

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

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan For Our Future	)	GN Docket No. 09-51
	)	

**COMMENTS OF USA MOBILITY, INC.**

USA Mobility, Inc. (“USA Mobility”) hereby offers the following comments in connection with the above-captioned Further Notice of Proposed Rulemaking.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

USA Mobility and other paging providers contribute to the federal universal service mechanisms despite making minimal use of the public switched telephone network (“PSTN”), and despite being ineligible to receive support under the high-cost or low-income support mechanisms. Under the existing revenue-based methodology, USA Mobility’s contributions are relatively low, commensurate with its low interstate revenues. Whatever reforms the Commission adopts in response to the FNPRM, it should ensure that low-revenue services like paging remain subject to “equitable and nondiscriminatory” contribution obligations, as Section 254(d) of the Communications Act of 1934, as amended (the “Act”), requires.<sup>2</sup>

USA Mobility submits that the Commission should retain the revenue-based contribution methodology but improve it by broadening the base of assessable services and by clarifying and simplifying contribution and reporting requirements. The FNPRM includes several reasonable

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<sup>1</sup> See *Universal Service Contribution Methodology*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51 (rel. April 30, 2012) (“FNPRM”).

<sup>2</sup> See 47 U.S.C. §254(d).

proposals along these lines, including assessing one-way VoIP services, SMS text-messaging, and the telecommunications component of all enterprise services, to ensure sufficient funding and to promote competitive parity.<sup>3</sup> In addition, the FNPRM appropriately proposes to establish additional safe harbors and/or fixed revenue allocations to facilitate more reliable reporting of revenues and more equitable assessments.<sup>4</sup>

The connection-based and numbers-based methodologies explored by the FNPRM would be unfairly regressive, as any flat-rate charge would subject low-revenue providers like USA Mobility to dramatically increased contribution burdens. Such increases would violate Section 254(d) of the Act and the Administrative Procedure Act (“APA”), and also undermine the public interest by threatening the continued use of paging services by health care providers and emergency responders, among others. Accordingly, if the Commission decides to adopt a flat-rate contribution methodology, it should provide an exemption or include an alternative assessment mechanism for low-revenue services such as paging.

## **BACKGROUND**

USA Mobility is the nation’s largest provider of paging services, with more than 1.5 million units in service. It provides services primarily to hospitals and other health care institutions; police and fire departments and other local, state, and federal government agencies; and large and small businesses. Paging services are critical for these customers because of their exceptional reliability and affordability. Paging is much less vulnerable to service outages than most other communications technologies because paging networks rely on satellite transmission and have built-in redundancy due to simulcasting from all the transmitters in a given zone. Moreover, paging transmitters emit more powerful signals than mobile voice transmitters,

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<sup>3</sup> See FNPRM ¶¶ 41-64.

<sup>4</sup> See, e.g., *id.* ¶¶ 119, 123-42.

significantly improving range and in-building penetration. Most paging devices use AA or AAA batteries, thus avoiding the need for re-charging and ensuring they can be used even during sustained power outages.

Paging services are also affordable. Most of USA Mobility's customers pay less than \$10 per month for service, and a significant number pay considerably less than that amount.

Notwithstanding these advantages, the paging industry faces tremendous economic challenges as a result of the migration of mass market consumers to mobile phones and related devices. The paging industry has faced a rapid decline in subscribership, going from 45.3 million units in service in 2000<sup>5</sup> to approximately 2.3 million today.<sup>6</sup>

## DISCUSSION

### **I. THE COMMISSION SHOULD RETAIN THE REVENUE-BASED CONTRIBUTION METHODOLOGY WHILE REVISING IT TO ADDRESS EXISTING SHORTCOMINGS**

The existing revenue-based system has the advantage of being inherently equitable and non-discriminatory, because it assesses contributions in an amount directly proportional to revenues (and, by extension, usage of the network). Lower-revenue services pay less under a revenue-based model, thus avoiding the inequities that have plagued the various flat-rate contribution proposals that some parties have advanced in recent years. Whereas numbers-based and connections-based proposals raise substantial concerns about their compliance with the

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<sup>5</sup> *FCC 2001 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, at 53.

