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

In the Matter of)
)
Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

To: The Commission

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COMMENTS OF PAGING NETWORK, INC. FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Summary

Paging Network, Inc. ("PageNet"), hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in CC Docket 96-98.

In this proceeding, the Commission should adopt a nationwide policy governing the provision of interconnection. It is the lack of such a policy that provides the foundation for the lengthy and litigious interconnection wars that are being fought today. To resolve these wars, the Commission should exercise authority over the interstate and intrastate aspects of interconnection to adopt fair, reasonable, and nondiscriminatory regulations governing the obligations of the LECs to provide interconnection and access to unbundled networks.

Even though there are different jurisdictional bases for the Commission's oversight of interconnection between CLECs and ILECs and ILECs and CMRS providers, the Commission should not distinguish between these carriers with respect to the technology they use. The Commission must set forth a national pricing policy that encompasses all carriers. Under this plan, the physical plant would need to be unbundled, as would functionality and access to databases, SS7 networks and the like. This does not mean that a national policy must be the same in all instances for both CMRS providers and CLECs. However, distinctions between wireless and wireline technology, cannot be the basis for discriminating between CMRS providers and CLECs. They are co-carriers, regardless of the type of subscriber loop technology they employ.

In the NPRM, the Commission sought comment on whether transport and termination of telecommunications under Section 251(d)(5) is limited to certain types of traffic. PageNet believes that the term "termination" may include "transport." In paging, termination refers to both the switching functions

performed by the paging carrier on behalf of the LEC originating the call, as well as interoffice and other transport on the wireless carrier's network. As such, compensation is warranted for all of the termination functions performed by the terminating co-carrier on behalf of the originating carrier.

PageNet supports the conclusion that CMRS carriers are not "incumbent local exchange carriers." CMRS carriers do not meet the definition of incumbent local exchange carriers under Section 251(h) and are specifically excluded from the definition of local exchange carrier.

Certain ILECs are construing Section 251(c)(2) to only be applicable to CLECs offering both exchange service and exchange access service. The Commission must not countenance such an interpretation because it would mean that CLECs would be deprived of the interconnection flexibility they need in order to offer services on a competitive basis with ILECs. In turn, such an interpretation would deprive CMRS providers of a valuable competition alternative for the services to which they subscribe.

The Commission should adopt a national policy, making it clear that the rates for co-carrier interconnection should not include contributions to the universal service fund. Unless the Commission adopts such an explicit policy, every rate offered by LECs will include substantial universal service fund contributions that could not be negotiated away.

In the context of Section 254(f), it is important for the Commission to recognize that the states lack any jurisdiction over CMRS providers for the support of universal service mechanisms. Section 332(c)(3) exempts CMRS providers from state universal service requirements unless the carrier is a substitute for landline telephone service for a substantial portion of communications within the state. No CMRS carrier can presently

be considered as a substitute for landline service for a significant portion of any state. Many CMRS services are not even comparable to telephone exchange service.

The Commission must act now to adopt a national interconnection policy. The existing interconnection arrangements that have been negotiated between LECs and CMRS paging carriers reflect extreme and wholly unjustified variations in pricing for identical interconnection components. Even a superficial review of the LEC pricing practices makes it clear that currently effective interconnection arrangements are patently unreasonable, wholly unsupported and unreasonably discriminatory. This rulemaking provides the Commission with a perfect opportunity to provide for a fair, uniform interconnection policy that will ultimately benefit end users in the form of better communications services at lower prices.

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To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. § 1.415, hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking in CC Docket No. 96-98.¹ As set forth herein and in its comments filed in Docket No. 95-185, dated March 4, 1996, PageNet does not believe that Sections 251 and 252 are directly applicable to the provision of commercial mobile radio service ("CMRS"). Instead, CMRS providers are governed by Section 332² of the 1934 Act.³ Nonetheless, to the extent that the Commission develops nationwide competitive policies for local entry and the paradigm for the relationships between co-carriers in this proceeding,

¹ *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, CC Docket No. 96-98 (released April 19, 1996) ("NPRM").

² 47 U.S.C. § 332.

³ Communications Act of 1934, 47 U.S.C. §§ 151, et. seq. ("1934 Act").

