BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion	)	GN Docket No. 09-137

AMERICAN ASSOCIATION OF PAGING CARRIERS

COMMENTS -- NBP NOTICE #19

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Exhibit 1: AAPC Comments on Further Notice of Proposed Rulemaking, WC Docket No. 05-337, *et al.*

Exhibit 2: AAPC *ex parte* memorandum to Marlene H. Dortch dated October 9, 2008, concerning USF contribution methodology, WC Docket No. 06-122, *et al.*

Exhibit 3: AAPC *ex parte* memorandum to Marlene H. Dortch dated October 23, 2008, concerning USF contribution methodology, WC Docket No. 06-122, *et al.*

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AMERICAN ASSOCIATION OF PAGING CARRIERS

COMMENTS -- NBP NOTICE #19

THE AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its comments to the Federal Communications Commission in response to the National Broadband Plan (NBP) Task Force request for comments (RFC), DA 09-2419, released November 13, 2009, on the role of the Universal Service Fund and intercarrier compensation in the National Broadband Plan. As its comments in response to the RFC, AAPC respectfully states:

Introduction and Background

RFC #19 is one component in a series of requests for public comment on various issues deemed relevant to the Commission's development of a National Broadband Plan, as mandated by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009). By its RFC #19 the Commission invites "more focused comment" on its universal ser-

vice and intercarrier compensation policies (RFC at p. 1), as well as the exploration of various policy options that would "further the goal of making broadband universally available to all people of the United States". *(Id.).*

To these ends, the RFC identifies seven broad subjects for comment, including (1) the size of the Universal Service Fund; (2) USF contribution methodology; (3) transitioning the current Universal Service high-cost support mechanism to support advanced broadband deployment; (4) the impact on USF service provider recipients of changes in current revenue flows; (5) competitive neutrality implications (on the distribution side); (6) oversight of high-cost funding; and (7) broadband Lifeline/Link Up programs. The RFC also identifies numerous questions within the seven subjects for comment by interested parties.

Identity and Interest of AAPC

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 issued 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 under Parts 22 and 90 of the Commission's rules; and equipment suppliers and other vendors to the carrier industry.

Paging carriers are classified as telecommunications carriers under the Communications Act, regardless of whether they offer one-way or two-way services. As such, paging carriers are direct contributors to USF, except to the extent they fall within the current *de minimis* exemption from contribution obligations. However, unlike cellular/PCS carriers, paging carriers are not able to be designated as Eligible Telecommunications Carriers (ETCs), and thus are barred from receiving high-cost support from USF. As a result, paging carriers are in the anomalous position of being required to contribute to USF on the same basis as cellular/PCS carriers, at the same

time paging carriers, unlike cellular/PCS carriers, are barred from receiving USF high-cost support for paging networks. AAPC thus has a direct and substantial interest in USF contribution methodology proceedings such as the RFC, and it has actively participated in such proceedings since AAPC's inception in 2002.

Summary of Comments

AAPC does not advocate a modification of the current methodology of assessing contributions to USF as a percentage of interstate service provider revenues. AAPC continues to believe the current methodology is the most reasonable way of balancing the Commission's various public interest concerns in establishing USF assessments. The current methodology also is fully consistent with incorporating support for broadband in USF, as explained *infra*. In AAPC's view, therefore, the incorporation of broadband into USF does not warrant significant modification of the USF contribution methodology insofar as existing telecommunications services and facilities are concerned.

Accordingly, in the event the Commission deems it necessary in the public interest to expand USF support to include broadband services and facilities, AAPC submits that the Commission should retain percentage-of-interstate-revenues as the basic contribution methodology, and should simply extend that methodology to providers of high-speed Internet access. In so doing, the Commission also should revisit and properly apply its competitive neutrality policy so as to exclude one-way paging service offerings from direct USF contribution obligations.

Comments on RFC #19

As a preliminary matter, AAPC does not take a position on whether the USF should be expanded or otherwise modified to support broadband services and facilities. Rather, AAPC's comments herein are predicated on the assumption that broadband will be supported by USF in

the future, either by transitioning from traditional high-cost support of telecommunications facilities and services to broadband, or by expanding USF to additionally support broadband facilities and services. Further, AAPC does not take a position on the principal distribution-side issues for which comments are requested in RFC #19, *viz.*, topics 3 through 7, inclusive. Instead, AAPC's comments are directed at topics 1 (Size of the Universal Service Fund) and 2 (Contribution Methodology). (RFC at pp. 1-2).

Size of the Universal Service Fund.

Experience has demonstrated that absent reasonable fiscal controls by the Commission, USF expenditures will continue to spiral upwards and will continue to increase as a percentage of the contribution base. Therefore, as a matter of fiscal responsibility, the Commission should impose a hard "cap" on the size of the USF to avoid it becoming, if it is not already, an undue and unfair financial burden on the end users. AAPC does not take a position on whether "caps" should be imposed on a program-by-program basis, as the Commission has done in the past, or whether an overall "cap" on the entire fund would impose sufficient fiscal discipline. In all events, however, the minimum step the Commission should take in the public interest is to limit the size of the USF by capping expenditures at a predetermined level. If the Commission is uncertain what level of expenditures is appropriate, it should immediately cap expenditures at current levels and then initiate a study to determine whether or not the expenditures should be reduced.

Contribution Methodology.

Assuming that the Commission includes support for broadband services and facilities as part of USF, it is clear that the contribution base likewise should be expanded to reflect that fact. AAPC does not understand that anyone is suggesting that providers of high-speed Internet access

should continue to be exempt from contributing to USF if distributions are going to be made from the USF to support those services and facilities. Indeed, continuing to exempt providers of high-speed Internet access from making USF contributions at the same time they are targeted to receive financial support from USF would obviously violate the most basic principles of equity and competitive neutrality.

Therefore, in AAPC's view, the pertinent question becomes whether the changes to the contribution rules will be confined to those changes reasonably appropriate and necessary in light of the inclusion of broadband in USF, or whether the need to make some changes to the contribution rules will be used as a pretext to implement the hidden agendas of the large carrier and user proponents of a "Numbers" contribution methodology. AAPC strongly urges the Commission to reject the attempts by large carriers and users to use contribution reform as a cover to implement their hidden agendas.

As AAPC argued in response to the Commission's Further Notice of Proposed Rulemaking last November,[1] no persuasive -- much less compelling -- case has been made as to the need for substantial modification of the contribution methodology at this time, whether on factual, policy or legal grounds. AAPC argued that, instead, the Commission should defer any further consideration of contribution methodology until USF *distribution* issues and related intercarrier compensation principles have been sorted out and resolved. A copy of AAPC's comments in response to the FNPR is attached hereto as Exhibit 1 and is incorporated herein by reference. AAPC fully adheres to its position as set forth in its comments in response to the FNPR.

Nor does including broadband in USF justify departing from the existing percentage-of-interstate-revenues contribution methodology. To the contrary, if broadband services and facili-

[1] Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, *et al.*,,, FCC 08-262, adopted and released November 5, 2008, and published at 73 Fed. Reg. 66821 (November 12, 2008) (the "FNPR").

ties become directly supported by USF, then the providers of those broadband services and facilities, *i.e.*, the high-speed Internet Service Providers (ISPs), likewise should be required to directly contribute to USF on the same percentage-of-interstate-revenues basis as do existing telecommunications carriers. The Commission has long maintained that ISP-bound traffic is jurisdictionally interstate in character.[2] Therefore, 100% of the revenues derived by ISPs from their high-speed Internet access services should be subject to direct assessment for USF contributions.

