

April 22, 2011

Sharon Gillett, Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

FILED/ACCEPTED

APR 26 2011

Federal Communications Commission  
Office of the Secretary

Re: Request for Guidance on Universal Service Fund Contributor Matter

Dear Ms. Gillett:

This letter requests guidance on a matter of Universal Service Fund (USF) policy concerning a telecommunications carrier's USF reporting and contribution obligations. Following is a discussion of the issue and the guidance requested.

Background

The Universal Service Administrative Company (USAC) Internal Audit Division (IAD) regularly performs audits of FCC Form 499-A filings. Objectives of these audits include, but are not limited to, determining the accuracy and completeness of the revenues reported by a contributor on the FCC Form 499-A pursuant to 47 C.F.R. Part 54, other FCC rules, FCC orders, and the Form 499-A Instructions (collectively, the Rules), and to identify any potential misstatements that may result in a change to their USF contribution obligations.

While examining multiple contributors' 2008 FCC Forms 499-A, USAC has identified a potential issue related to the proper reporting of text messaging revenues. Specifically, USAC noticed that carriers are reporting this revenue in two different ways.

1. Carriers are reporting text messaging revenue as non-telecommunications revenues in Line 418.3. As a result, these carriers would not make USF contributions based on this revenue.
2. Carriers are reporting text messaging revenue as telecommunications revenue on Line 409. The carrier then allocates this revenue as either interstate or international jurisdiction and makes USF contributions based on this revenue.

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### Guidance Request

USAC seeks guidance regarding the proper reporting of text messaging revenues. Text messaging is the sending of messages in plain text to various wired or wireless devices. The most common format in use today is short message service (SMS).<sup>1</sup> The 2008 FCC Form 499-A Instructions appear to support classifying text messaging as either an information service, not subject to USF contribution, or a telecommunications service, which is subject to USF contribution.

According to the 2008 FCC Form 499-A Instructions, telecommunications is “the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.”<sup>2</sup> Text messaging as defined above is the sending of messages in plain text to various wired or wireless devices. Plain text is sent and plain text is received – there is no change in the form or content of customer's information. Additionally, the instructions state that “[f]or the purpose of filing, the term ‘interstate telecommunications’ includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); [and] paging and messaging services . . . .”<sup>3</sup> The market for paging and messaging services includes both paging operators and narrowband PCS operators,<sup>4</sup> both of which provide text based services. From early on in its development, SMS text messaging service has been compared to paging and messaging service by the Commission.<sup>5</sup>

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<sup>1</sup> Newton's Telecom Dictionary 1116 (25th ed. 2009). See also *In the Matter of Schools and Libraries Universal Service Support Mechanism*, FCC 08-173, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703, 11712, ¶ 19 (July 31, 2008) (“Text messaging, known as short message service or SMS, is a service that allows short messages, typically up to 160 characters, to be sent to and from handheld wireless devices.”).

<sup>2</sup> Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, February 2008, at 4 (“2008 Instructions”). See also Instructions to the Telecommunications Reporting Worksheet, FCC Forms 457, December 1998, at 4, & December 1999, at 3-4 (demonstrating that paging and messaging services have been a part of the contribution base since the beginning of the USF).

<sup>3</sup> 2008 Instructions at 4. See also Instructions to the Telecommunications Reporting Worksheet, FCC Forms 457, December 1998 & December 1999, at 4.

<sup>4</sup> FCC Website, FCC Second Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services 51, 12 FCC Rcd 11266, 11321 (Mar. 25, 1997), available at [http://wireless.fcc.gov/index.htm?job=cmrs\\_reports](http://wireless.fcc.gov/index.htm?job=cmrs_reports) (Second Annual CMRS Competition Report); see also FCC Website, FCC Fifth Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services 55 n.416, 15 FCC Rcd 17660, 17714 (Aug. 18, 2000) (“As used herein, paging and messaging refer broadly to traditional one-way paging and advanced or two-way messaging services, as well as services provided over narrowband PCS spectrum.”), available at [http://wireless.fcc.gov/index.htm?job=cmrs\\_reports](http://wireless.fcc.gov/index.htm?job=cmrs_reports).

