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OCT - 9 2009

Federal Communications Commission
Office of the Secretary

October 9, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Notice of Ex Parte Presentation, *Universal Service Contribution Methodology*,
WC Docket No. 06-122**

Dear Ms. Dortch:

On October 8, 2009, Vince Kelly, Chief Executive Officer of USA Mobility, Inc. and I met with the following Commission personnel regarding the universal service contribution methodology: Christine Kurth, Legal Advisor to Commissioner McDowell; Christi Shewman, Acting Legal Advisor to Commissioner Baker; Carol Simpson, Acting Legal Advisor to Commissioner Clyburn; Jennifer Schneider, Legal Advisor to Commissioner Copps; and Jennifer McKee, Vickie Robinson, and Cindy Spiers of the Wireline Competition Bureau. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter and the materials distributed at the meetings are being filed with the Commission.

The purpose of these meetings was to emphasize the critical importance of maintaining a revenue-based contribution methodology for paging carriers and their customers (or a flat-rate approach that maintains the very low contributions to which paging carriers are subject today). We explained that, unless a carve-out is established, the "emergency" proposal advanced by AT&T likely would destroy what remains of the paging industry, because a monthly USF fee of \$0.85 or more per assigned number would lead to a *ninefold* increase in the USF fee paid by many of USA Mobility's customers. Indeed, in some cases, the new USF charge would amount more than a third of the customer's entire bill. USA Mobility accordingly proposed that the Commission retain the revenue-based USF fee for paging services, or alternatively establish a deeply discounted flat USF charge based on the paging industry's unique circumstances.

We further explained that paging services are fundamentally different from wireless voice services. While the mobile phone industry has undergone explosive growth in recent years, and now has more than 260 million units in service, the paging industry has declined dramatically, falling from approximately 45 million to fewer than 4 million units in service since 2000. Paging revenues also contrast starkly with other wireless carriers' revenues: Whereas national wireless voice carriers generate more than \$50 per subscriber each month, USA Mobility generates less than \$9 per month for most subscribers (and in many cases less than half

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that amount). In addition, paging carriers face significant spectrum constraints compared to wireless voice carriers and make minimal use of the PSTN (because they rely on satellite transmission instead of wireline facilities for backhaul). And, despite paging carriers' obligation to contribute to the USF, they are not eligible to receive high-cost or low-income universal service support.

As a result of such factors, the Commission has consistently recognized that the paging industry warrants distinct treatment, including in the universal service context. For example, the Commission has always maintained a separate safe harbor for calculating paging carriers' and wireless voice carriers' interstate revenue percentage, and it declined to increase the paging safe harbor (from 12 percent) when it raised the general wireless safe harbor from 15 percent to 28.5 percent in 2002,¹ and to 37.1 percent in 2006.² The Commission likewise has exempted paging carriers from regulatory fee increases every year since 2003, observing that the long-lasting decline in subscribership and the spectrum-limited, geographically localized, and cost-sensitive nature of the paging industry make it impossible to pass through significant cost increases to subscribers and warrant "some measure of relief."³ The Commission also has exempted paging carriers from many voice-centric regulations, including 911/E911, local number portability, and number pooling requirements.⁴

Here, too, the Commission should maintain an alternative approach to USF contributions for paging services that recognizes the unique posture of the paging industry and avoids imposing needless hardships on paging carriers and their subscribers. The Commission should continue to assess contributions based on paging carriers' interstate revenues (as determined by interstate minutes of use), consistent with AT&T's proposed carve-out for prepaid wireless voice services. Alternatively, the Commission could derive a flat monthly charge by comparing paging carriers' interstate revenues to the proposed flat monthly fee. Data submitted by AAPC suggests that an appropriate flat monthly USF charge for paging services would be approximately \$0.05 per month.⁵

These alternative mechanisms would have a de minimis impact on the contribution methodology overall: They would add less than a penny to the monthly per-number charge, even

¹ See *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24965-66 (2002).