This can be readily accomplished under existing law, pursuant to the Commission's permissive authority in Section 254(d) of the Communications Act to require USF contributions by "provider[s] of interstate telecommunications". 47 U.S.C. §254(d). The Commission's authority under Section 254(d) to require USF contributions by interconnected VoIP providers was upheld by the Court of Appeals because the provision of telecommunications is a component of interconnected VoIP.[3] Telecommunications likewise is a component of cable modem service, notwithstanding that the end product is classified as an "information service" rather than as a "telecommunications service".[4] So too, obviously, telecommunications likewise is a component of DSL and wireless broadband service, regardless of the regulatory classification of the finished product.

Accordingly, the Commission clearly has the authority under existing law, and should exercise it, to require providers of high-speed Internet access service – whether via coaxial cable, DSL, fiber optic or wireless network facilities -- to directly contribute to USF on the same percentage-of-interstate-revenues basis as existing telecommunications carriers. More than that is

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[2] *See, e.g.,* FNPR at ¶17.
[3] *Vonage Holdings Corp. v. FCC,* 489 F.3d 1232 (D.C. Cir. 2007).
[4] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities (Internet Over Cable Declaratory Ruling),* 17 FCC Rcd 4798, 4823 & ¶39 (FCC 2002).

not required to answer the legitimate expressed complaints of the large carrier and user interests that seek to "reform" the existing contribution methodology by implementing "Numbers".

Impact on End Users. Under AAPC's recommended approach, existing end users indirectly contributing to USF would not be adversely affected, and should be benefited to the extent that increasing the contribution base to include broadband services and facilities would decrease the overall percentage required to generate revenues for the USF. That is, assuming the USF is capped at current revenue levels and the contribution base is expanded to include broadband services and facilities, the current contribution factor of 12.3 percent would necessarily decline because the same revenue requirement would be spread among a significantly larger contribution base. Therefore, in such case, all existing end user contributors to USF would see a decline in their USF line charges for their existing telecommunications services and facilities.

Of course, to the extent the existing users also have high-speed Internet access, their overall USF contributions would not necessarily decline. This is so because the decline in contributions for telecommunications services and facilities would be offset in whole or in part by the increase in contributions for broadband services. However, in such case the USF contributions still would be fairly apportioned among end users, since the contribution assessments would be directly correlated to the USF-supported services employed by those end users.

The same basic equities obviously would **not** be observed in a "Numbers" contribution methodology. AAPC previously analyzed the impact of "Numbers," based on data submitted for the record in WC Docket No. 06-122, *et al.*, by AT&T and Verizon. Copies of AAPC's analyses are attached hereto as Exhibits 2 and 3 and are incorporated herein by reference. These analyses demonstrate that "Numbers" is no more than a cover for effecting a massive and unjustified off-loading of USF contribution obligations from cellular/PCS customers and large wireline business

users to low-usage business (including paging) and residential wireline users. A "Numbers" proposal lawfully should be rejected on that basis alone.

One other point should be noted in this regard. The health care industry and first responders comprise a substantial portion of the current paging customer base. All of their budgets are under substantial and increasing pressure due to the poor economy and constantly rising costs of providing health care. The most likely effect of the rate shock for paging customers which would result from implementation of a "Numbers" contribution methodology would be a further decline in the use of paging by those industries and increased reliance on cellular/PCS technology in emergency conditions.

However, as has been amply documented in the literature,[5] cellular/PCS networks tend to become overloaded and unusable in emergency situations due in substantial part to their point-to-point architecture, in contrast to the point-to-multipoint architecture of paging networks. Therefore, implementing a "Numbers" USF contribution methodology likely would have the unintended and unfortunate consequence of causing the hospitals and the first responder community to become less well equipped to respond competently to emergency conditions. Such a result plainly is not in the public interest.

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[5] *See, e.g.,* Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission,* June 12, 2006, at p. 10 (Appendix B to *Notice of Proposed Rulemaking,* EB Docket No. 06-119, FCC 06-83, released June 19, 2006 and published at 71 Fed. Reg. 38564 (July 7, 2006)) (finding paging networks "more reliable" during disaster than voice/cellular systems). *See also, e.g.,* Arlington County After-Action Report on the Response to the September 11 Terrorist Attack on the Pentagon (undated), at pp. 9, 20, 34 (available at http://www.co.arlington.va.us/departments/Fire/edu/about/FireEduABoutAfterReport.aspx) (last visited December 3, 2009) and "Wireless Messaging for Homeland Security" by Dr. Peter Kapsales, senior consulting engineer for CACI Technologies (March 2004). In a similar vein, the Commercial Mobile Service Alert Advisory Committee bluntly concluded that poin-to-point technologies such as the cellular/PCS networks "are not reasible or practical" for the support of the Commercial Mobile Alert System (CMAS), because, among other reasons, they can "experience significant delivery delays" and can result in "network and radio interface congestion to the point of blocking voice calls". Commercial Mobile Service Alert Advisory Committee, *Commercial Mobile Alert Service Architecture and Requirements,* October 12, 2007, at p. 49 (Appendix B to Notice of Proposed Rulemaking, PS Docket No. 07-287, FCC 07-214, released December 14, 2007 and published at 73 Fed. Reg. 545 (January 3, 2008)).

Exclusion of One-Way Paging from Direct USF Contributions. Assuming the USF contribution rules are modified to support broadband services and facilities, the Commission also should re-evaluate its policies on contributions to USF by paging carriers, specifically as they relate to one-way paging services. The pertinent statutory standard is that paging and other telecommunications carriers must contribute to USF on an "equitable" basis. 47 U.S.C. §§254(b)(4), (d). From the outset, the Commission has recognized that the statutory standard incorporates the notion of "competitive neutrality".[6]

At year end 1997, the year the Commission first decided that paging carriers should contribute to USF, there were an estimated 55 million cellular/PCS units in service, compared to an estimated 49.8 million paging/messaging units in service.[7] However, by year end 2008, based on the Commission's regulatory fee data, cellular/PCS units in service had grown to an estimated 276 million, while paging/messaging units in service had declined to an estimated 7 million.[8] In recognition of the financial difficulties of the paging industry generally, the Commission has maintained the same paging/messaging regulatory fee since 2002.[9]

Moreover, in 1997, neither paging carriers nor cellular/PCS carriers received any USF high-cost support for their networks. Currently, paging carriers are still barred from receiving any high-cost support. In stark contrast, however, the high-cost support paid to competitive ETCs (largely the cellular/PCS carriers) has grown from under $17 million in 2001 to $1.18 billion through 2007, shortly before the Commission imposed a "cap" on competitive ETC high-

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[6] *Federal-State Joint Board on Universal Service (Report and Order),* CC Docket No. 96-45, FCC 97-157, released May 8, 1997, at ¶46.
[7] Third Annual CMRS Competition Report, Federal Communications Commission, released June 11, 1998, pp. 3-4.
[8] *Assessment and Collection of Regulatory Fees (Report and Order),* MD Docket No. 09-65, FCC 09-62, released July 31, 2009, Slip. Op. at p. 19 (Appendix B: FY 2009 Payment Units).
[9] *E.g., id.,* at p. 6 & ¶¶14-15.

cost support because the "average annual growth rate of over 100 percent" of competitive ETC disbursements placed the USF in "dire jeopardy".[10]

It is further pertinent in this regard that one-way paging services are, by definition, inward communications only, and calls to paging terminals characteristically are originated by telephone service subscribers on a sent-paid basis. Therefore, to the extent paging services are involved in interstate communications, it is fair to say that contributions to USF on paging traffic characteristically are made independently of the paging carriers, because they are made via the telephone services and facilities used to transmit calls to the paging networks.

