

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2014)	MD Docket No. 14-92
)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2013)	MD Docket No. 13-140
)	
Procedures for Assessment and Collection of Regulatory Fees)	MD Docket No. 12-201
)	

To: The Secretary, Federal Communications Commission

Attn: Managing Director

COMMENTS OF CRITICAL MESSAGING ASSOCIATION

THE CRITICAL MESSAGING ASSOCIATION (CMA),¹ by its attorney, respectfully submits its comments to the Federal Communications Commission in the captioned proceedings, in response to the Notice of Proposed Rulemaking, Second Further Notice of Proposed Rulemaking, and Order (collectively the “NPRM”), FCC 14-88, adopted June 12, 2014, released June 13, 2014, and published at 79 Fed. Reg. 37982 (July 3, 2014). In summary, CMA urges the Commission to eliminate entirely the CMRS Messaging fee, as suggested in ¶32 of the NPRM, due to the effective absence of regulatory activity warranting collection of the Messaging fee and the alternative fee revenues derived from the critical messaging industry.

As its comments in response to the NPRM, CMA respectfully states:

In this proceeding the Commission seeks to establish the schedule of regulatory fees for FY 2014 in order to offset the Congressional appropriation for the Commission of \$339,844,000.

¹ Formerly the American Association of Paging Carriers.

(NPRM at ¶4). Continuing the Commission's review of the regulatory fee framework initiated in 2008,² the order portion of the NPRM maintains the CMRS Messaging fee at \$0.08 per unit for FY 2014, and makes certain other substantive and procedural changes to other fees and collection procedures that will apply to FY 2014. (NPRM at ¶¶10-17). Otherwise, the Commission proposes to recover FY 2014 fees based upon a revised Full Time Employee (FTE) allocation, either with or without a capped allocation, and proposes certain other changes, at least some of which would not be implemented until future years, including the combination of certain fee categories; creating new fee categories; reallocating direct or indirect FTEs; and improving the fee calculation and collection process.

The NPRM also requests comments on adopting a cap on regulatory fee increases; increasing the *de minimis* exemption from fee payments; eliminating some fee categories; and periodically re-examining FTE allocations. In this regard, in relevant part, the NPRM requests comment on eliminating the CMRS Messaging fee category. (NPRM at ¶32). However, at this point, the fee cannot be eliminated for FY 2014 due to the requirement to provide 90-day advance notice to Congress. (NPRM at ¶33).

CMA is the national trade association representing the interests of the critical messaging industry (historically known as the paging industry) throughout the United States. As wireless services have evolved over approximately the last decade, the critical messaging industry has increasingly concentrated on serving the specialized, emergency alerting needs of health care providers, first and second responders, and other customers employing critical, time-sensitive messages using a point-to-point protocol that cannot be duplicated by broadband networks. CMA members include a representative cross-section of carriers operating messaging networks

² *Assessment and Collection of Regulatory Fees for Fiscal 2008 (Further Notice of Proposed Rulemaking)*, MD Docket No. 08-65, FCC 08-182, released August 8, 2008 and published at 73 Fed. Reg. 50285 (August 26, 2008).

licensed by the Commission under Parts 22, 24 and 90 of its rules, as well as equipment suppliers and other vendors to the carrier industry. The services provided by CMA's carrier members are classified as CMRS Messaging services for purposes of the Commission's regulatory fees.

The objections of the industry to increasing the fee from the FY 2001 level to the FY 2002 level prompted then Commissioner Copps to observe:

[T]he Commission does not address when or how it would adjust regulatory fees to take into account *changes to the cost of regulating various services*. The paging industry argues that it faces a 60 percent per unit increase in regulatory fees this year due to a declining subscriber base, notwithstanding *reduced regulatory resources devoted to paging*. Today's order . . . fails to address the underlying concern about revisions to the Commission's methodology. I take some comfort, however, that the Commission plans to have in place a new accounting system in the near future . . .³

The Commission subsequently "froze" the CMRS Messaging fee at the FY 2002 level based on "unique circumstances" applicable to the paging industry,"⁴ stating that "The Commission is completing design work on a new cost accounting system."⁵ No such revised cost accounting system has been developed; nor has the Commission reviewed the ancient allocations of time within the Wireless Bureau to determine whether they reflect current reality. However, as pointed out above, the NPRM does request comment on whether the CMRS Messaging fee should be eliminated altogether.

CMA strongly urges the Commission to eliminate the CMRS Messaging fee. As the NPRM itself points out, regulatory fees are supposed to be collected "to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities."⁶ Due to the Commission's effective deregulation of the critical messaging in-

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2002 (Report and Order)*, 17 FCC Rcd 13202 (FCC 2002) (concurring statement of Commissioner Copps). (Emphasis added).

⁴ *Id.* at ¶21 & n. 31.

⁵ *Assessment and Collection of Regulatory Fees for Fiscal Year 2003 (Report and Order)*, 18 FCC Rcd 15985, 15992 at ¶¶21-22 (FCC 2003).

⁶ NPRM at ¶4, citing 47 U.S.C. §159.

dustry; the absence of policy or rulemaking activity targeting the industry in recent years;⁷ at most *de minimis* enforcement actions involving members of the industry; and the change in the character of critical messaging subscribers from the consumer market to sophisticated corporations that negotiate detailed service contracts with service providers (and thus do not require or get user information services from the Commission), the fact is that the Commission no longer engages in any significant fee-recoverable activity in connection the critical messaging industry. As a result, continued collection of the CMRS Messaging fee under Section 9 of the Communications Act likewise is no longer warranted.

CMA also points out that the Commission does generate significant application fee revenues from the industry independent of the CMRS Messaging fee. These fees include revenues for license assignments and transfers of control; Part 90 site-by-site new station and modification applications; as well as fees for renewal of licenses. Since the licensing process is the primary interface of the industry with the Commission, it is fair to conclude that those revenues already compensate the Commission for its regulation of the industry, and that it is unnecessary to also impose a CMRS Messaging regulatory fee on top.

Additionally, critical messaging service providers commonly also employ facilities in their networks, such as domestic satellite control stations, for which regulatory fees are assessed. When carriers do so, those network facilities also generate regulatory fees independent of CMRS Messaging fees.

⁷ The last significant policy and rulemaking activity targeting the critical messaging industry was during the 1996-1999 time frame when the Commission adopted auctioning for paging licenses. *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18; *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PR Docket No. 93-253, Notice of Proposed Rulemaking, 11 FCC Rcd 3108 (FCC 1996); First Report and Order, 11 FCC Rcd 16570 (FCC 1996); Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732 (FCC 1997), Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030 (FCC 1999) (subsequent history omitted).

In short, continued collection of the CMRS Messaging fee is unwarranted based upon the underlying purposes for which regulatory fees are collected, and in light of the Commission's collection of application fees as part of the licensing process and facility-based regulatory fees. Accordingly, CMA respectfully requests that the CMRS Messaging fee be eliminated as soon as practicable.

Respectfully submitted,

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