<sup>6</sup> 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). More recent competition reports have not included estimates regarding the total number of paging customers, but the Commission should be well aware that paging subscriptions have continued to decrease markedly in recent years.

Commission's obligations to ensure equitable and nondiscriminatory treatment under Section 254(d), the revenue-based methodology is on solid legal footing.

While the current revenue-based methodology has certain shortcomings, the FNPRM proposes various measures that would address such concerns without any need to abandon revenue-based assessments altogether. The Commission should adopt proposals to broaden the funding base by assessing all VoIP services that transmit calls to or from the PSTN, text-messaging services, and enterprise services that include a telecommunications component.<sup>7</sup> Extending contribution obligations to such services will not only lower the quarterly contribution factor for all contributors, but also promote a more level playing field. In particular, from USA Mobility's perspective, there is plainly no reason why paging messages should be subject to USF contributions but SMS messages should not.

The Commission also should take steps to reduce complexity and uncertainty for contributors. The FNPRM's proposals to rely on safe harbors and fixed interstate allocations will ease administration and facilitate improved compliance.<sup>8</sup> These proposals will achieve the Commission's goals and ensure that the contribution mechanism fulfills the statutory mandate that contributions be equitable and nondiscriminatory.

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<sup>7</sup> See FNPRM ¶¶ 41-64.

<sup>8</sup> See, e.g., *id.* ¶¶ 119, 132-42.

## **II. DRAMATICALLY INCREASING PAGING CARRIERS' USE BURDENS BY REQUIRING FLAT-RATE CONTRIBUTIONS BASED ON CONNECTIONS OR NUMBERS WOULD BE UNLAWFUL AND WOULD UNDERMINE THE PUBLIC INTEREST**

### **A. Any Flat-Rate Contribution Methodology Would Dramatically and Disproportionately Increase Paging Carriers' Contribution Obligations, Which Would Violate Section 254(d) and the APA**

Whether based on connections or telephone numbers, proposals to adopt a flat-rate contribution obligation of \$1 or more would be devastating to paging carriers and their customers.<sup>9</sup> Most of USA Mobility's customers pay monthly service charges of less than \$10, of which a small component corresponds to interstate usage. As a result, a typical customer's monthly USF contribution is less than \$0.20 under the revenue-based system, and some customers with more basic service plans pay considerably less. Assessing connections or telephone numbers would have the same harmful effect, as each paging unit would be subject to the \$1 flat charge (or greater) under either approach. Other wireless services, such as mobile voice services provided to smart phones, would be subject to the same flat charge even though they are used to transmit far greater quantities of interstate traffic and generate substantially more revenue.

A five-fold (or greater) increase in USA Mobility's contribution obligations—particularly as other providers face *reduced* or only slightly increased contribution burdens—would violate Section 254(d)'s requirement that contributions be “equitable and nondiscriminatory.”<sup>10</sup> Imposing the same contribution burdens on paging carriers as on services that generate far greater interstate usage and revenues is not “equitable” or “nondiscriminatory” under any reasonable construction of those terms. To the contrary, paging services arguably should not

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<sup>9</sup> *See id.* ¶¶ 219-341.

<sup>10</sup> 47 U.S.C. § 254(d).

contribute to USF *at all*, given that they make only incidental use of the PSTN and are ineligible to receive support from the high-cost and low-income support mechanisms. But in no event should paging carriers bear disproportionately *heavier* burdens than other service providers that make far greater use of the PSTN.

The imposition of a \$1 flat fee per connection/number on paging carriers would also conflict with *Texas Office of Public Utility Counsel v. FCC*, which held that the Commission could not force carriers to “contribute more in universal service payments than they will generate from interstate service.” 183 F.3d 393, 434-35 (5th Cir. 1999). That is precisely the effect that an assessment of \$1 per connection or per number would have on USA Mobility because of its low revenues and low interstate usage.