² See *Federal-State Joint Board on Universal Service*, Report and Order and Notice of Proposed Rule Making, 21 FCC Rcd 7518, 7531-34 (2006).

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, 18 FCC Rcd 15985, 15992 (2003).

⁴ See 47 C.F.R. § 20.18(a); *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7634 (2000).

⁵ See Letter of Kenneth E. Hardman, counsel for American Association of Paging Carriers (AAPC), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 3-4 & n.1 (Oct. 9, 2008) (estimating average paging revenues to be approximately \$8.00 per subscriber per month and noting that the 12 percent safe harbor for calculating the percentage of interstate revenues significantly overstates interstate usage).

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using the inflated (and now outdated) estimate of assessable numbers provided by AT&T and Verizon.⁶ This impact would amount to less than that of excluding telephone numbers of Lifeline subscribers, less than one-quarter of that of assessing prepaid wireless services based on minutes of use, and less than one-seventh of that of assessing “family share” numbers at 50 percent of the per-telephone number charge.⁷

In addition, failure to adopt an alternative contribution mechanism for paging services would undermine the public interest. Pagers remain a critical technology for many important customer segments, including hospitals and health care professionals as well as police departments, fire departments, and other emergency responders.⁸ Paging services remain vital for emergency communications because of their exceptional reliability and affordability. Because paging networks rely on satellite transmission and have built-in redundancy due to simulcasting, for example, they are far less vulnerable to service outages. Moreover, paging transmitters emit more powerful signals than mobile voice transmitters, significantly improving range and in-building penetration. And most paging devices use AA or AAA batteries, thus avoiding the need for constant re-charging and ensuring continuing functionality during sustained power outages. For these and other reasons, the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks lauded the exemplary performance of paging systems and recommended a number of actions designed to broaden their use during emergencies.⁹ The Commission, in turn, adopted the Katrina Panel’s findings and expressly endorsed the goal of promoting more widespread use of paging services by emergency responders.¹⁰ Adopting AT&T’s proposal without an alternative contribution mechanism for paging carriers would undermine these acknowledged public interest benefits, even though the need for reliable and affordable emergency communications solutions remains as compelling as ever.

Finally, failure to adopt an alternative mechanism for paging services would violate the Communications Act and the Administrative Procedure Act (“APA”). Section 254(d) of the Act requires that the USF contribution methodology be “equitable and nondiscriminatory,”¹¹ and an approach that massively increases contributions by paging subscribers—while reducing (or only modestly increasing) other customer segments’ contributions—would fly in the face of that mandate. Indeed, a flat monthly charge of \$0.85 or more would exceed USA Mobility’s

⁶ Letter of Mary L. Henze, AT&T Services, Inc. and Kathleen Grillo, Verizon, WC Docket No. 06-122, CC Docket No. 96-45, Direct USF Contribution Methodology: Supporting Data Analysis, Table 2 (Sept. 23, 2008).

⁷ *Id.*

⁸ Indeed, many hospitals have submitted ex parte letters in this proceeding to underscore their concern that a flat monthly USF fee of \$0.85 or more would threaten their continued use of paging services and, in turn, the safety of their patients.

⁹ Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and Recommendations to the FCC, at 10, 24, 32, 37-38, 40 (2006).

¹⁰ *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Red 10541, 10544-45 (2007).

¹¹ 47 U.S.C. § 254(d).

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interstate revenues for the majority of its customers, and thus would replicate the very error that the U.S. Court of Appeals for the Fifth Circuit found applicable to a previous contribution scheme involving international revenues.¹² By contrast, allowing paging carriers to continue contributing based on their interstate revenues would fairly apportion contribution burdens among the various industry participants and customer segments.