<sup>5</sup> Second Annual CMRS Competition Report at 52, 12 FCC Rcd at 11322 (“Although cellular and paging can be considered complements, developments in digital technology make it possible to offer a paging-like service, such as Short Message Service (SMS), over a cellular or broadband PCS phone.”). See also *id.* at n.246 (“SMS is essentially short paging style messaging.”); –*In the Matter of Schools and Libraries Universal Service Support Mechanism*, FCC 09-105, CC Docket No. 02-6, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6562, 6571, ¶ 17 (Dec. 2 2009) (“We agree with commenters



### **Paging Service**

“Traditional commercial paging service consists of one-way data communications sent to a mobile device that alerts the user when it arrives. The communication could consist of a phone number for the user to call, a short message, or an information update.”<sup>6</sup> One type of paging service is called ‘alphanumeric paging (also known as text messaging).’<sup>7</sup>

### **Narrowband PCS**

“Personal Communications Service (PCS) encompasses a wide variety of mobile, portable and ancillary communications services to individuals and businesses. The Commission broadly defined PCS as mobile and fixed communications offerings that serve individuals and businesses, and can be integrated with a variety of competing networks. The spectrum allocated to PCS is divided into three major categories: (1) broadband, (2) narrowband, and (3) unlicensed.

Narrowband PCS uses a smaller portion of the spectrum than broadband PCS. Narrowband PCS licenses are used to provide such services as two-way paging and other text-based services. For example, licensees offer services using devices that come equipped with a small keyboard allowing a subscriber to both retrieve and send complete messages through microwave signals (e.g. wireless e-mail).<sup>8</sup>

Conversely, the Instructions for Line 418 of the FCC Form 499-A state: “[I]nformation services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. Information services do not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.”<sup>9</sup> Some contributors are relying on this section of the instructions to classify text messaging as an information service not subject to the USF contribution requirements.

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who noted that text messaging is similar to other E-rate-eligible services used by applicants to communicate, such as e-mail and paging services.” (“2009 NPRM”).

<sup>6</sup> FCC Website, Paging (last updated Mar. 21, 2011), *available at* [http://wireless.fcc.gov/services/index.htm?job=service\\_home&id=paging](http://wireless.fcc.gov/services/index.htm?job=service_home&id=paging). See also FCC Website, FCC First Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services 51, 10 FCC Rcd 8844, 8854, ¶ 29 (July 28, 1995), *available at* [http://wireless.fcc.gov/index.htm?job=cmrs\\_reports](http://wireless.fcc.gov/index.htm?job=cmrs_reports).

<sup>7</sup> *In the Matter of Arch Communications Group, Inc. and Paging Network, Inc. for Consent to Transfer Control of Paging, Narrowband PCS, and Other Licenses*, Memorandum Opinion and Order, WT Dkt. No. 99-365, DA 00-925, 16 FCC Rcd 3675, 3676, ¶ 2 (Apr. 25, 2000) (“Arch offers several types of paging services: tone-only paging; tone-plus-voice paging; numeric paging (also known as digital display); alphanumeric paging (also known as text messaging); guaranteed messaging; and two-way messaging.”).

<sup>8</sup> FCC Website, Narrowband PCS (last updated Mar. 21, 2011), *available at* [http://wireless.fcc.gov/services/index.htm?job=service\\_home&id=narrowband\\_pcs](http://wireless.fcc.gov/services/index.htm?job=service_home&id=narrowband_pcs).

<sup>9</sup> 2008 Instructions at 29.

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On December 11, 2007, Public Knowledge, Free Press, Consumer Federation of America, Consumers Union, EDUCAUSE, Media Access Project, New America Foundation, and U.S. PIRG filed a joint petition for declaratory ruling asking the Commission to clarify the regulatory status of text messaging services, including short-code based services sent from and received by mobile phones.<sup>10</sup> Currently the Commission has not determined the regulatory classification of text messaging.<sup>11</sup> Due to the lack of guidance within the Rules, IAD is unable to determine the proper classification of text messaging revenues. As a result, USAC seeks guidance concerning the proper reporting of text messaging.

Until guidance is received, carriers will continue to inconsistently report text messaging revenues. This may result in carriers incorrectly collecting USF charges from their customers. In addition, as demonstrated by the examples noted above, this may result in some carriers over contributing to the USF, while others may under contribute to the USF.

Therefore, USAC is seeking guidance on whether text messaging revenues should be reported as telecommunications revenue or non-telecommunications revenue.

Thank you for your attention to this matter.

Sincerely,

//s// Richard A. Belden  
Chief Operating Officer

cc: Carol Matthey (*via email only*)  
Trent Harkrader (*via email only*)  
Patrick Halley (*via email only*)

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<sup>10</sup> *In the Matter of Petition of Public Knowledge et al. for Declaratory Ruling Stating Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules*, WT Dkt. No. 08-7, DA 08-78, 23 FCC Rcd 262 (Dec. 11, 2007).

<sup>11</sup> 2009 NPRM, 25 FCC Rcd at 6571, ¶ 17 n.66.