PageNet expects certain of these policies to apply more broadly to CMRS providers. PageNet's comments herein focus on those issues. PageNet also responds to specific questions posed by the Commission with respect to CMRS and local exchange carrier ("LEC") relationships. In support of these comments, the following is respectfully shown:

I. Statement of Interest

PageNet is the largest paging carrier in the United States. Created in 1982, PageNet currently provides service to approximately 6.7 million paging units throughout the United States. PageNet offers service in every major market and is in the process of building systems pursuant to its nationwide narrowband PCS authorizations. PageNet has sought, and obtained over time, various forms of interconnection to the Public Switched Telephone Network ("PSTN") for its paging operations in nearly every major population center in the United States. PageNet is currently seeking to revise the terms and conditions of interconnection with its LEC co-carriers, and as such, is aware of the current state of interconnection and compensation as it affects paging carriers. PageNet's experience in the process of interconnection makes PageNet eminently qualified to comment on the issues raised in this proceeding.

II. The 1996 And 1993 Acts Contemplate A Single National Telecommunications Policy Framework, Under Different Jurisdictional Bases

[Response to NPRM ¶¶ 26, 166.] PageNet commends the Commission for its recognition in this proceeding of its statutory authority and indeed the need for nationwide policies governing the provision of interconnection between wireline co-carriers. Section 251(d)(1), for example, mandates that the Commission, within six months of enactment, "complete all actions necessary to establish regulations to implement the requirements of this section."⁴ These requirements include the regulations governing the obligations of incumbent LECs to provide interconnection and access to unbundled networks on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

The national framework contemplated by the 1996 Act is similar in many respects to the framework for regulation of commercial mobile service providers adopted by the Omnibus Budget Reconciliation Act of 1993.⁵ In the 1993 Act, the Commission was granted explicit authority to order all common carriers to interconnect with CMRS providers upon request.⁶ Section 332 did

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"), sec. 101, § 251(d)(1).

⁵ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 397 ("1993 Act").

⁶ 47 U.S.C. § 332(c)(1)(B).

not limit the FCC's authority over interconnection to that which is interstate, but rather simply provided that the Commission "shall order a common carrier to establish physical interconnections with CMRS providers." Moreover, the 1993 Act explicitly preempted state regulation of the rates charged for interconnection by CMRS providers and, implicitly, all charges for interconnection between CMRS providers and LECs.⁷

PageNet concurs with the Commission's conclusion that, as in the 1993 Act, the 1996 Act is intended to give it authority over both the interstate and intrastate aspects of interconnection and network elements.⁸ In order to have clearly defined and uniformly implementable interconnection, it is critical that this jurisdiction be exercised. It was exactly the lack of such national rules that produced the lengthy and often litigious interconnection wars that occurred and are still occurring in the context of wireless services that the Commission needs to avoid in the circumstance of wireline co-carrier interconnections.⁹

The 1993 and 1996 Acts, philosophically, give the Commission the expansive authority to adopt certain nationwide policies which govern both the interconnection of CMRS to incumbent local

⁷ See 47 U.S.C. § 332(c).

⁸ NPRM at ¶ 38.

⁹ As set forth in its comments in Docket 95-185, PageNet is similarly asking the Commission to exercise its authority under Sections 332 and 201 to enforce national interconnection policies with respect to wireless as well.

exchange carriers ("ILECs"), and ILEC to competitive local exchange carrier ("CLEC"). The fact that these policies would be applied in the form of implementing the requirement that the ILECs meet the "checklist" in the context of the 1996 Act and, more directly, in adopting regulations ordering the interconnection of CMRS providers and LECs under the 1993 Act, does not negate the benefits of a nationwide policy for interconnection.

The application of Sections 201 and 202 of the Communications Act assures that CMRS providers will be entitled to the same unbundled access that CLECs are entitled should the LECs exercise their option to provide interLATA services and, therefore, comply with their obligations under the checklist. For example, if an LEC offered unbundled access to ports in the context of a CLEC interconnection agreement, it would be unreasonable to decline to provide a CMRS provider with similar access. Specifically, a refusal to provide such access would be in violation of Sections 201(a) and 202(a) of the 1934 Act.¹⁰

This national policy should be implemented for co-carrier interconnection for both CMRS and CLEC even assuming, *arguendo*, that the Commission concludes that the states have the sole jurisdiction over the details of the interconnection arrangements required under Section 251. The singular difference would be that, in some instances, the services would be offered by the

¹⁰ 47 U.S.C. §§ 201(a) and 202(a).

LECs to the CLECs under agreements subject in part to the jurisdiction of the states; whereas, in the context of CMRS to LEC interconnection, the FCC would have the sole jurisdiction over the physical interconnection arrangements as well as the terms and conditions under which it is offered. The policies which would be required to be implemented would be the same regardless of which jurisdictional body is responsible for its implementation.