For similar reasons, imposing a flat monthly USF charge of \$0.85 or more on paging carriers and their customers would constitute arbitrary and capricious decisionmaking, in at least three different respects. First, treating paging carriers the same as wireless voice carriers in spite of the fundamental differences between the two classes of providers is plainly unreasonable.¹³ Second, if the Commission accommodates the concerns of wireless carriers that provide prepaid services and family-share plans, it would be arbitrary and capricious to deny paging carriers comparable treatment, because the logic underlying those proposed carve-outs applies even more powerfully to paging services.¹⁴ Finally, in light of the Commission's past findings that (a) paging carriers cannot pass through significant fee assessments (which in the context of annual regulatory fees were far more modest than the USF charges at issue here), and (b) paging services deliver vital public interest benefits by enabling emergency communications and other important functions, it would be arbitrary and capricious to saddle paging carriers and customers with massively increased fees that would break the back of an already-beleaguered sector.¹⁵

Please contact the undersigned if you have any questions regarding this letter.

Sincerely,



Matthew A. Brill
Counsel for USA Mobility, Inc.

Attachment

¹² See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 434 (5th Cir. 1999) (holding that disproportionate impacts caused by assessing certain providers' international revenues violated Section 254(d)).

¹³ See, e.g., *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (holding that an agency must "justify its failure to take account of circumstances that appear to warrant different treatment for different parties").

¹⁴ See, e.g., *Burlington N. & Santa Fe Ry. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) ("Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.").

¹⁵ See, e.g., *Ctr. for Auto Safety v. FHA*, 956 F.2d 309, 313 (D.C. Cir. 1992).

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cc: Christine Kurth
Jennifer Schneider
Christi Shewman
Carol Simpson
Jennifer McKee
Vickie Robinson
Cindy Spiers

Impact of Numbers-Based USF Fee

On Paging Subscribers and the Paging Industry

Meeting with Federal Communications Commission
October 8, 2009



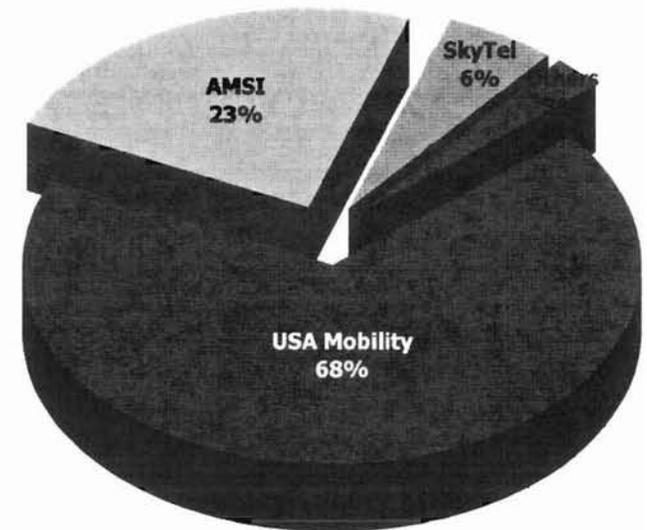
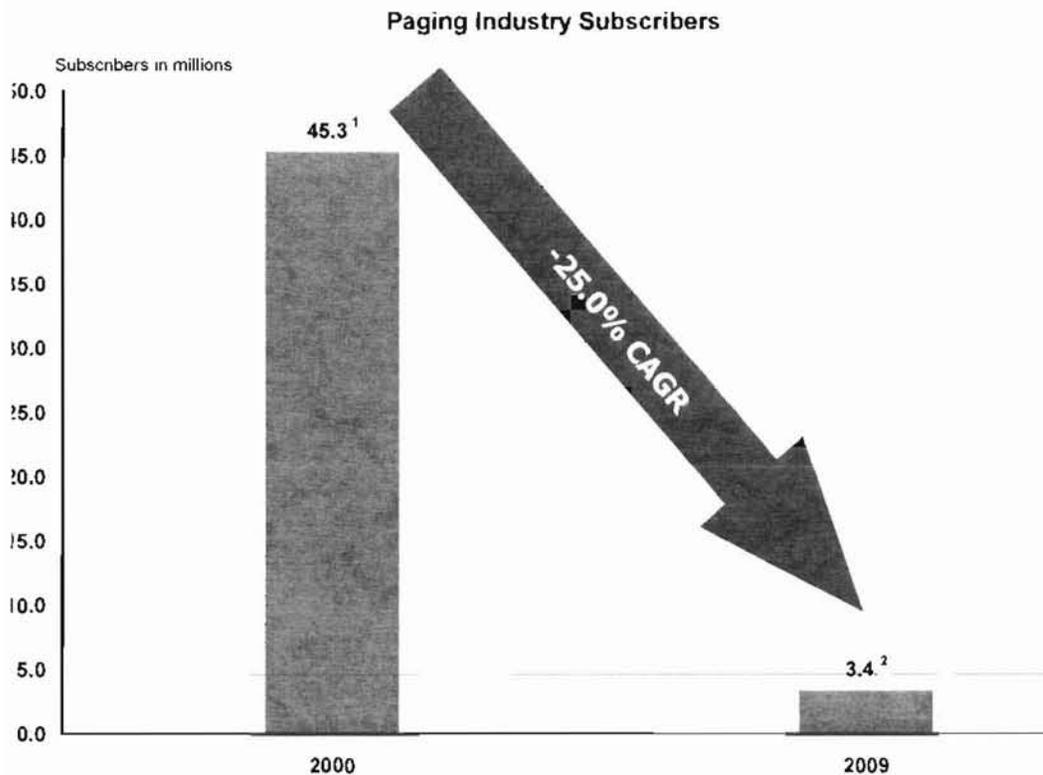
Introduction

