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EX PARTE MEMORANDUM

March 7, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: Connect America Fund, WC Docket No. 10-90;
A National Broadband Plan for Our Future, GN Docket No. 09-51;
Establishing Just and Reasonable Rates for Local Exchange
Carriers, WC Docket No. 07-135;
High-Cost Universal Service Support, WC Docket No. 05-337;
Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92;
Federal-State Joint Board on Universal Service, CC Docket No. 96-45;
Lifeline and Link-Up, WC Docket No. 03-109;
Universal Service Reform – Mobility Fund, WT Docket No. 10-208.

Dear Ms. Dortch:

On March 6, 2012, the undersigned, representing the Critical Messaging Association (CMA) (formerly the American Association of Paging Carriers), met with various members of the staff of the Wireline Competition Bureau, including Travis Litman, Randolph Clarke, Peter Trachtenberg, Victoria Goldberg and, via telephone, Rebekah Goodheart. The purpose of the meeting was to request guidance from the Commission concerning the propriety of ILECs continuing to charge critical messaging and other paging carriers for the delivery of “transit” traffic in light of the Commission’s adoption of a default bill-and-keep rule for the exchange of traffic between ILECs and CMRS providers.

CMA first described the Type I and Type II interconnection arrangements utilized by critical messaging and other paging carriers to receive traffic from ILECs. CMA explained that a Type I interconnection utilizes a trunk side connection with a line appearance at the ILEC’s end office; and connecting circuits provided by the ILEC extend its network and connect its end office to the paging carrier’s terminal at its premises. Numbers are assigned to paging customers from NXX codes resident in the ILEC’s end office.

CMA further explained that a Type II interconnection is a trunk side connection at the ILEC’s tandem office; and connecting circuits provided by the ILEC extend its network and connect its tandem switch to the paging carrier’s terminal at its premises. In this arrangement, the paging

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carrier obtains an NXX code from NANPA, which is resident at the premises of the paging carrier.

CMA noted that Section 51.703(b) of the rules, 47 C.F.R. §51.703(b), prohibits ILECs from charging paging carriers for the delivery of traffic to the point of interconnection that originates on the ILEC's network. However, since the Commission's *TSR Wireless* decision, 15 FCC Rcd 11116 (FCC 2000) (subsequent history omitted), it has become the routine practice for ILECs to charge paging carriers for traffic that does *not* originate on the ILEC's network, *i.e.*, for "transit" traffic. Typically, the ILECs do so by charging the paging carrier a percentage of what the ILEC deems to be the normally applicable tariff rate for the circuits used to connect the ILEC's end or tandem office to the point of interconnection with the paging carrier at the paging carrier's premises. The percentage charge is deemed to be the percentage of traffic delivered to the paging carrier over the Type I or Type II connection that represents "transit" traffic. Where interconnection agreements have been entered into, the percentage typically is set forth in a schedule of the agreement. Where interconnection agreements have not been entered into, the ILEC unilaterally determines the percentage deemed to represent compensation for "transit" traffic.

In the CAF Report and Order, FCC 11-161, the Commission described bill-and-keep at ¶742 in relevant part as "requir[ing] carriers to recover the cost of their network through end-user charges". In CMA's view, such a principle is mutually exclusive with ILECs imposing *any* charges on terminating carriers, whether for traffic originating on the delivering carrier's network or for "transit" traffic. Instead, where originating carriers utilize transit services by ILECs, bill-and-keep necessarily implies that the originating carrier, not the terminating carrier, is responsible for paying for the transit services to the point of interconnection with the terminating carrier.

Nonetheless, CMA is aware that uncertainty has arisen concerning the implications of bill-and-keep for paging carriers. In substantial part this is because the definition of bill-and-keep in Section 51.713 does not track the description employed by the Commission in ¶742 of the CAF Report and Order, but instead ambiguously prohibits exchanging carriers from charging each other for "specific transport . . . functions or services". In this part of the rules, the term "transport" sometimes is used in a narrow, technical sense, as in the definition in Section 51.701(c) ("the transmission and any necessary tandem switching . . . from the interconnection point between the two carriers to the terminating carrier's end office switch"); and at other times it is used in a broader, non-technical sense, as in Section 51.709(c) (an RLEC "will be responsible for transport to the CMRS provider's interconnection point" and the RLEC's "transport obligation . . . stops at its meet point").

If the term "transport" in Section 51.713 is used in the broader sense of Section 51.709(c), then in CMA's view Section 51.713 clearly prohibits ILECs from charging paging carriers for the "transport" of transit traffic as they now do. Otherwise, the CAF Report and Order remains ambiguous on this issue and it should be resolved by the Commission.

CMA further advised that the issue of the meaning of the bill-and-keep rule as applied to critical messaging and other paging carriers has already arisen in cases where the ILEC does not have an

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interconnection agreement, and that the issue will become more prominent as the July 1, 2012 effective date for carriers with interconnection agreements approaches.

Respectfully submitted,

s/Kenneth E. Hardman

cc: Rebekah Goodheart
Travis Litman
Randolph Clarke
Peter Trachtenberg
Victoria Goldberg