III. It Is Unlawful To Discriminate Between CMRS Providers And CLECs Despite Their Different Jurisdictional Bases

[Response to NPRM ¶¶ 169, 109, 79] The fact that there are different jurisdictional bases for Commission oversight of interconnection between CLECs and ILECs, and ILECs and CMRS providers does not suggest that it would be sound policy or law for the Commission to distinguish between telecommunications carriers on the basis of the technology they use. Co-carriers are entitled to non-discriminatory treatment regardless of the technology they may use to provide co-carrier services. This does not necessarily mean the identical treatment, particularly where different technology or service requires a different treatment. Clearly, with respect to interconnection, the Commission can set forth a national pricing plan which encompasses all forms of interconnection between co-carriers. Under this national plan, the physical plant would need to be

unbundled, as would functionality and access to data bases, SS7 networks and the like.¹¹

The pricing plan would recognize the need for cost-based transport and termination compensation for interconnection. It would also recognize that there is the need, in the messaging context, to require LECs to pay an actual rate for service provided by the messaging carrier rather than assume a zero-sum interconnection arrangement such as bill and keep.

This does not mean that, in all instances, national policy must be exact for both CMRS providers and CLECs. There may, in fact, be technical reasons why certain requirements would be reasonable to impose on one type of co-carrier but not others.

Interim number portability requirements are such an example. As PCIA discusses in its *ex parte* comments in the Commission's Number Portability Rulemaking Proceeding, CC Docket No. 95-116, paging switches are not generally capable of forwarding calls in the manner Remote Call Forwarding ("RCF") would require and, thus, should not be subject to interim number portability (even assuming, *arguendo*, that long term number portability is appropriate) because of the incapability of the paging switch to

¹¹

Variation among the states would create havoc for national carriers, such as PageNet, in particular, wherever the co-carrier offers service through a centralized network, a hub-type configuration, or operates through a single or few primary platforms. For nationwide or regional operation, it would become very difficult if there were different network protocols based on the state in which the call originates or terminates.

comply. This technological difference allows the FCC to treat messaging carriers differently than CLECs and perhaps even differently than cellular carriers for purposes of interim number portability.

However, distinctions between wireless and wireline switches cannot be touted by the ILECs as a basis for unreasonably discriminating between CMRS providers and CLECs simply because of their deployment of wireless rather than wireline subscriber loop facilities technologies. They are co-carriers, regardless of the type of subscriber loop technology they employ.

It must be emphasized that the Commission has already determined that discrimination based upon whether the carrier is wireline or wireless is unlawful. Specifically, in *In The Matter Of Proposed 708 Relief Plan And 630 Numbering Plan Area Code By Ameritech - Illinois, Declaratory Ruling And Order*, 10 FCC Rcd 4596 (1995), the Commission found that Ameritech's numbering plan would unlawfully discriminate against paging and cellular carriers under Section 202(a) of the 1934 Act.

In *Ameritech Numbering Plan*, Ameritech had determined to cease providing central office codes in area code 708 to wireless carriers and reserve the remaining codes in 708 for its wireline customers. Wireless carriers were to be assigned codes from the 312 area code. In finding the plan unreasonably discriminatory, the Commission stated:

We find Ameritech's 'exclusion' and 'segregation' proposals would confer significant competitive advantages on the wireline companies in competition with paging and cellular companies, and, in particular, Ameritech itself. Similarly, Ameritech's 'take-back

proposal' would confer a significant competitive advantage on wireline carriers that would be permitted to retain their NPA 708 numbers because customers of those carriers would be able to avoid the inconvenience associated with number changes. On the other hand, paging and cellular companies would be placed at a distinct disadvantage by the 'take-back proposal' because their customers would suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers, and informing callers of the new number.

* * * *

[W]e believe that a successful administration of the NANP should seek to accommodate new telecommunications services and providers by making numbering resources available in a way that does not unduly favor one industry segment or technology and by making numbering resources available on an efficient, timely basis. We believe that assignment of numbers based on whether the carrier provides wireless service is not consistent with these objectives and could hinder the growth and provision of new beneficial services to consumers.¹²

PageNet submits that like the *Ameritech Numbering Plan*, there are no grounds to distinguish between technology with respect to interconnection. To do so would be a violation of Section 201 and 202 of the 1934 Act.¹³

IV. The Definition Of Termination Facilities Include Transport, For The Purposes Of Termination Compensation

[Response to NPRM ¶¶ 230, 241, 166] The Commission seeks comment on whether "transport and termination of telecommunications" under Section 251(b)(5) is limited to certain types of traffic. It notes that the statutory provision appears

¹² *Ameritech Numbering Plan*, 10 FCC Rcd at 4608-4609, ¶¶ 27 and 29.