- ◆ Changing the USF charge to a flat rate per telephone number would cause significant disruption for a large number of paging customers.
- ◆ Subjecting paging carriers to a flat USF charge of \$0.85 or more per telephone number per month would cripple what remains of the paging industry.
- ◆ The AT&T proposal would raise the monthly USF charge paid by the typical paging subscriber *more than 700 percent* (and in some cases far more), while *substantially reducing* contributions paid by most wireless and wireline voice customers.
- ◆ USA Mobility, Inc. proposes that the FCC either (1) retain the revenue-based USF charge for paging services, or (2) set a discounted flat charge that avoids imposing inequitable and discriminatory fees on paging carriers and their customers, in violation of Section 254(d) of the Act and the APA.

Background on USA Mobility

- ◆ USA Mobility is the nation's largest provider of paging services.
- ◆ The company provides essential services to hospitals, police and fire departments, and other emergency responders and government officials throughout the country.
- ◆ The Commission expressly recognized the public interest benefits associated with USA Mobility's services in the Katrina Order, based on the company's exemplary performance during Hurricane Katrina and prior emergencies.

Paging Industry Subscribers Have Been Rapidly Declining for Nearly a Decade



August 31, 2009

RANK	CARRIER	UIS*	SHARE
1	USA Mobility	2.3	68%
2	AMSI	0.8	23%
3	SkyTel	0.2	6%
	Others	0.1	3%
Total		3.4	100.0%

¹ FCC WTB 2001 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, page 53.

² Management Estimates. Latest available data from 2009 FCC WTB Annual Report cites 5.8 million paging subscribers at end of 2007 based on estimates using NRUF data, page 99.

*Units in Service in millions; management estimates.

However, Healthcare Customers Have Been Relatively Stable

- ◆ Healthcare customers represent 56% of USA Mobility's subscribers and have been very stable over the past four years compared to overall Paging Industry subscribers.

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"We have been hearing about the end of paging for at least 4 years. I can tell you that we don't see that happening for our organization any time soon. The service is extremely reliable and very cost effective and is the right choice for our mission critical messaging needs."