A flat-rate assessment on paging carriers would further violate the APA because the Commission could not provide a reasoned explanation as to why such providers should be subject to such disproportionately heavy burdens. Far from warranting greater burdens, paging services if anything should be subject to disproportionately light contribution obligations, as they rely primarily on satellite transmission (rather than the PSTN) to transmit messages. The Commission has recognized in other contexts that paging carriers are differently situated from other Commercial Mobile Radio Service (“CMRS”) providers. For example, the Commission has exempted paging carriers from E911 requirements and number/portability/pooling rules.<sup>11</sup> The Commission also has recognized in freezing paging carriers’ annual regulatory fees that the paging industry faces continued decline in subscribership and revenues, and paging carriers

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<sup>11</sup> See 47 C.F.R. §20.18(a); *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7634 (2000).

therefore cannot pass through increased costs to customers.<sup>12</sup> The justifications for exempting paging carriers from the small increases in annual regulatory fees apply with much more force in the context of a potential five-fold increase in USF assessments. A \$1 flat-rate assessment would ignore the Commission's prior recognition of these unique attributes of paging services without any principled basis, in violation of the APA.<sup>13</sup>

**B. A Dramatic Increase in USF Costs Would Threaten the Viability of Paging Services and Thus Harm Public Safety**

As the Commission recognized in freezing paging carriers' annual regulatory fee payments, the paging industry cannot withstand a dramatic increase in USF contributions. The number of subscribers for paging services has significantly and continually declined, and because paging carriers use limited narrowband spectrum, they have no ability to increase their revenues by offering broadband or other high-value services.

Jeopardizing the viability of paging services through a one-size-fits-all contribution scheme would undermine the public interest. Paging services are critical for emergency communications because they work when landlines and wireless phones do not. The Commission recognized the importance of USA Mobility's paging services for police, fire, and emergency medical personnel during and in the aftermath of Hurricane Katrina. The Commission agreed with the recommendation of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks that the Commission should promote increased

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<sup>12</sup> See *Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, 18 FCC Rcd 15985, 15992 (2003).

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

use of paging services by first responders.<sup>14</sup> Paging services are also the best form of communications within hospitals when doctors are needed on an emergency basis. Among other unique attributes, high-power paging signals can penetrate buildings better than broadband signals, and pagers' ability to operate with AA batteries enables them to function for long periods when power is interrupted.

The vital public benefits associated with paging would be in peril if paging carriers and their customers were subject to vastly increased USF fees. Nor would such assessments result in offsetting public interest benefits: Even apart from the likelihood that such fees would spell the demise of the paging industry (and thus result in a net decrease in overall contributions), any short-term increase in USF receipts from paging carriers would be *de minimis* in light of the low number of paging units that remain in service today.

**C. If the Commission Were to Adopt a Flat-Rate Contribution Mechanism, It Should Establish an Alternative Mechanism for Paging Services**

The FNPRM recognizes the potentially devastating effects of flat-rate contribution schemes on low-revenue services like paging and seeks comment on potential exemptions or carve-outs.<sup>15</sup> For all the reasons set forth above, if the Commission adopts a numbers- or connections-based regime, it should exempt paging carriers or maintain existing contribution levels to prevent the legal and policy problems identified above. USA Mobility has previously identified alternative proxy charges that would be equitable and nondiscriminatory,<sup>16</sup> and it

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<sup>14</sup> 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).

<sup>15</sup> See FNPRM ¶¶ 251, 315.

<sup>16</sup> See, e.g., Notice of Ex Parte Presentation, WC Docket No. 06-122 (filed Aug. 12, 2010); Comments of USA Mobility, Inc., GN Docket Nos. 09-47, 09-51, 09-137 (filed Dec. 7, 2009);

incorporates those proposals by reference here. Moreover, just as the FNPRM proposes excluding Lifeline subscribers from any numbers- or connections-based fee,<sup>17</sup> the same considerations warrant a comparable exemption or alternative mechanism for paging subscribers. The FNPRM does not identify any persuasive reason why paging subscribers would warrant differential treatment.

### CONCLUSION

For the foregoing reasons, USA Mobility urges the Commission to ensure that any reforms to the contribution methodology avoid imposing inequitable and discriminatory burdens on paging carriers.

Respectfully submitted,

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Notice of Ex Parte Presentation, WC Docket No. 06-122 (filed Oct. 14, 2009); Notice of Ex Parte Presentation, WC Docket No. 06-122 (filed Dec. 04, 2008); Comments of USA Mobility, Inc., WC Docket Nos. 05-337, 03-109, 06-122, 04-36, (filed Nov. 26, 2008).

<sup>17</sup> See FNPRM ¶¶ 243-44, 316-17.