The same analysis does not apply, however, in the case of cellular/PCS services. Cellular/PCS units are used both to originate outbound calls and receive inbound calls. Indeed, the interconnection agreements between cellular/PCS carriers and wireline carriers typically reflect that the cellular/PCS units originate proportionately more calls than they receive. Accordingly, if USF assessments were not made on cellular/PCS services, the necessary result would be that other segments of the communications industry would be directly paying all of the high-cost support provided to cellular/PCS carriers.

In a similar vein, cellular/PCS carriers are licensed for sufficient spectrum to offer wireless broadband services, and presumably will receive substantial disbursements for their 3G and 4G broadband offerings in the event the USF is expanded to support broadband services and facilities. By contrast, again, the narrowband licenses under which paging carriers operate do not have the technical capacity to support broadband offerings.

In short, the wireless competitive environment has changed substantially since the Commission's determination that paging carriers should be required to contribute to USF as tele-

[10] *High-Cost Universal Service Support (Order),* WC Docket No. 05-337, *et al.,* FCC 08-122, released May 1, 2008, at pp. 5-6 & ¶¶6-7.

communications carriers, on an equal basis with cellular/PCS carriers. If the Commission revisits the contribution rules to accommodate broadband services and facilities, it should at the same time revisit its consideration of the equities and competitive neutrality of requiring one-way paging services to continue as direct contributors to the USF. If it does so, AAPC respectfully submits that the Commission properly and lawfully should conclude that one-way paging services should be excluded from direct USF contributions.

Respectfully submitted,

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December 7, 2009

EXHIBIT NO. 1:

AAPC COMMENTS ON FURTHER NOTICE
OF PROPOSED RULEMAKING,
WC DOCKET NO. 05-337, *et al.*

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

To: The Federal Communications Commission, *en banc*

COMMENTS OF
AMERICAN ASSOCIATION OF PAGING CARRIERS
ON FURTHER NOTICE OF PROPOSED RULEMAKING

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November 26, 2008

SUMMARY

Any USF contribution methodology based on a uniform charge per number across all telecommunications industry segments, such as set forth in Attachment "B" and (at least for residential subscribers) in Attachments "A" and "C," would be exceedingly injurious to the paging industry and potentially disastrous. Paging units, which generate network usage of less than a minute per day and have an ARPU of approximately $8.00 per month, would be assessed the same USF fee as wireline and mobile telephone numbers that generate 25-30 minutes of usage per day and, at least for mobile telephone numbers, generate ARPU nearly seven times that of a paging unit.

The result is that a numbers-based contribution methodology would massively offload USF contribution obligations from mobile telephone carriers, while at the same time imposing a ***crippling increase of more than 800%*** on paging carriers. Such a contribution methodology simply cannot be squared with the "equitable and nondiscriminatory" standard of Section 254 of the Act, or with the Commission's freeze of regulatory fees applicable to paging carriers since 2002; and it plainly violates principles of competitive neutrality embedded in the "equitable and nondiscriminatory" statutory standard.

Moreover, and contrary to the analysis contained in the proposals, no persuasive case -- much less a compelling one -- has been made as to the need for substantial modification of the contribution methodology, whether on factual, policy or legal grounds. The facts show that it has been the growth in USF disbursements that has caused the rise in USF contribution factors, not that the contribution methodology is "broken." Bundling issues have already been addressed through the use of "safe harbor" allocations; and the Commission's studied failure to clearly distinguish between "telecommunications" and "information" is not a rational justification for mak-

ing wholesale changes to the contribution methodology. Further, the added administrative convenience of a numbers-based methodology for a handful of large telephone companies does not offset or otherwise justify subjecting untold additional companies to direct contribution obligations and resulting new regulatory burdens, as the Attachments would do.

From a legal standpoint, the Commission's general discretion to design a USF contribution methodology must give way to Congress' specific design in Section 254, which the Commission initially sought to implement when it established the current system of USF contributions based on interstate end-user revenues. It also is plainly inadequate to construe the "equitable and nondiscriminatory" standard of Section 254 to require different industry groups to contribute *something* to USF; instead, the relevant issue, which the Attachments do not attempt to address, is how much different industry groups should be required to contribute compared to others. The current system recognizes the distinction by using revenues as a proxy for relative usage; the proposals in the Attachments would throw this principle overboard without any explanation as to why it is no longer valid.

Accordingly, the Commission should *not* consider significant modifications to USF contribution methodology at this time, and should defer any such consideration until modifications to USF disbursements and to intercarrier compensation principles have been implemented and evaluated. If at that time the Commission properly determines that significant modifications to the USF contribution methodology are still required in the public interest, it should propose a specific methodology based on contributions to the network in a second further notice of proposed rulemaking, so that interested parties will have a meaningful opportunity to comment on a concrete connections-based proposal prior to its adoption by the Commission.

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To: The Federal Communications Commission, *en banc*

COMMENTS OF
AMERICAN ASSOCIATION OF PAGING CARRIERS
ON FURTHER NOTICE OF PROPOSED RULEMAKING

THE AMERICAN ASSOCIATION OF PAGING CARRIERS (AAPC), by its attorney, respectfully submits its comments to the Federal Communications Commission in response to the Order on Remand and Report and Order and Further Notice of Proposed Rulemaking (the "FNPR") in the captioned proceedings, FCC 08-262, adopted and released November 5, 2008, and published at 73 Fed. Reg. 66821 (November 12, 2008). As explained more fully below,

AAPC requests that the Commission *not* address modification of the Universal Service Fund (USF) contribution methodology at this time. AAPC urges the Commission instead to defer any such modifications until distribution-side reforms have been implemented and a reasonable demonstration can be made that modification of the USF contribution methodology is nevertheless necessary in the public interest. Further, if the Commission decides at a future time to consider significantly modifying USF contribution methodology, it should issue a second further notice of proposed rulemaking setting forth a specific contribution methodology based on connections to the interstate network, so that interested parties will have a meaningful opportunity to comment on the proposed changes prior to their adoption by the Commission.

As its comments on the FNPR, AAPC respectfully states:

Introduction and Background

Proposals to modify the USF contribution methodology have been offered and debated for a number of years. In a 2001 Notice of Proposed Rulemaking issued in CC Docket No. 96-45, *et al.*, the Commission suggested that the USF contribution methodology adopted in the aftermath of the Telecommunications Act of 1996 may need to be simplified and streamlined, citing the entry of the RBOCs into the long distance market and resultant declining revenues of the existing interexchange carriers, the growth of mobile telephony, the advent of Internet Protocol telephony and the increased "bundling" of telecommunications services.[1]

In a subsequent Further Notice of Proposed Rulemaking, issued in early 2002 without taking any remedial action in response to comments on the 2001 NPRM,[2] the Commission expressed similar concerns, citing such factors as declining revenues of interexchange carriers, the

[1] *In the Matter of Federal-State Joint Board on Universal Service, et al.* (Notice of Proposed Rulemaking), CC Docket No. 96-45, *et al.*, FCC 01-145, 16 FCC Rcd 9892 (FCC 2001), at ¶¶3-4.

