Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters 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, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act	)	GN Docket No. 09-137

COMMENTS OF USA MOBILITY, INC. – NBP NOTICE # 19

USA Mobility, Inc. hereby submits these comments in response to NBP Notice # 19, which inquires about changes to the universal service support mechanisms in connection with the National Broadband Plan, among other issues.[1] As USA Mobility has explained in parallel proceedings, it has deep concerns about the potential imposition of a flat-rate, numbers-based assessment of $1.00 or more per month on paging carriers and their customers.[2] USA Mobility provides very low cost and highly reliable wireless text-messaging services to hospitals and other health care customers, police departments, and other emergency responders throughout the nation, and the Commission has expressly recognized the important role played by USA Mobility and other paging providers in facilitating emergency communications. A numbers-

---

1 Notice at 1.

2 *See, e.g.*, Comments of USA Mobility, Inc., WC Docket No. 06-122, et al. (filed Nov. 26, 2008); Ex Parte Letter of Matthew A. Brill to Marlene H. Dortch, WC Docket No. 06-122 (filed Oct. 9, 2009).

based charge of anything approaching $1.00 would dramatically increase the contribution costs borne by these budget-sensitive customer groups. The magnitude of such charges in relation to the low cost (average revenue per unit below $9.00) of paging services likely would cripple what remains of the paging industry, and in turn would eliminate the significant public interest benefits delivered by USA Mobility. While USA Mobility is confident that the National Broadband Plan Task Force has no intention of inflicting harm on paging carriers, it should be mindful of the risks of collateral damage. Indeed, the Communications Act requires *equitable* and *nondiscriminatory* contribution obligations and therefore precludes the imposition of draconian and disproportionate cost increases on paging carriers and their customers.

BACKGROUND

USA Mobility is the nation's largest provider of paging services, with approximately 2.3 million units in service. While the paging industry had a significant mass market presence a decade ago, with more than 45 million units in service,[3] the meteoric rise of mobile telephony and personal data assistants has all but eliminated the consumer base, driving overall paging subscribership below 4 million units.[4] Yet paging services remain critical to the health care industry as well as police and fire departments and other local, state, and federal government agencies.

---

3 *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*; *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350, at 53 (2001).

4 This figure is an estimate by USA Mobility's management. The latest available data from the *Thirteenth Annual CMRS Report* identified 5.8 million paging subscribers at the end of 2007. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*; *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, at ¶ 207 (2009) ("*Thirteenth Annual CMRS Report*"). Paging subscriptions have continued their substantial erosion since that time.

Paging services are vital to these customer segments because of their exceptional reliability and affordability. Because paging networks rely on satellite transmission and have built-in redundancy, they are far less vulnerable to service outages. While mobile phone transmitters operate at low power and send signals only from the tower closest to the end user—thus risking outages whenever that tower is affected—paging networks rely on “simulcasting,” which involves broadcasting the paging message from all the transmitters in a given zone at high power simultaneously, thereby enabling delivery of the message to the pager even if one or a handful of individual transmitters are down. Moreover, the high power of paging transmissions significantly improves 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.

Under the existing revenue-based universal service contribution methodology, USA Mobility’s assessments are forecast at less than $3 million for all of 2009—because most paging customers pay very low rates and generate correspondingly low interstate revenues. For example, within USA Mobility’s health care segment, which is by far its largest, the average customer generates less than $9.00 per unit in total monthly revenue, and more than a third of such customers generate less than $5.00 per month. Such customers today pay as little as $0.02 per month in USF charges, and in most cases less than $0.10. Not only would raising the monthly assessment to $1.00 (or some comparable figure) cause increases of up to ***5,000 percent*** in these customers’ contribution costs, but doing so would result in a USF charge that actually exceeds USA Mobility’s total interstate revenues for many customers. In stark contrast, wireless voice carriers receive more than $50.00 per subscriber per month, on average, and their customers’ current USF liability is well above $1.00 per month. Thus, while most telephony customers would benefit from reduced USF charges or at most face slight increases under proposed numbers-based methodologies, paging carriers and their customers would be saddled with back-breaking fee hikes. This key disparity underscores the need to avoid a one-size-fits-all approach to USF contributions.