- Carol Deneefe, System Executive, Information Systems Division
Memorial Hermann Hospital System

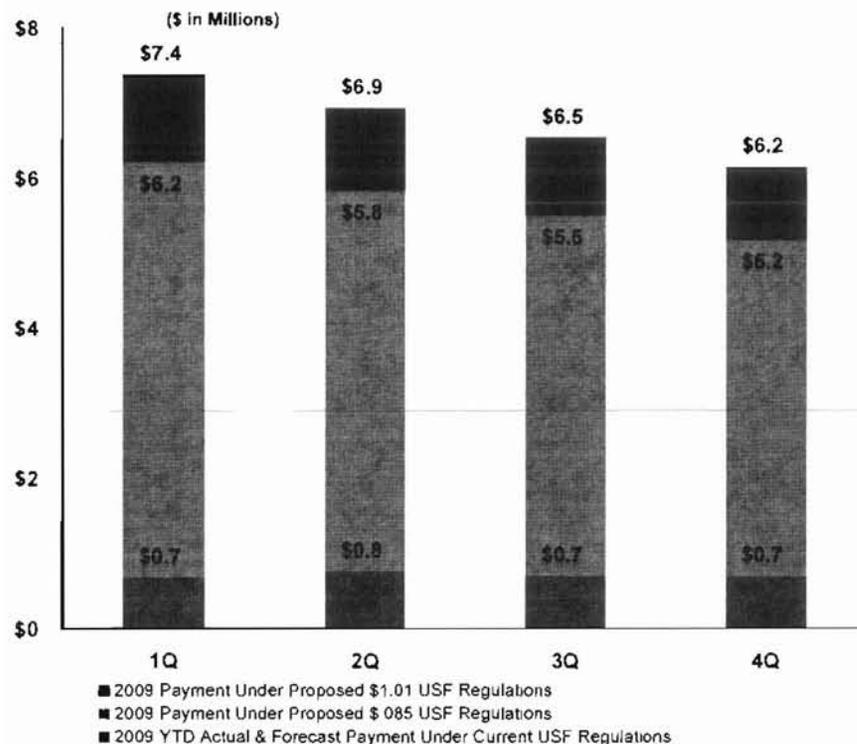
MEMORIAL
HERMANN
Breakthroughs every day

Paging Services Are Fundamentally Different from Wireless Voice Services

- ◆ Paging's rapidly declining subscriber numbers (now fewer than 3.5 million units in service) contrast with exploding use of wireless voice services (more than 260 million units in service).
- ◆ On average, USA Mobility's paging customers generate less than \$9 per month in revenue, whereas wireless voice carriers receive more than \$50 per subscriber per month.
- ◆ Spectrum constraints and high sensitivity to cost increases characterize the paging industry.
- ◆ Paging services make minimal use of the PSTN, given their reliance on satellite backhaul.
- ◆ Paging carriers pay into the USF but are not eligible to receive USF support.

A Flat USF Fee of \$.85 or More Would Have a Draconian Impact on Paging Subscribers

- ◆ AT&T touts the fact that its numbers-based proposal would be neutral or positive for most industry/customer segments.
- ◆ But this proposal would shift massive costs to the beleaguered paging industry, potentially causing a **nine fold** increase in their share of the overall contribution burden.



- 2009 USF Payments under current regulations are forecast at **\$2.9 million**.
- 2009 USF Payments under proposed flat \$1.01 or \$0.85 amount would be **\$27.0 million** and **\$22.7 million** respectively.
- These increases of \$24.1 million and \$19.8 million respectively would amount to **76.9%** and **63.2%** of USA Mobility's total interstate revenue forecast for 2009 (\$31.3 million, using the 12 percent safe harbor).

USA Mobility Has a Wide Distribution of Healthcare Units in Service and Service Rates

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- ◆ Healthcare customers represent 56% of our subscribers and are our most valuable and stable customer segment.

Impact of Number Based USF Fee on USA Mobility's Most Valuable & Stable Customers - Healthcare

- ◆ Under a flat \$0.85 or \$1.01 USF fee, our healthcare customers would see their USF fees increase by 218% to 5,050%. Overall monthly cost for service would increase by up to 65% per month, and on average would increase 8% to 10% respectively if the Commission adopted a flat \$0.85 or \$1.01 USF fee.
- ◆ Even a flat \$0.10 would increase USF fees by as much as 500% and the overall cost of monthly service by 5% for low-revenue customers.