[2] *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.*, FCC 02-329, 17 FCC Rcd 3752 (FCC 2002),

increasing use of mobile telephony for interstate calls, the blurring of distinctions between telecommunications and non-telecommunications services, and increased bundling of telecommunications services.[3] The Commission sought public comment to ensure the sufficiency and stability of the USF, to provide certainty to market participants and to minimize the costs of regulatory compliance.[4] At that time the Commission suggested that a connections-based assessment methodology appeared to be the most promising way to achieve its objectives.[5]

In December 2002, the Commission issued an order adopting limited modifications to the USF contribution rules and requesting comment on additional issues, including three different variations of a connections-based USF contribution methodology.[6] The modifications adopted in the December 2002 order included increasing the mobile telephony "safe harbor" interstate revenue allocation from 15% to 28.5%, adopting an "all-or-nothing" rule requiring affiliated CMRS carriers to use the same method for allocating interstate revenues, and changing the quarterly revenues reported for USF contribution computation purposes from historical to forecast quarterly revenues.[7] The latter change was necessary in the Commission's view in order to "promote competitive neutrality".[8]

The Commission's next action was to issue an "interim" order in June 2006 increasing the interstate "safe harbor" allocation for mobile telephony carriers from 28.5% to 37.1%, adopting new requirements for mobile telephony carriers relying on traffic studies to determine inter-

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[3] *Id.* at ¶¶7-14.
[4] *Id.* at ¶¶15-17.
[5] *Id.*
[6] *In the Matter of Federal-State Joint Board on Universal Service, et al.* (Report and Order and Second Further Notice of Proposed Rulemaking), CC Docket No. 96-45, *et al.*, FCC 02-329, adopted December 12, 2002 and released December 13, 2002. Later, the Commission also released a staff study purporting to show the revenue effect on different industry segments arising from converting to a connection-based methodology; and it requested comments on the staff study as part of response of interested parties to the Second Further Notice of Proposed Rulemaking.
[7] *Id.* at ¶¶20-39.
[8] *Id.* at ¶29.

state revenues, requiring interconnected VoIP service providers to contribute to the Universal Service Fund and establishing a 64.9% "safe harbor" interstate allocation for VoIP service providers.[9] The Commission declined to adopt more fundamental modifications to the contribution methodology, despite claims at that time by the large telephone companies that the current system is "broken," acknowledging that "a consensus approach to reform has not developed."[10]

The Commission's June 2006 order is its last word on the subject of USF contribution methodology until issuance of the current FNPR. The FNPR does not claim that a "consensus approach to reform" has developed in the intervening months since the June 2006 order, and does not itself propose specific changes to the USF contribution methodology. Rather, the FNPR attaches three alternative "draft" orders (Attachments "A," "B" and "C") that were circulated to the commissioners for a vote in connection with a meeting scheduled for November 4, 2008.

Insofar as USF contribution methodology is concerned, there is little difference between the proposals in Attachments "A" and "C". Both would immediately impose a fixed $1.00 per number per month USF contribution obligation on "residential" service subscribers with "Assessable [Telephone] Numbers." AAPC understands the proposals to require all telecommunications carriers, including paging carriers, to apply the "residential" and "business" distinction to their subscriber base and to assess a $1.00 per month charge to all "residential" subscribers, without regard to a *de minimis* exemption such as exists currently. The only exceptions would be for prepaid wireless and lifeline subscribers, which are not relevant to paging carriers, and, under the "A" proposal, subscribers to stand-alone voicemail services, also not relevant to paging carriers.

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[9] *In the Matter of Universal Service Contribution Methodology, et al.* (Report and Order and Notice of Proposed Rulemaking), WC Docket No. 06-122, *et al.*, FCC 06-94, 21 FCC Rcd 7518 (FCC 2006) (subsequent history omitted).

[10] *Id.* at ¶21.

"Business" service subscribers would continue to pay under the current system under both the "A" and "C" proposals while a rulemaking is conducted to determine a suitable contribution methodology for them based on connections to the network. No proposed rules are attached to either proposal to inform interested parties as to the specific nature of the connection-based contribution methodology under consideration.

The proposal in Attachment "B" would impose an immediate USF contribution obligation of $0.85 per number per month on all subscribers – including paging service subscribers -- with an "Assessable Number," both residential and business, again evidently without regard to any *de minimis* exemption. "Business" service subscribers with "Assessable Connections" also would be assessed a $5.00 per month USF contribution obligation for each dedicated connection with a speed of 64 kbps or less, and $35.00 per month for each dedicated connection with a speed greater than 64 kbps. The "B" proposal essentially parrots a proposal advanced jointly by AT&T and Verizon on October 20, 2008, after they concluded that the "A" proposal circulated by the Chairman on October 15, 2008 "would perpetuate all of the problems with the current mechanism" and would, at the same time, "also inject additional complexity by requiring providers to distinguish between residential and business telephone numbers and revenues."[11]

AAPC is the national trade association representing the interests of paging carriers throughout the United States. AAPC's members include a majority of the 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 carriers are telecommunications carriers and, unless within the current *de minimis* exemption, are direct contributors to

[11] *Ex Parte Letter dated October 20, 2008, from Mary L. Henze (AT&T) and Kathleen Grillo (Verizon),* WC Docket No. 06-122 & CC Docket No. 96-45, at p. 1.

USF. AAPC thus has a direct and substantial interest in USF contribution methodology proceedings and has actively participated in such proceedings since AAPC's inception in 2002.

Summary of Position

Any USF contribution methodology based on a uniform charge per number across all telecommunications industry segments, such as set forth in Attachment "B" and (at least for residential subscribers) in Attachments "A" and "C," would be exceedingly injurious to the paging industry and potentially disastrous. Such a contribution methodology simply cannot be squared with the "equitable and nondiscriminatory" standard of Section 254 of the Act, or with the Commission's freeze of regulatory fees applicable to paging carriers since 2002; and it plainly violates principles of competitive neutrality embedded in the "equitable and nondiscriminatory" standard. Moreover, and contrary to the analysis contained in the proposals, no persuasive -- much less compelling -- case has been made as to the need for substantial modification of the contribution methodology, whether on factual, policy or legal grounds.

Accordingly, the Commission should *not* consider significant modifications to USF contribution methodology at this time, and should defer any such consideration until modifications to USF disbursements and to intercarrier compensation principles have been implemented and evaluated. If at that time the Commission properly determines that significant modifications to the USF contribution methodology are still required in the public interest, it should propose a specific methodology based on contributions to the network in a second further notice of proposed rulemaking, so that interested parties will have a meaningful opportunity to comment on a concrete connections-based proposal prior to its adoption by the Commission.

Comments on FNPR

AAPC respectfully submits that no modifications to the USF contribution methodology should be considered at this time because the "analysis" and "justification" set forth in the Attachments to the FNPR fall far short of adequately supporting the wholesale changes that those Attachments would bring about.[12] As an initial matter, AAPC points out that the foundational claim in the Attachments, that that the current contribution system is "broken,"[13] reflect hyperbolic, result-oriented rhetoric rather than reasoned analysis. The decline in assessable revenues from $79.0 billion in 2000 to $74.5 billion in 2006, cited and relied upon in the Attachments,[14] is only a 5.7% decline over a six-year period. On its face that hardly constitutes a "breakdown" of the current contribution system. Quite to the contrary, to generate the same contribution of $4.5 billion in 2006 that was generated in 2000, the contribution factor would have increased only from the 5.9% factor used in the first quarter of 2000 to a 6.0% contribution factor in 2006. Again, that hardly constitutes a "breakdown" of the current contribution system.