DISCUSSION

I. SUBJECTING PAGING CARRIERS TO DRAMATICALLY INCREASED USF CHARGES WOULD BE UNLAWFUL AND UNSOUND AS A POLICY MATTER

The Notice seeks comment on a possible transition to a numbers-based contribution methodology, among other options. As an initial matter, it would be ironic, to say the least, if USF reform undertaken in the interest of promoting broadband deployment and adoption led to increases of up to 5,000 percent in paging customers' contribution obligations. Paging is a narrowband technology that is incapable of supporting voice transmissions, much less broadband Internet access, and providers like USA Mobility therefore are ineligible to receive high-cost or low-income support. Moreover, paging carriers' contributions are easy to calculate and pose none of the complexities attendant to voice and broadband data services. Accordingly, materially increasing paging carriers' contribution obligations would not remotely advance the objectives underlying the National Broadband Plan, just as such action would fail to advance any other public policy goal.

In any event, the massive increases in contribution burdens that would result from numbers-based charges in the neighborhood of $1.00 per month would violate Section 254(d) as well as the Administrative Procedure Act ("APA"). And, far from advancing legitimate objectives, such increases would undercut important policies established by Congress and the Commission. Indeed, as hundreds of hospitals and emergency responders have documented in the universal service dockets, such disproportionate fee increases would significantly curtail their use of paging services and thereby eliminate the life-saving role they play in emergencies.

A. Massively Increasing Paging Carriers' Contribution Obligations Would Violate Section 254(d) and the APA.

Numbers-based contribution proposals rest on the assumption that a per-number monthly fee of approximately $1.00 would reduce pass-through charges for most consumers, or at most would result in a slight increase. But that is manifestly untrue in the context of paging services. As noted above, most of USA Mobility's customers pay monthly service charges of less than $9.00, and those revenues yield USF charges of less than $0.10 in most cases (and sometimes considerably less). Overall, USA Mobility would face an increase of approximately 1,000 percent in its total USF costs if a flat $1.00 per-number charge were imposed. Such a drastic increase cannot be squared with the requirement in Section 254(d) to assess contributions on an equitable and nondiscriminatory basis.[5] It is hardly equitable for a paging customer who pays $5.00 a month for service (making only incidental use of the PSTN, if any) to be charged the exact same USF fee as a wireless or wireline voice customer who pays $50-plus a month for service. Moreover, the fact that most industry segments would face lower contribution costs or modest increases only heightens the inequitable and discriminatory nature of applying a numbers-based charge to paging carriers.

In addition, subjecting paging carriers to such draconian fee increases would squarely conflict with the Fifth Circuit's decision in *Texas Office of Public Utility Counsel v. FCC*. In that case, COMSAT argued that it was inequitable and discriminatory for the Commission to impose contribution obligations on COMSAT that exceeded its total interstate telecommunications revenues. The court found it "obvious[]" that the statutory requirement that the contribution methodology be equitable "refers to the fairness in the allocation of contribution duties," concluding that there must be a reasonable nexus between the telecommunications revenues that give rise to the USF contribution obligation and the amount of the USF levy itself.[6] The assessment of COMSAT's international revenues failed that test, because the Commission was unable to justify a regime that forced a class of carriers to "contribute more in universal service payments than they will generate from interstate service."[7] That is the precise result that would follow from imposing a numbers-based charge of approximately $1.00 on paging carriers. The interstate portion of USA Mobility's telecommunications revenues would be significantly less than its USF liability in connection with many customers.[8]

The imposition of monthly charges on the order of $1.00 on paging carriers, despite their low revenues, also would violate the APA. Such a one-size-fits-all solution would ignore critical differences between paging carriers and other telecommunications carriers, including paging carriers' reliance on satellite transmission, rather than the PSTN, to relay messages.[9] The Commission historically has recognized these clear distinctions in regulating CMRS carriers, such as in exempting paging carriers from E911 requirements and number portability/pooling rules. Moreover, as discussed further in the following section, Commission precedent recognizes

---

5 47 U.S.C. § 254(d).