¹³ 47 U.S.C. § 202.

at least to encompass telecommunications traffic that originates on the network of one LEC and terminates on the network of a competing LEC in the same local service area "as well as traffic passing between LECs and CMRS providers."¹⁴ In the context of this discussion, the FCC also asks about the appropriate definitions of "transport" and "termination."

[¶ 166] In the first instance, it is important to note that, while the language on its face could apply to both the termination of LEC to CLEC traffic as well as LEC to CMRS provider traffic, Section 251 is not directly applicable to the interconnection arrangements between the LEC and CMRS provider. As discussed above, LEC to CMRS interconnection, at least in the circumstance of paging and messaging, is governed by Section 332 of the 1934 Act, not by Section 251.

Nonetheless, PageNet notes that there are generally differences between the terms "transport" and "termination." However, the term "termination" may encompass the term "transport." In paging, termination refers to both the switching functions performed by the paging carrier on behalf of the LEC originating the call, as well as to the interoffice (and other) transport which occurs in the wireless carrier's network.

Compensation is warranted for all of the termination functions performed by the terminating co-carrier on behalf of the originating co-carrier. In the paging context at least, this

¹⁴ NPRM at ¶ 230.

means that the LEC should be required to pay for the facility between the LEC's end office and the wireless carrier's MTSO, as well as all switching and transport functions associated with LEC call termination over paging carrier facilities.

[¶ 241] PageNet also notes that the Commission's perception of the ratio of termination charges to total service costs is in error, at least with respect to paging and messaging services. According to the Commission, in the context of the extent to which "bill and keep" is appropriate, the Commission states that "demand might be inelastic either because termination charges are not passed through to customers," or, as is the case with CMRS, "the termination charges are a small part of the costs of service."¹⁵

With respect to paging, the costs of termination are not merely small costs. They comprise a significant portion of the total revenue requirement for paging services. In fact, PageNet estimates that the termination costs that it presently incurs represents perhaps as high as 25 to 30 percent of the total costs of its service. As noted above, PageNet believes that these costs are more appropriately borne by the LECs who originate the traffic on behalf of their LEC customers whose rates compensate them for termination costs, but then do not presently pass through any of that compensation to the terminating carrier performing the service and bearing the costs.

¹⁵ NPRM at ¶ 241.

V. CMRS Carriers Are Not Obligated To Provide Interconnection Under Section 251(c)(2) Because CMRS Providers Are Not Local Exchange Carriers

[Response to NPRM ¶ 166, 167] In the NPRM, the Commission tentatively concluded that CMRS providers are not encompassed by the definition of "incumbent local exchange carrier" as specified by the 1996 Act and are not obligated to provide interconnection to requesting telecommunications carriers under Section 251(c)(2).¹⁶ PageNet supports the Commission's conclusion and agrees that CMRS carriers are not "incumbent local exchange carriers" as defined by Section 251(h). In fact, CMRS carriers have been excluded from the definition of LECs in the 1996 Act. Specifically, the 1996 Act defines an LEC as:

[A]ny person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under Section 332(c)¹⁷

Because CMRS carriers are engaged in the provision of commercial mobile service under Section 332, CMRS providers do not fit within the definition of an LEC.¹⁸

Furthermore, the interconnection obligations under Section 251(c)(2) are applicable only to those carriers that are defined

¹⁶ NPRM at ¶ 167.

¹⁷ 1996 Act, sec. 3, § 3(44).

¹⁸ The definition of an LEC under 3(44) does provide that an exception may be made if the Commission finds that the CMRS service should be included in the definition of an LEC. See 1996 Act, sec. 3, § 3.

as "incumbent local exchange carriers" under 251(h). Section 251(h)(1) defines an "incumbent local exchange carrier" as an LEC that:¹⁹

1. As of the enactment date of the 1996 Act provided telephone exchange service and was a member of the exchange carrier association pursuant to 47 C.F.R. § 69.601; or
2. A person or entity that is the successor or assign of such an LEC as described in No. 1 above.

No CMRS carrier, by virtue of its CMRS license alone, meets the definition of an "incumbent local exchange carrier," as, in that capacity, none was a member of the Exchange Carrier Association mandated by Section 69.601 of the Commission's rules.