Moreover, ending the comparison with 2006, as the Attachments do, does not fairly account for the modifications adopted in June 2006 increasing the mobile telephony "safe harbor" interstate allocation to 37.1% from 28.5%, and requiring interconnected VoIP providers to contribute to USF for the first time, using a 69.4% "safe harbor" interstate allocation. Those modifications were expressly designed to increase USF contributions and were not implemented at all until the fourth quarter of 2006. As a result, the financial impact of the 2006 modifications is not

[12] The basic analysis and argument in the Attachments in favor of change are largely identical among all three of the proposals. *Compare* Attachment A, ¶¶97-114, pp. A-42-A-50, *with* Attachment B, ¶¶44-61, pp. B-17-B-25, *and* Attachment C, ¶¶93-110, pp. C-41-C-49. For simplicity, AAPC will refer hereinafter only to the discussion in Attachment A and not to the parallel discussions in Attachments B and C.

[13] Attachment A, ¶97, p. A-42.

[14] *Id.* at ¶94, p. A-41.

fairly reflected in the 2006 revenues cited in the proposals, further undercutting any reasonable claim that the current USF contribution system is "broken".

Instead, the part of USF that truly may be "broken" is the USF *disbursements*. As the analysis in the proposals concede, USF disbursements grew from $4.5 billion in 2000 to over $6.6 billion in 2006, almost *150%* of 2000 disbursements. If the increased USF disbursements were warranted and in the public interest, they do *not* suggest that the contribution system is "broken". Rather, in such case they would simply mean that the USF program is relatively broader and more expensive in 2006 than in 2000, and therefore that it was necessary to increase the contribution factor in order to generate the increased revenues needed to pay for the more expensive 2006 USF program.

What almost everyone understands, however, is that the increased USF disbursements from 2000 to 2006 were *not* altogether warranted and in the public interest, although there are sharp disagreements as to which portions were warranted and in the public interest and which portions were not. The point here is that what the relevant facts show is *not* that the USF contribution methodology is "broken," as claimed in the Attachments, but rather that the USF disbursements need to be scrutinized and fixed as necessary. Under these circumstances, it is absolutely irrational to use the set of problems on the distribution side as justification for wholesale changes to the *contribution* methodology.

In this regard, AAPC notes that the Attachments include sometimes widely varying proposals for significantly modifying USF disbursement rules, including caps on ILEC high cost disbursements, phase-out of ETC high cost support over five years, elimination of the "identical support" rule, and use of negative auctions, as well as for substantial changes to principles of intercarrier compensation. The changes to USF disbursements obviously are intended to substan-

tially *reduce* them over time, some of which could be offset by the proposed changes in intercarrier compensation.

All of these changes are highly controversial; and the extent to which they ultimately are adopted or abandoned will have a substantial impact on USF revenue requirements in the future. Again, under these circumstances, the rational approach to USF reform is to first address, implement and evaluate modifications to USF disbursements, before attempting to determine whether any changes are necessary to the USF contribution methodology.

The second foundational predicate in the Attachments purporting to justify modifying the USF contribution methodology is the claim that "interstate end-user telecommunications service revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services."[15] The statement may be true as far as it goes, but it does *not*, upon analysis, justify the sweeping changes the proposals seek to implement.

The bundling of intrastate and interstate service packages has already been addressed by the Commission through the adoption of "safe harbor" interstate revenue allocations. If a "safe harbor" allocation is still needed for wireline unlimited calling plans (which is not at all clear in light of the call records routinely maintained by telephone companies), the Commission readily can establish one. AAPC knows of no reason to believe that "safe harbor" allocations are not simple and effective solutions to the intrastate/interstate revenue issue; and the proposals do not claim otherwise. Thus, the proposals' complaint that distinguishing interstate from other revenues now is "difficult if not impossible" is, at best, a gross and unreasonable exaggeration.[16]

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[15] *Id.* at ¶95, p. A-41.
[16] *Id.* at ¶97, p. A-42.

The real problem here, which the Attachments do not choose to highlight, is the extant ambiguity between "telecommunications services" (which clearly are subject to USF contribution assessments under Section 254) and "information services" (which clearly are *not* subject to USF contribution assessments under Section 254). Again, however, the underlying problem is *not* the USF contribution mechanism itself, but rather is the Commission's studied refusal – for unrelated regulatory policy purposes -- to classify particular services as "telecommunications" or as "information". The Commission may have very good reasons for failing to make this distinction clear, but it is plainly irrational to import that policy predilection into the USF debate and to bootstrap it into a justification for wholesale modification of the USF contribution methodology.

The legal analysis advanced by the Attachments is little better than their factual discussion. The Attachments entirely forget the fundamental principle reaffirmed in the Supreme Court's *Chevron* decision[17] that the first inquiry in every case of agency implementation of its organic statute is to determine "whether Congress has directly spoken to the precise question at issue" and, if so, "that is the end of the matter" and the agency "must give effect to the unambiguously expressed intent of Congress."[18] To satisfy this requirement the agency must "giv[e] some substance" to the statutory provisions it is interpreting and failure to do so is error.[19]

That is exactly what the Commission did in the aftermath of the 1996 amendments adding Section 254 to the Communications Act, when it determined that USF contributions should be assessed on telecommunications providers based on their interstate and international end-user

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[17] *Chevron U.S.A., Inc. v. NRDC,* 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed 2d 694 (1984).

[18] *Id.,* 467 U.S. at 842-843, 104 S. Ct. 2781. *Accord, e.g., American Mining Congress v. EPA,* 824 F.2d 1177, 1182 (DC Cir. 1987).

[19] *AT&T v. Iowa Utilities Board,* 525 U.S. 366, 392, 119 S. Ct. 721, 736, 142 L. Ed. 2d 834 (1999) (FCC reversed for failing to "giv[e] some substance" to the "necessary" and "impair" statutory requirements for unbundling telephone network elements). Accordingly, whether or not the Commission separately has "plenary" authority over telephone numbers is besides the point.

telecommunications revenues.[20] Nonetheless, the Attachments would essentially ignore that history and argue, in substance, that times have changed and hence an entirely new system of the Commission's design and choosing should be implemented, without regard to implementing the Congressional directives in Section 254.

That is *not*, however, the Commission's lawful role. If it believes that the Congressional design as expressed in Section 254 has become anachronistic, the proper remedy is not to ignore and rewrite the Congressional design but instead is to obtain appropriate revisions to Section 254 by Congress.