6 *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999).

7 *Id.* at 435; *see also AT&T Corp. v. Public Utility Commission of Texas*, 383 F.3d 641, 646 (5th Cir. 2004) (reaffirming the principle that USF charges may not exceed interstate revenues, and finding state contribution requirements unlawful even absent such evidence).

8 *See* Letter from Matthew A. Brill, Counsel for USA Mobility, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 3-4 & Attachment at 8 (filed Oct. 16, 2008).

that paging carriers (a) cannot pass through increased regulatory fees to their subscribers or absorb increased costs, and (b) deliver important public safety benefits that should be supported, rather than undercut, by regulatory policy. Extending numbers-based charges to paging carriers would ignore such precedent without any principled basis, in violation of the APA.[10]

B. The Threatened Increases Would Harm the Public Interest, Including in Particular the Commission's Commitment to Public Safety.

The Commission has long recognized that the distinct features of the paging industry warrant tailored regulatory solutions. Paging carriers have endured dramatic declines in subscribership, and their narrowband spectrum does not enable them to offer high-value broadband services or to pursue other growth strategies. In light of this reality, the Commission has exempted paging carriers from annual regulatory fee increases every year since 2003, observing that the permanent 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."[11] It would be nonsensical to provide relief from regulatory fee increases of a few cents per subscriber, only to saddle paging carriers with increased USF costs of some 80 to 90 cents per subscriber. As the Commission recognized in its regulatory fee decisions, paging carriers are not be able to sustain such massive increases. USA Mobility's own economic analysis confirms that such fee increases likely would cripple what remains of the industry.

---

9 *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.").

10 *See Wis. Valley Improvement Co. v. FERC*, 236 F.3d 738, 748 (D.C. Cir. 2001) ("[A]n agency acts arbitrarily and capriciously when it abruptly departs from a position it previously held without satisfactorily explaining its reason for doing so.").

Numbers-based USF charges not only would greatly exacerbate the problems facing the paging industry, but also eviscerate the public interest benefits delivered by paging carriers. Most notably, the Commission has recognized that paging services play a vital role in emergency communications. During Hurricane Katrina and in the storm's aftermath, USA Mobility's services enabled police, fire, and emergency medical personnel to communicate when landlines and wireless phones were out of service. As a result of this and similar experiences, the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks recommended that the Commission promote more widespread use of paging devices by first responders, and the Commission agreed and directed its staff to implement that recommendation.[12] Imposing draconian fee increases that the industry cannot sustain would contradict this important policy initiative, while threatening to curtail the availability of paging services in future emergencies.[13]

II. IN LIGHT OF THESE LEGAL AND POLICY CONCERNS, THE COMMISSION SHOULD RETAIN REVENUE-BASED ASSESSMENTS FOR PAGING CARRIERS OR ESTABLISH AN ALTERNATIVE APPROACH THAT AVOIDS INCREASED BURDENS

While the imposition of a numbers-based USF assessment of approximately $1.00 on paging carriers would cripple what remains of the industry, such harms can be easily averted.

---

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

12 *See Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Rcd 10541, 10544-45 (2007); *see also 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).

13 Based on these concerns, hundreds of hospitals and other entities dependent on pagers for emergency communications have urged the Commission to refrain from imposing USF charges on the order of $1.00 per month on paging services. *See* WC Docket No. 06-122. USA Mobility encourages the National Broadband Plan Task Force to review those filings.

DC\1263955.2

Specifically, if the Commission decides to implement a numbers-based methodology, it 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 could continue to assess contributions based on paging carriers' interstate revenues (as determined by interstate minutes of use), consistent with carve-outs that have been proposed 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. Regardless of the methodology, paging carriers' USF charges must remain commensurate with their minimal use of the PSTN and their very low interstate revenues.

CONCLUSION

For the foregoing reasons, USA Mobility urges the Commission to refrain from imposing a numbers-based contribution methodology on paging carriers.

Respectfully submitted,

USA MOBILITY, INC.

/s/ Matthew A. Brill

By: ___________________________________

Matthew A. Brill
LATHAM & WATKINS LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304

December 7, 2009