In addition to Section 251(h)(1), the Commission may also treat another LEC or LECs as an "incumbent local exchange carrier" if:²⁰

1. Such carrier occupies a position in the market for telephone exchange service within an area that is comparable to that of an incumbent LEC;
2. Such carrier has substantially replaced an incumbent LEC; and
3. Such treatment is consistent with the public interest, convenience, and necessity and for the purpose of Section 251.

Like the criteria under Section 251(h)(1), no CMRS carrier by virtue of its CMRS licenses would meet this definition today

¹⁹ 1996 Act, sec. 101, § 251(h)(1).

²⁰ 1996 Act, sec. 101, § 251(h)(2).

or for the foreseeable future. Wireless services are not yet either comparable to or a substitute for basic telephone services, in most instances. Landline customers have not, with few, if any, exceptions, replaced their traditional plain old telephone service with cellular or PCS services. Messaging services, in fact, are not even two-way, interactive services akin to traditional plain old telephone service; even the new two-way services contemplated are not interactive, but rather two separate, one-way communications.

Secondly, because of the specialized nature of messaging service, it is unlikely, in the foreseeable future, to become wholly substitutable for basic telephone service.

Because CMRS carriers do not meet the definition of an "incumbent local exchange carrier," the provisions of Section 251(c)(2) are not applicable to CMRS carriers. Because Section 251(c)(2) is inapplicable to CMRS carriers, such carriers are not obligated to provide interconnection to requesting telecommunications carriers under that Section.

VI. Under Section 251(c)(2), ILECs Must Offer CLECs Co-Carrier Access Arrangements For Both Telephone Exchange And Exchange Access

[Response to NPRM ¶ 162] Certain ILECs are construing Section 251(c)(2) to only be applicable to CLECs offering both exchange service and exchange access service. Under Section 251, such a reading would deprive the CLECs of the interconnection flexibility they need in order to offer services on a competitive basis with the incumbent LECs and, in turn, deprive CMRS

providers of a viable competitive alternative for the services to which they may subscribe. The Commission should not countenance such an interpretation.

The ILECs base their argument on the premise that Section 251(c)(2) imposes a duty on ILECs to provide interconnection ". . . for the transmission and routing of telephone exchange service and exchange access." They argue that the use of the term "and" makes telecommunications carriers eligible under this section only if they provide both such services. In making this argument, the ILECs ignore the fact that the word "and" in the context of legislative history can be read alternatively as "and" or "or."²¹ The correct reading must be based on Congressional intent.

In this circumstance, Congress could not have intended to limit those entitled to interconnection to only those who provide both exchange and exchange access service. The 1996 Act is premised on the conclusion that competition to incumbent LECs is in the public interest. Incumbent LECs are those in operation as of a particular date who were engaged in providing "telephone exchange service or exchange access." The 1996 Act is thus intended collectively to promote competition for exchange access services and promote competition for exchange services. Reading

²¹ *E.g. Bruce v. First Federal Savings and Loan Ass'n of Conroe, Inc.*, 837 F.2d 712, 715 (5th Cir. 1988; IA N. Singer, *Sutherland on Statutes and Statutory Construction* § 21.24 (5th ed. 1993)).

the interconnection obligation to mean that it is applicable only with respect to those telecommunications carriers who provide both exchange services and exchange access would limit competitive entry to only those new carriers who intended to provide both services and thus limit, artificially, those carriers who could enter the local marketplace. That interpretation would be a barrier to entry of the local market, exactly opposite to the intent of the 1996 Act.

Furthermore, such a reading would deprive CMRS providers of taking advantage of the interconnection obligations imposed upon the ILECs should it be found that Section 251 of the 1996 Act is applicable even in light of Section 332's proscription. That is because, although CMRS provider services have been found by the Commission to constitute a type of local exchange telecommunications service, they do not necessarily also offer exchange access services.²² Thus, requiring telecommunications companies seeking interconnection under this section to offer both exchange and exchange access would narrow the number of CMRS providers who were eligible in a manner that Congress could not have intended.

²² The Commission has already determined that paging carriers are co-carriers "generally engaged in the provision of local exchange telecommunications in conjunction with the local telephone exchange companies." *Radio Common Carrier Services (Post Divestiture BOC Practices)*, 59 RR2d 1275, 1278 (1986).