To the extent the Attachments do bow in the direction of Section 254, they do not even acknowledge, much less appropriately address, the proper scope of the principles contained in that section. The core requirement in Section 254(d) is that carriers providing interstate telecommunications services shall contribute to the USF "on an equitable and nondiscriminatory basis". From the outset, the Commission has held that this standard includes the requirement of "competitive neutrality".[21] Nonetheless, the discussion in the Attachments, to the extent it addresses the statutory standard at all, is confined to whether or not it is equitable for different entities to contribute some amount to USF or not, and does *not* address in any meaningful way whether relative contributions from different industry groups would be equitable and competitively neutral.[22]

It has long been accepted that relative usage of the interstate network is a reasonable proxy for equitable contributions to USF; and it likewise has long been acknowledged that it is part of the "equitable and nondiscriminatory" standard that those who use the network more

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[20] *In the Matter of Federal-State Joint Board on Universal Service* (Report and Order), CC Docket No. 96-45, 12 FCC Rcd 8776 (FCC 1997).
[21] *Id.* at ¶¶843-848, 854.
[22] Attachment A, ¶¶108, 113, 143-145.

should make greater contributions to USF. Relative usage is roughly reflected in the end-user revenues paid; thus there is a correlation under the current system between relative network usage by subscribers and the magnitude of their USF contribution obligations. As a result, paging service subscribers, which generate on average less than a minute of network usage per day, pay far less in USF contributions than do conventional wireline and mobile telephony subscribers, who are commonly understood to generate usage on the order of 25-30 minutes per day.[23] The Attachments would throw this principle overboard without acknowledging it or explaining why it is no longer true.

Stating the point somewhat differently, facially equal treatment is both inequitable and discriminatory when the parties to whom such (facially equal) treatment is extended are not similarly situated. That is exactly the major flaw of a "Numbers" approach to USF contributions, *viz.*, it affords superficially "equal" treatment to different groups that are not in fact similarly situated. The result is a contribution system that is neither "equitable" nor "nondiscriminatory" as required by Section 254.

This principle applies with particular force when a "Numbers" USF contribution methodology is applied to the paging industry, as AAPC has explained in previous *ex parte* submissions.[24] As the Commission well knows, paging and mobile telephony are competing mobile service technologies; and the erosion of the paging service subscriber base over the past decade has been primarily due to the availability of mobile telephony alternatives. One of the important factors in the ability of paging carriers to retain customers is the low price of paging service relative to mobile telephone service, *viz.*, approximately $8.00 per month ARPU for paging service

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[23] *See, e.g.*, *id.* at ¶138 (citing CTIA data showing that the average wireless postpaid customer used 826 minutes per month for the period ending December 2007).

[24] *See, e.g.*, AAPC *Ex Parte Memorandum*, WC Docket No. 06-122, October 9, 2008; AAPC *Ex Parte Memorandum*, WC Docket No. 06-122, October 23, 2008, hereby incorporated herein by reference.

compared to approximately *seven times* that amount for mobile telephone service.[25] Accordingly, as explained in AAPC's October 9, 2008, *ex parte* memorandum, imposing a facially "equal" USF contribution obligation on telephone numbers actually results in a massive *offloading* of USF contribution obligations for mobile telephony carriers while saddling paging carriers at the same time with a ***crippling increase of more than 800%*** in their USF contribution obligations.

It does not take a financial genius to understand that imposing anything like a $1.00 surtax on a $8.00 total monthly service charge potentially would be devastating for paging carriers, particularly since that same charge actually would represent a cost *reduction* for competing mobile telephony services. The proposals in the Attachments do not acknowledge this blatant violation of the "equitable and nondiscriminatory" standard of Section 254, and most obviously the "competitive neutrality" component of that standard.

Furthermore, even apart from the "equitable and nondiscriminatory" standard of Section 254, imposing such a surtax on paging service rationally cannot be reconciled with the Commission's freeze on paging service regulatory fees since 2002.[26] The "unique circumstances" in the paging industry that have persuaded the Commission to freeze regulatory fees equally counsel that a drastic rate shock such as would happen under a "Numbers" USF contribution methodology outlined in the Attachments likewise should be avoided.

Finally, the Attachments trumpet the alleged benefits of their new contribution methodology without acknowledging, much less analyzing in any meaningful way, the increased regulatory *burdens* that the new methodology would entail or any disadvantages of such a methodology. The Attachments concede, albeit rather euphemistically, that implementation of contribu-

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[25] *See, e.g.*, AAPC Comments on Further Notice of Proposed Rulemaking, *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, September 25, 2008, at pp. 4-5.
[26] *See, e.g., id.* at pp. 2-3.

tions based on "Assessable Numbers" means that certain "non-carrier entities that use telephone numbers in a manner that meets our definition of Assessable Numbers do not report NRUF data yet must [directly] contribute" to USF.[27]

With contributor status also comes burdensome new regulatory reporting and payment obligations for those non-carrier entities.[28] While it may be the case that a handful of large and sophisticated telephone companies will have modestly simpler regulatory requirements under the new USF contribution methodology set forth in the Attachments, the Commission does not trouble to explain why it is in the public interest to lighten those requirements by inflicting onerous new regulatory burdens on non-carrier and heretofore non-direct contributor entities.

Nor do the attachments attempt to justify why it is in the public interest to newly burden direct contributors with distinguishing between "residential" and "business" subscribers, such as would be required under the proposals in Attachments "A" and "C". Even AT&T and Verizon, the principal industry proponents of a "Numbers" USF contribution methodology, found it necessary to protest the "additional complexity" of "requiring providers to distinguish between residential and business telephone numbers and revenues".[29]

Conclusion

Under all of these circumstances, AAPC respectfully submits that the Attachments utterly fail to justify adoption of any of the wholesale modifications to the existing USF contribution methodology set forth therein, and that consideration of any such modifications should not take place, if at all, until issues relating to the appropriate level of USF disbursements have been resolved and implemented, and the impact of intercarrier compensation reform on subscriber rates

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[27] Attachment A at ¶128, p. A-55.
[28] *Id.* at ¶¶148-153, pp. A-65-A-67.
[29] *Ex Parte Letter dated October 20, 2008, from Mary L. Henze (AT&T) and Kathleen Grillo (Verizon),* WC Docket No. 06-122 & CC Docket No. 96-45, at p. 1.

has been determined. Only then will the Commission be in a position to rationally determine whether and, if so, how the USF contribution methodology should be modified consistent with the requirements of Section 254. Moreover, at such time as the Commission appropriately determines that significant modification of the USF contribution methodology is in the public interest, the Commission should issue a specific proposal based on connections to the network for public review and comment, prior to deciding whether or not to convert to a new contribution methodology.

Respectfully submitted,

AMERICAN ASSOCIATION OF PAGING CARRIERS

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November 26, 2008

EXHIBIT NO. 2:

AAPC *EX PARTE* MEMORANDUM TO MARLENE H. DORTCH DATED OCTOBER 9, 2008, CONCERNING USF CONTRIBUTION METHODOLOGY, WC DOCKET NO. 06-122, *et al.*

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Via ECFS

Ex Parte Memorandum

October 9, 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

Dear Ms. Dortch:

On behalf of the American Association of Paging Carriers (AAPC), this responds to the *ex parte* notice filed in the above-referenced proceedings on September 23, 2008, jointly by AT&T Services, Inc. and by Verizon (the "AT&T/VZ Notice"). The purpose of the AT&T/VZ Notice was to support the claim that under their proposed Direct USF Contribution Methodology outlined in a previous joint submission on September 11, 2008 (commonly referred to as their "Numbers" proposal for contributing to the Universal Service Fund), "the majority of consumers would pay less in monthly USF fees . . . than they do today."

The claim and underlying analysis are, at best, disingenuous, superficial and highly misleading. In fact, their Numbers proposal is simply a device for effecting a massive and unjustified off-loading of USF contribution obligations from cellular/PCS subscribers and large business wireline subscribers onto the backs of low-usage business and residential wireline customers. Such a proposal represents a huge step in precisely the wrong direction, particularly in the case of cellular/PCS subscribers, and is utterly at odds with the Commission's public interest objectives in its recent USF decisions such as increasing the two-way wireless "safe harbor" interstate allocation for bundled services from 28.5% to 37.1% and "capping" wireless ETC Universal Service Fund disbursements. Accordingly, the AT&T/VZ Numbers proposal should be summarily rejected by the Commission.