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The Commission Has Consistently Recognized that Paging Warrants Distinct Treatment

- ◆ When the Commission raised the USF safe harbor for wireless voice carriers from 15 percent in 1998 to 28.5 percent in 2002 and to 37.1 percent in 2006, it held the USF safe harbor for paging carriers constant at 12 percent.
- ◆ The FCC has exempted paging carriers from regulatory fee increases every year since 2003, citing the inability of paging customers to absorb cost increases.
- ◆ The FCC has exempted paging carriers from many voice-centric regulations, including 911/E911, local number portability, and number pooling requirements.

The Commission Should Maintain an Alternative Contribution Mechanism for Paging Services

- ◆ Consistent with AT&T's proposed carve-out for prepaid wireless voice services, the Commission could avoid hardship for paging subscribers by maintaining a methodology based on revenues (minutes of use).
- ◆ Alternatively, the Commission could derive a flat monthly charge by comparing existing paging revenues to the proposed \$1.01 monthly fee. (AAPC data suggests that an appropriate monthly charge for paging providers would be \$.05 per month.)

Such Approaches Would Have a De Minimis Impact on the Contribution Methodology Overall

- ◆ Even using the inflated estimate of assessable numbers provided by AT&T, an alternative assessment on paging carriers would add less than a penny to the monthly per-number charge.
- ◆ This impact would amount to:
 - Less than that of excluding telephone numbers of Lifeline subscribers;
 - Less than quarter of that of assessing prepaid wireless telephone numbers on a per-minute-of-usage basis;
 - Less than one-seventh of that of assessing “family share” numbers at 50 percent of the per-telephone number charge.

An Alternative Approach for Paging Is Compelled by the Logic of the AT&T Proposal

- ◆ The AT&T proposal recognizes the need to accord special treatment to Lifeline, prepaid wireless, and family share customers, based on the discriminatory impacts of a high flat charge on these customer groups.
- ◆ The numbers-based assessment proposal would have a greater impact on paging subscribers, given the magnitude of the increase in contributions.

Failure to Adopt an Alternative Mechanism Would Undermine the Public Interest

- ◆ The Independent Katrina Panel and the Commission have recognized the important public interest benefits of paging services. Pagers remain a critical technology for emergency responders, healthcare professionals, and others because:
 - Paging systems are exceptionally reliable, based on their reliance on satellite transmission, rather than the PSTN;
 - Paging transmitters simulcast messages, providing inherent redundancy;
 - Paging transmitters emit more powerful signals than mobile voice transmitters, improving range and in-building penetration;
 - Paging devices use AA or AAA batteries, which avoid the need for constant re-charging (which cannot occur during power outages).
 - Paging devices and service plans are affordable.

The Impact of the Numbers-Based Proposal Would Undercut the Katrina Order

- ◆ The Katrina Panel noted the superior reliability of paging systems and recommended their broader use by emergency responders.
- ◆ The Commission, in turn, adopted the Katrina Panel's findings and agreed to promote increased use of paging services.
- ◆ The numbers-based USF proposal, absent an alternative assessment methodology for paging carriers, would undermine these vital public safety objectives.

Failure to Adopt an Alternative for Paging Services Would Violate the Act and the APA

- ◆ A numbers-based contribution methodology, absent an alternative assessment approach for paging services, would be inequitable and discriminatory, in violation of Section 254(d). In particular, a flat charge of \$.85 or \$1.01 would exceed the total amount of interstate revenue earned by USA Mobility in many cases.
- ◆ Failure to accommodate paging-specific concerns also would be arbitrary and capricious.
 - The Commission must balance the benefits of a numbers-based methodology against the costs, which in the paging context are greatly magnified.
 - The Commission could not establish a carve-out for prepaid wireless or family share customers without also doing so for paging services.
 - The Commission must adhere to its previous recognition that paging services present unique concerns or provide a reasoned basis for departing from that precedent.