

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2009)	MD Docket No. 09-65
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008)	MD Docket No. 08-65
)	

To: The Commission, *en banc*

**COMMENTS OF
AMERICAN ASSOCIATION OF PAGING CARRIERS
ON NOTICE OF PROPOSED RULEMAKING AND ORDER**

THE AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its comments to the Federal Communications Commission in the captioned proceeding, in response to the Notice of Proposed Rulemaking and Order (the “NPRM”), FCC 09-38, released May 14, 2009 and published at 74 Fed. Reg. 26328 (June 2, 2009). AAPC is disappointed that the Commission generally has deferred action on proposals to reform its fee calculation methodology, and shares Acting Chairman Copp’s concern that the regulatory fee framework continues to be based on the communications industry as it existed in 1994. Nonetheless, AAPC agrees that retaining the previous fee of \$0.08 per unit for CMRS Messaging Service is appropriate under the prevailing circumstances, as proposed in ¶12 of the NPRM.

As its comments in response to the NPRM, AAPC respectfully states:

In this proceeding the Commission seeks to establish the schedule of regulatory fees for FY 2009 so as to recover a minimum of \$341,875,000 as mandated by Congress. (NPRM at ¶1).

Despite last year having initiated what was said to be a comprehensive review of the regulatory fee framework,¹ the NPRM only adopts a new methodology for calculating regulatory fees for submarine cable operators. (NPRM at ¶8). Otherwise, the NPRM defers action on the various proposals submitted in 2008 for revising regulatory fee calculations,² including a proposal by AAPC to base CMRS fees on the relative ARPU (average revenue per unit) of cellular/PCS services and paging services.³ Instead, using essentially the same outmoded methodology as previously, the Commission proposes to maintain the CMRS Messaging fee at \$0.08 per unit, the level initially established for FY 2002, and requests comments on the proposal. (NPRM at ¶12).

AAPC is the national trade association representing the interests of paging carriers throughout the United States. AAPC's members include paging operators with nationwide licenses under Parts 22, 24 and 90 of the Commission's rules; a representative cross-section of operators of regional and local paging systems licensed by the Commission; as well as equipment suppliers and other vendors to the carrier industry. Paging services are classified as CMRS Messaging services for purposes of the Commission's schedule of regulatory fees; thus, the issues raised in ¶12 of the NPRM directly affect AAPC's members.

With respect to the proposal to maintain the CMRS Messaging fee at \$0.08 per unit, AAPC believes that holding the line at previous levels is the appropriate action the Commission should take under the principles set forth in Section 9 of the Communications Act, 47 U.S.C. §159.⁴ In FY 2002, when the Commission increased the CMRS Messaging fee from \$0.05 per

¹ *Assessment and Collection of Regulatory Fees for Fiscal 2008 (Further Notice of Proposed Rulemaking)*, MD Docket No. 08-65, FCC 08-182, released August 8, 2008 and published at 73 Fed. Reg. 50285 (August 26, 2008).

² NPRM at ¶2 & n. 4.

³ Comments of American Association of Paging Carriers on Further Notice of Proposed Rulemaking, *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, September 25, 2008.

⁴ Section 9(b)(1) requires the Commission to "determin[e] the full-time equivalent number of employees performing [fee-recoverable] activities . . . , adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities".

unit to \$0.08 per unit over the objection of the paging industry, then Commissioner Copps pointed out in his concurring statement:

[T]he Commission does not address when or how it would adjust regulatory fees to take into account changes to the cost of regulating various services. The paging industry argues that it faces a 60 percent per unit increase in regulatory fees this year due to a declining subscriber base, notwithstanding reduced regulatory resources devoted to paging. Today's order . . . fails to address the underlying concern about revisions to the Commission's methodology. I take some comfort, however, that the Commission plans to have in place a new accounting system in the near future⁵

In 2003 the Commission decided to maintain the CMRS Messaging fee at the FY 2002 level based on "unique circumstances" applicable to the paging industry,⁶ noting that "The Commission is completing design work on a new cost accounting system. As part of this process, we are evaluating methodologies for capturing data relevant to the regulatory fee setting process."⁷

To date, as noted by Acting Chairman Copps in his separate statement, and despite having initiated last year the long overdue review of its regulatory fee methodology, the Commission still has not altered in any meaningful way its methodology for annual revisions to the regulatory fee schedule. Nonetheless, the "unique circumstances" applicable to the paging industry in 2003 still prevail. Under these circumstances, absent the Commission determining whether the fee for the paging industry properly should be *reduced*, as the industry believes it should, AAPC respectfully submits that maintaining the fee at the existing level is the minimum reasonable and appropriate action the Commission should take again this year.

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2002 (Report and Order)*, 17 FCC Rcd 13202 (FCC 2002) (concurring statement of Commissioner Copps).

⁶ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003 (Report and Order)*, 18 FCC Rcd 15985, 15992 at ¶¶21-22 (FCC 2003).

⁷ *Id.* at ¶21 & n. 31.

Accordingly, for the reasons stated above, the American Association of Paging Carriers respectfully urges the Commission to maintain the CMRS Messaging fee at \$0.08 per unit, as proposed in ¶12 of the NPRM.

Respectfully submitted,

AMERICAN ASSOCIATION OF PAGING
CARRIERS

By: s/Kenneth E. Hardman
Kenneth E. Hardman
2154 Wisconsin Avenue, NW, Suite 250
Washington, DC 20007-2280
Telephone: (202) 223-3772
Facsimile: (202) 315-3587
kenhardman@att.net

Its Attorney

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