What the AT&T/VZ Notice fails to make clear is that their Numbers proposal would result in a massive reduction of contributions to USF by what they refer to as "Wireless Telephony" subscribers (*i.e.,* cellular/PCS subscribers). The Notice then overwhelmingly -- but rather disingenuously – allocates the wireless decrease to the "consumer" side of the ledger, thus making it

appear overall as though the typical telephone "consumer" will benefit financially as a result of their Numbers proposal.

By way of illustration, the most basic individual wireless voice plan offered by AT&T and VZ is $40 per month, which uses one telephone number. Using the current "safe harbor" allocation of 37.1%, interstate revenues under this plan thus are $14.84 per month, making a USF contribution due (at the current 11.4%) of $1.69 per month. By contrast, AT&T & VZ estimate that under their Numbers proposal, the monthly USF contribution for this wireless subscriber would be reduced to $1.07 (with the family plan adjustment), ***a 37% reduction in USF contributions for wireless telephony subscribers at the same time wireless ETC distributions threaten to "bust" the USF budget.***

This massive offloading of USF contribution obligations is even greater as a general rule under the more expensive wireless telephony rate plans. For example, VZ offers a basic two-line (two-number) family plan for $70 per month. Again, using the "safe harbor" allocation of 37.1%, interstate revenues under this plan thus are $25.97, making a USF contribution due (at 11.4%) of $2.96 per month. However, under the AT&T/VZ Numbers proposal, the estimated contribution would be only $1.61 per month (150% of the single number assessment of $1.07), ***a 46% reduction in USF contributions for wireless telephony subscribers at the same time wireless ETC distributions threaten to "bust" the USF budget.*** Similarly, AT&T's basic two-line (two-number) family plan at $60 per month would receive a 37% reduction, the same as their basic individual wireless telephony subscriber, reducing a current $2.54 per month USF contribution obligation (interstate revenues of $22.26 x 11.4%) to the same $1.61 contribution as under VZ's basic family plan.

Eliminating the family plan adjustment lessens the reduction somewhat overall, although individual wireless telephony subscribers would still reduce their USF contribution obligation from $1.69 currently to $1.01 per month, a 40% reduction compared to a 37% reduction with the family plan adjustment.

This offloading of wireless telephony USF contribution obligations is also demonstrated by the AT&T/VZ Notice's own data. Table 1 of the Notice states that interstate Wireless Telephone end user revenues for 2006 were $26,857,000. The Commission should note that the wireless "safe harbor" interstate allocation was only 28.5% for the first three quarters of 2006, so the interstate revenue reflected in Table 1 is actually understated for a current analysis. Nonetheless, even using Table 1's data without adjustment, at the current USF contribution factor of 11.4%, the wireless telephony USF contribution obligation for 2006 would be $3,061,698,000. By contrast, using the family plan adjustment set forth in the Notice, there were 203,816,317 net Wireless Telephony numbers at year end 2007 according to the Notice's Table 2 (260,143,000 less 21,305,712 adjustment for prepaid wireless and 35,020,917 adjustment for the family plan). At $1.07 per number times 12 months, the net 203,816,317 wireless telephony numbers would yield a USF contribution obligation of only $2,617,001,510, ***a reduction of $445 million for wireless telephony subscribers at the same time wireless ETC distributions threaten to "bust" the USF budget.***

The Commission also should note that actual extent of USF contribution offloading is much greater than reflected in the above data in the Notice. As noted above, the 2006 interstate revenues included only one quarter at the current "safe harbor" of 37.1%; the first three quarters used the substantially lower 28.5% wireless "safe harbor". Additionally, of course, 2007 wireless telephony revenues in general were greater than in 2006, again resulting in understating the actual USF contribution obligation in 2007 under the current system, and therefore understating the true extent of the offloading of that contribution obligation by wireless telephony subscribers under the AT&T/VZ Numbers proposal.

Eliminating the family plan adjustment does not eliminate the wireless offloading. Adding back the 35,020,917 family plan adjustment numbers results in net wireless telephony numbers of 225,122,029 which, when multiplied by $1.01 times 12 months results in a wireless telephony USF contribution obligation of $2,728,478,991. This is still a $333 million reduction compared to a USF contribution obligation of $3,061,698,000 using Table 1 data, as explained above.

Indeed, Table 4 of the Notice itself also demonstrates the offloading by wireless telephony and large business wireline subscribers. Table 4 shows a reduction in USF contribution obligations under the AT&T/VZ Numbers proposal for ***all*** categories of wireless telephony subscribers and for ***all*** categories of wireline subscribers ***except*** zero and low usage subscribers. Zero and low usage wireline subscribers, whether business or residential, would experience increases in their USF contribution obligations, according to Table 4, ranging from 4% (Line 2, Column 6) to as high as 57% (Line 1, Column 5).

In 2006, the Commission raised the "safe harbor" interstate allocation for wireless telephony from 28.5% to 37.1%, at least in part because the Commission determined that wireless telephony subscribers were not shouldering a fair portion of the USF contribution load. Adopting the AT&T/VZ Numbers proposal would effectively reverse the 2006 decision without the necessary findings and conclusions that their proportion of the obligation is now too high under current rules, and would do so at the same time increased USF payments to wireless telephony carriers continue to strain the USF budget and cause upward pressure on the quarterly USF contribution factor.

Nor is the massive and unjustified offloading of wireless telephony USF contribution obligations the only flaw in the AT&T/VZ Proposal. Numbers used by paging carriers, which are classified overwhelmingly as business numbers (*see* Table 2 of the Notice), would be assessed the full, per number contribution obligation of $1.07 and $1.01, respectively, depending upon whether an adjustment is made for wireless telephony family plans. By contrast, under the current methodology, even using the unrealistically high paging "safe harbor" interstate allocation of 12%,[1] the

[1] AAPC has previously pointed out that the 12% paging "safe harbor" is unrealistically high, having been based on data submitted by nationwide carriers that largely have disappeared, and that a more accurate safe harbor would be the 1% used for analog SMRS licensees. *See, e.g.,* Comments of American Association of Paging Carriers on Further Notice of Proposed Rulemaking, *In the Matter of Federal-State Joint Board on Universal Service, et al.,* CC Docket No. 96-45, *et al.,* April 22, 2002, at p. 5 (the "FNPR Comments").

typical monthly paging fee of $8.00 per month[2] results in a USF contribution obligation of $0.11 per month per pager at the current contribution factor.[3] That is, while wireless telephony subscribers would be offloading their USF contribution obligations under the AT&T/VZ Proposal, paging carriers would be saddled with a ***crippling increase of more than 800%*** in their USF contribution obligations. AAPC has noted previously that part of the statutory standard that USF contribution obligations be "equitable and nondiscriminatory" is the notion of competitive neutrality.[4] Clearly, as applied to paging carriers, the AT&T/VZ Numbers proposal utterly fails to comply with the statutory requirements, a particularly egregious failure in light of the fact that paging carriers do not and cannot – unlike wireless telephony service providers – receive any USF disbursements to support paging services in high cost areas.

For all of the foregoing reasons, the American Association of Paging Carriers respectfully requests that the Commission categorically reject the AT&T/VZ Numbers proposal at the threshold.