VII. In Setting Interconnection Rates, The Commission Should Assure That The Rates Do Not Contain Universal Service Subsidies

[Response to NPRM ¶ 3] In the *NPRM*, the Commission recognizes the interrelationship between this proceeding and the universal services proceeding mandated by the 1996 Act.²³ In the universal service proceeding, the Commission is considering the extent to which there needs to be a universal service fund, the mechanism by which carriers would pay into the fund, and the mechanism by which the collected funds would be allocated.

The Commission should adopt a national policy, making it clear that the rates for co-carrier interconnection should not include any amounts of contribution toward the universal service fund. The national policy needs to be in place from the beginning of CLEC interconnection and, thereby, avoid the circumstance where the LEC is requesting rates far in excess of costs whether based on total service long-run incremental costs ("TSLRIC") or some other measure. Unless the Commission adopts such an explicit policy, it can be certain that every rate offered by the LECs will include substantial amounts of "contribution" which the CLEC will be unable to negotiate away. If the national policy were imposed from the outset, it would limit the LEC's ability to claim that it needs amounts substantially in excess of costs, and focus the negotiations that

²³ *NPRM* at ¶ 3.

do occur on the reasonableness of the costs of providing the particular service under negotiation.

VIII. States Are Preempted From Subjecting CMRS Providers To Their Universal Service Standards And Procedures

[Response to NPRM ¶ 145] Section 254(f) of the 1996 Act reserves to the states the ability to adopt regulations "not inconsistent with the Commission's rules," to preserve and advance universal service within their jurisdictions. Within this confine, and subject to the further condition that the state may not adopt universal service standards which "rely on or burden Federal universal service support mechanisms," telecommunications carriers providing intrastate services may be called upon by the state to support its universal service program. It is, therefore, important for the Commission to be cognizant in this proceeding of the fact that the states lack any jurisdiction over CMRS providers for the support of universal service mechanisms.

The Commission seeks comment on the extent to which it would be consistent with Sections 251(d)(1) and 254 for states to include universal service costs or subsidies in the rates they set unbundled for interconnection, collocation and network elements.

In the case of state authority over CMRS carriers relative to universal service issues, 47 U.S.C. § 332(c)(3) is specific in ousting the states of a regulatory role. That Section reads in relevant part:

Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a

substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications services at affordable rates.

By negative inference, Section 332(c)(3) leaves authority in the states to regulate intrastate universal service responsibilities for CMRS carriers providing intrastate services within their jurisdictions only to the extent CMRS services "are a substitute for land line telephone exchange service for a substantial portion of the communications within such State."

At this time, no CMRS providers can be considered to serve as a substitute for landline telephone service for a significant portion of any state. Cellular and personal communications service are not now serving as substantial substitutes for landline telephone service in any state of which PageNet is aware. Indeed, in the case of messaging services, the services are not even comparable to telephone exchange service, which provide real-time, two-way, interactive voice communications. Accordingly, Section 332(c)(3) does not leave the states with authority to regulate wireless carriers for universal service purposes.²⁴

²⁴

According to this reading of the allocation of universal service responsibilities under the 1996 Act, the Commission can exercise plenary interstate and intrastate authority with regard to CMRS carriers in the establishment of universal service principles and procedures. See *Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing Joint Board*, CC Docket No. 96-45, released March 8, 1996 at ¶ 119.

Continued on following page

This legislative result is not affected by the 1996 Act. Section 254(f) empowers the states to adopt universal service rules "not inconsistent with" the Commission's own rules, requiring telecommunications carriers that provide intrastate services to contribute to universal service support "in a manner determined by the State . . ." States' universal service authority in relation to CMRS providers, however, is already specifically delimited by the specific provisions of Section 332(c)(3) discussed above. The general authority recognized for states under Section 254(f) regarding universal service principles must yield to the more specific restrictions on that authority laid down in Section 332(c)(3) with particular regard to CMRS providers.

Furthermore, Section 254(f) is, by its terms, made applicable only to intrastate services. As has already been noted, CMRS services are, by their nature and as a matter of law, interstate in character.²⁵

Continued from previous page

²⁵ The definition of interstate versus intrastate classification as applied to CMRS carriers is being considered by the Commission at this time in the context of the LEC-CMRS Interconnection Proceeding, *Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers, Notice of Proposed Rulemaking*, CC Docket No. 95-185, released January 11, 1996. That rulemaking will almost certainly be decided prior to the Joint Board's scheduled issuance of its recommendations to the Commission in this proceeding in November of this year. Accordingly, it will not be necessary for the Joint Board to address this issue in its deliberations in this docket.