

KENNETH E. HARDMAN
ATTORNEY AT LAW

DIRECT DIAL: (202) 223-3772

2154 WISCONSIN AVENUE, N.W., SUITE 250
WASHINGTON, DC 20007-2280

FACSIMILE: (202) 315-3587

kenhardman@att.net

EX PARTE MEMORANDUM

October 24, 2008

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

Re: Universal Service Contribution Methodology, WC Docket No. 06-122
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

The undersigned, representing the American Association of Paging Carriers (AAPC), met with Scott M. Deutchman, Legal Advisor to Commissioner Capps, on October 23, 2008, and with Nicholas G. Alexander, Legal Advisor to Commissioner McDowell, on October 24, 2008, to urge the Commission not to consider proposals for implementing a Universal Service Fund contribution methodology based on telephone numbers at the Commission's meeting on November 4, 2008. AAPC's arguments advanced in the meeting are summarized in the attached outline of its position, which was distributed to Messrs. Deutchman and Alexander during the meetings.

AAPC additionally argued the fact that AT&T and Verizon, the principal proponents of a "Numbers" contribution methodology, have largely repudiated the proposal under circulation and have now advanced an 11th hour "hybrid" numbers/connection proposal, is the best evidence that consideration of this issue on the November 4 agenda would be improvident and premature. AAPC also stated that if a distinction nonetheless is made between "residential" and "business" or "commercial" telephone numbers for USF contribution purposes, the numbers used by paging carriers should all be classified as "business" or "commercial" numbers, regardless of the nature of the paging carriers' customers, since they are all used as a component of a commercial undertaking.

Should there be any questions concerning this filing, kindly direct them to the undersigned.

Respectfully submitted,

s/Kenneth E. Hardman

Enclosure

cc: Scott M. Deutchman, Esq.
Nicholas G. Alexander, Esq.

AMERICAN ASSOCIATION OF PAGING CARRIERS
WC Docket No. 06-122; CC Docket No. 96-45
October 23-24, 2008

- I. The Commission should not consider a “Numbers” USF contribution proposal on November 4, 2008 as part of its agenda on USF reform
- A. The legal foundation for a “Numbers” contribution methodology is at best shaky:
- * A “Numbers” assessment has nothing to do with interstate telecommunications as specified in Section 254(d)
 - * The first prong of the *Chevron* test requires the Commission to give effect to the express intent of Congress in Section 254(d) regardless of the Commission’s otherwise “plenary” authority over numbers
- B. The principal asserted “benefits” of a “Numbers” contribution methodology are false or unsubstantiated:
- * A “Numbers” methodology will massively offload USF contribution obligations from wireless telephony providers and large corporate users of interstate telecommunications to residential and business consumers with low interstate usage
 - * Assessing USF contributions on a per-number basis will create incentives to minimize number usage for non-voice network routing and similar applications, destabilizing and reducing the amount of numbers available for contribution purposes. The timing and extent of such reduction is unknown.
- C. Until reform of distribution side policies is implemented, the revenue requirement for, or the size of, USF “Numbers” contributions cannot rationally be determined
- II. A “Numbers” contribution methodology applied to paging carriers would violate Section 254’s mandate of “equitable and nondiscriminatory” contributions:
- A. Generally speaking, paging carriers do not “provide interstate telecommunications” or “interstate telecommunications services” as required by Section 254(d) for direct USF contributors
- B. A “Numbers” USF contribution methodology would result in a crippling and likely fatal *increase* in USF contributions for affected paging subscribers compared to a massive *decrease* in USF contributions for wireless telephony subscribers
- C. Implementing a “Numbers” USF contribution methodology for paging carriers cannot be reconciled with “freezing” paging regulatory fees since 2002