Universal Service Funds, Report and Order and Notice of Proposed Rulemaking*, WC Docket No. O6-122, FCC 06-94 (rel. June 27, 2006)..

[9] *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986).

[10] If anything, the trend away from nationwide, i.e. interstate, paging services, which was noted in Allied's USF Comments in 2002, has accelerated. With wider spectrum available to cellular and PCS, paging companies have reverted to regional and local systems tailored to fit the needs of particular groups. Examples include in-hospital networks and emergency systems designed for responders to forest fires, earthquakes and other disasters. Allied believes that the percentage of interstate use is even less today than in 2002. The Plan's "per number" proposal, which imposes an equal charge on all numbers irrespective of usage or revenues ignores entirely the nature of the paging market, and the law underlying the current USF mechanism.

[11] See, e.g., *In the Matter of William G. Bowles v. United Telephone Company of Missouri*, Memorandum Opinion and Order, File No.-96-04, released July 11, 1997, which lists various pre-1996 cases affirming the right of CMRS carriers generally and paging carriers specifically to Type 2 interconnection.

forced paging carriers to pay 100% of dedicated facilities charges along with elevated Type 1 numbers charges.[12]

Despite Commission orders to the contrary,[13] vestiges of this old regime continue to this day. Some smaller ILECs still demand direct end office connections as the price of number recognition, and nearly all LECs insist that their obligation to pay transport charges for their own calls ends at the originating exchange boundary.[14] Likewise, nearly all of the smaller LECs route the bulk of their intraMTA land to pager calls through IXCs, thus collecting originating access charges while attempting to avoid, contrary to the Act, any obligation to pay termination compensation to paging carriers.

The Missoula proposal tries to make all this legal, asking that the rural ILECs (the so-called Track 2/3 carriers) be relieved of most of their transport and switching obligations in the land to mobile direction.[15] At the same time, the bigger ILECs ask for pricing freedom for their tandem switching services.[16] The net result would be the classic Hobson's choice for CMRS carriers in less populated areas: either spend thousands of dollars on new, underutilized end office direct connects, or subject oneself to bottleneck, monopoly pricing abuses by transit service providers. In either case, the costs of providing this critical service would skyrocket, thereby threatening the very existence of the paging industry.

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[12] *See Local Competition Order, supra* at paragraph 1084.

[13] *See, e.g., In the Matter of the Need to Promote Competition and the Efficient Use et al., Declaratory Ruling,* 2 FCC Rcd 2910 (1987); *In the Matter of the Need to Promote Competition and the Efficient Use et al., Third Radio Common Carrier Order*, 4 FCC Rcd, 2369 (1989) (see note 16 for definitions of Type 1, Type 2 and Type 2B interconnection), and *Implementation of Sections 3(N) and 332 et al., Second Report and Order*, 9 FCC Rcd 1411, 1413. Collectively these and other similar decisions confirm the general advantages of tandem level interconnection, the right of *all* CMRS carriers to such interconnection, and the applicability of the anti-discrimination provisions of Section 201(a) in the interconnect context.

[14] Rural telcos insistence on direct connections to individual rate centers has caused the few remaining paging carriers to withdraw service from many rural areas and/or to convert such service to 800 numbers which are extremely expensive for end users.

[15] See Missoula Plan, pages 32 et seq., and cross references therein. The Plan describes a complicated "Modified Rural Transport Rule" and "Full Rural Transport Rule." The gist of the two rules is that the transport and switching obligations of Track 2 and 3 carriers would end at or near the boundary of the originating exchange service area.

[16] Allied acknowledges that the Missoula plan caps transit rates at $.0025 for the first 4 years, but notes that after that time, there is no limit on charges for transit rates nor any requirement that such rates even be forward looking. See Plan at page 52. The assumption seems to be that there is a competitive market for transit services in most areas. In Allied's experience, this assumption is not true.

D. The Proposed Modification of the MTA Rule Would Violate the Statutory Requirement That Termination Compensation be Mutual and Reciprocal

Allied concedes that the Commission has latitude to define “telecommunications” for purposes of the reciprocal compensation provisions of the Act. The Commission also has the ability to forbear from enforcing certain provisions of the Act. However, the Commission may not define terms in a way that violates the prescriptions of the Act. Nor may it forbear enforcement in a way that is discriminatory or non-reciprocal.

The Plan would retain the MTA rule (47 C.F.R. Section 51.701) insofar as the Track 1 carriers are concerned: transport and termination burdens would continue to be borne by the originating carrier, and termination compensation would be paid reciprocally and symmetrically.[17]

For Track 2 and 3 carriers, termination compensation would be paid for intra-MTA calls in the mobile-to-land direction. The rate (for two-way CMRS providers at least) would be capped at the ILEC’s interstate terminating switched access charge. In the land-to-mobile direction, however, termination compensation would be paid only for calls between numbers in the same rate center or EAS. All other intraMTA land-to-mobile calls would be exempt from termination compensation, and subject to originating access charges. See Plan at page 29.

It is entirely unclear how this proposal would apply to paging, if indeed it would apply at all. The intent, however, seems clear: the smaller ILECs wish to modify the MTA rule in a way which would maximize their own revenue stream from mobile-to-land calls, but minimize compensation for calls in the opposite direction. Such a change would not be permitted absent an Act of Congress.

III. CONCLUSION

The Commission desires to simplify and unify the current intercarrier compensation regime. The hope seems to be that there is a silver bullet somewhere that might end arbitrage and litigation even while encouraging competition and preserving universal service. The Missoula Plan would do none of these things:

[17] It is entirely unclear how traffic between Track 1 and paging carriers would be categorized. Under the *status quo*, paging carriers may not use ILEC termination rates as a surrogate for the compensation paid for terminating land to pager calls. This has obliged paging carriers to negotiate their own rates, and to perform their own cost studies. It is not clear whether or not the *status quo* would change under the Plan.

- It is neither simple nor uniform. Instead, it creates entirely new classes, and subclasses, of carriers. Each category would have different rights and obligations that would vary with time and that would depend almost entirely on artificial distinctions created by the drafters of the Plan.
- If anything, arbitrage opportunities would increase as a result of, among other things, the expansion of the access regime to include many intraMTA CMRS calls, the introduction of a wide range of termination rates, and the creation of multiple exceptions to current transport and switching rules.
- Litigation would proliferate, both as the result of the Plan's unparalleled complexity, and its disregard for the basic tenets of the Act, including the "originating party pays," "additional cost" and competitive neutrality rules.
- The Plan would not encourage competition: on the contrary it would penalize efficient technologies (like wireless) in order to guarantee revenue flows for older, less efficient incumbent LECs.

In sum, the Missoula Plan should be rejected, and the Commission should refocus its efforts on enforcing and implementing the Act as written.

Respectfully submitted,

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