Respectfully submitted,

AMERICAN ASSOCIATION OF
PAGING CARRIERS

By: Kenneth E. Hardman

Kenneth E. Hardman

Its Attorney

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[2] This estimate has been used by the Commission. *See In the Matter of Federal-State Joint Board on Universal Service, et al. (Further Notice of Proposed Rulemaking and Report and Order),* FCC 02-43, released February 26, 2002 and published at 67 Fed. Reg. 11268 (March 13, 2002), at ¶59 & n. 145. Due to the intense competition within the paging industry and from the wireless telephony industry, the average monthly paging revenue per unit has changed little since then.

[3] $8.00 x 12% "safe harbor" yields an interstate revenue allocation of $0.96. $0.96 x 11.4% current USF contribution factor yields a contribution obligation of $0.11 per month per pager.

[4] AAPC FNPR Comments, *supra,* pp. 8-9. *See also, e.g., In the Matter of Universal Service Contribution Methodology, et al. (Report and Order and Notice of Proposed Rulemaking),* WC Docket No. 06-122, et al., FCC 06-94, released June 27, 2006, at ¶37 (justifying the imposition of USF contribution obligations on interconnected VoIP providers in the interest of "competitive neutrality").

EXHIBIT NO. 3:

AAPC *EX PARTE* MEMORANDUM TO MARLENE H. DORTCH DATED OCTOBER 23, 2008, CONCERNING USF CONTRIBUTION METHODOLOGY, WC DOCKET NO. 06-122, *et al.*

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Via ECFS

Ex Parte Memorandum

October 23, 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

Dear Ms. Dortch:

On October 10, 2008, CTIA – The Wireless Association® (CTIA) submitted an *ex parte* memorandum in WC Docket No. 06-122 supporting the "family plan" adjustment to the "Numbers" USF contribution plan submitted jointly by AT&T Services, Inc. and Verizon in September. In the course of that memorandum CTIA asserts (at p. 1 & n. 3) that the analysis of the "Numbers" proposal submitted by the American Association of Paging Carriers (AAPC) on October 9, 2008, "grossly overstates" current USF assessments on wireless telephony carriers, allegedly because "wireless carriers typically contribute based upon *actual* interstate wireless revenues that are lower than the 37.1% 'safe harbor' value". (Emphasis in original).

As an initial matter, AAPC is puzzled by CTIA's criticism of AAPC's use of the 37.1% "safe harbor" to analyze the impact of a "Numbers" contribution methodology on wireless telephony carriers. AT&T and Verizon – the two largest wireless telephony carriers -- also used the 37.1% "safe harbor" value for their analysis when arguing that a "Numbers" would be beneficial to consumers, including wireless telephony subscribers.[1] One would think that AT&T and Verizon know very well what percentage of their wireless revenues are reported as interstate; and their use of the 37.1% "safe harbor" allocation obviously implies that it is a fair representation of current wireless telephony USF contributions and pro forma USF contributions under their "Numbers" proposal. AAPC believes that AT&T and Verizon's use of the "safe harbor" allocation in their analysis is more persuasive of its fairness than CTIA's obviously self-serving use of a lower

[1] AT&T/VZ ex parte memorandum, WC Docket No. 06-122, CC Docket No. 96-45, September 23, 2008, at Table 4 & n. 5.

interstate allocation when it wants to complain about an alleged rate shock if the "Numbers" proposal is adopted without a family plan adjustment.

In any event, CTIA's criticism is at best misplaced. The thrust of AAPC's analysis is that the "Numbers" proposal is a mask for a massive and unjustified offloading of USF contribution obligations from cellular/PCS subscribers and large business wireline subscribers onto the backs of low-usage business and residential wireline subscribers. That simple fact remains, and is amply demonstrated by the AT&T/VZ analysis submitted on September 23, 2008 of their "Numbers" proposal, irrespective of the 37.1% "safe harbor" allocation employed *in a portion* of AAPC's analysis.

As pointed out by AAPC, Table 1 of the AT&T/VZ analysis states that interstate Wireless Telephone end user revenues for 2006 were $26,857,000,000. This purports to be the actual interstate revenue allocation for 2006 and is not dependent in any way upon whether it constituted 37.1% of total revenues, or, a lesser percentage as claimed by CTIA. At the current contribution factor of 11.4%, the USF contribution obligation of wireless telephony carriers for 2006 thus would have been $3,061,698,000 under the current contribution system.

By contrast, even using the higher amount of net wireless telephony numbers for 2007 of 203,816,317 (rather than 2006 net wireless telephony numbers), the USF contribution obligation of wireless telephony carriers at $1.07 per number (the alternative with the "family plan" adjustment) would total $2,617,001,510, ***a reduction of $445 million for wireless telephony carriers at the same time ETC distributions to wireless telephony carriers threaten to "bust" the USF budget.***

According to the Commission's data, wireless telephony regulatory fee payment units as of December 31, 2006 were 229 million,[2] or 88% of the 260 million wireless telephony fee payment units as of December 31, 2007.[3] Applying that same 88% factor to AT&T/VZ's net 203,816,317 wireless telephony numbers for 2007 yields an estimated net 179,358,359 wireless telephony numbers for 2006 after making the family plan adjustment and the prepaid service adjustment. Therefore, if the 179,358,359 net wireless telephony numbers for 2006 paid $1.07 per month as estimated by AT&T and VZ under their "Numbers" proposal, the USF contribution obligation of wireless telephony carriers actually would have been $2,302,961,329, nearly a ***$700 million reduction for wireless telephony carriers at the same time ETC distributions to wireless telephony carriers threaten to "bust" the USF budget.***

The essential result does not change if the "family plan" adjustment is eliminated for wireless telephony carriers, although the amount of USF contributions offloaded obviously is somewhat

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[2] *See Assessment and Collection of Regulatory Fees for Fiscal Year2007 (Report and Order and Further Notice of Proposed Rulemaking),* MD Docket No. 07-81, FCC 07-140, released August 6, 2007, at Attachment C, p. 2 (estimating 229 million fee payment units for Cellular Public Mobile as of December 31, 2006).

[3] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008 (Report and Order and Further Notice of Proposed Rulemaking),* MD Docket No. 08-65, released August 8, 2008, at Attachment B, p. 2 (estimating 260 million fee payment units for Cellular Public Mobile as of December 31, 2007).

reduced. Using 2007 number data and 2006 revenue data, AAPC's earlier submission estimated a USF contribution obligation of $2,728,478,991 for wireless telephony carriers without the family plan adjustment, compared to a contribution obligation of $3,061,698,000 under the current system, a $333 million reduction for wireless telephony carriers. More realistically, applying the same 88% factor used above to adjust 2007 numbers to 2006 numbers, an estimated total of 198,107,386 wireless telephony numbers (without the family plan adjustment) would have paid $1.01 per month times 12 months, or a total USF contribution obligation of $2,401,061,518 for wireless telephony carriers. That is still more than a $600 million reduction for wireless telephony carriers at the same time ETC distributions to wireless telephony carriers threaten to "bust" the USF budget.

AAPC does not take a position on whether the family plan adjustment is warranted, as claimed by CTIA. Whether a "Numbers" proposal is adopted with or without such an adjustment, however, the result is a massive offloading of USF contribution obligations by wireless telephony carriers at the same time the Commission is struggling to rein in ETC distributions to wireless telephony carriers. CTIA did not and cannot refute these basic facts.

Respectfully submitted,

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