

Additional support for this interpretation is found in new Section 253 of the Act, concerning removal of barriers to entry. Section 253(b) of that provision makes clear that state "requirements necessary to preserve and advance universal service," in a manner consistent with Section 254, are not considered to be barriers to entry. Subsection (e) of the section, however, expressly provides: "Nothing in this section shall affect the application of Section 332(c)(3) to commercial mobile service providers."²⁶ Here, again, the 1996 Act makes clear that the states' general authority to regulate universal service standards within their jurisdictions under both Sections 253 and 254 of the Act must yield to the more specific restriction on the exercise of that authority as regards CMRS carriers found in Section 332(c)(3) of the Act.

IX. The Commission's Enforcement Authority Under Sections 208, 201 And 202, Are Not Superseded By New Sections 251 And 252

[Response to NPRM ¶ 41] The Commission seeks comment on the relationship between Sections 251 and 252 and the Commission's enforcement authority under Section 208. As set forth below, Section 252's grant of state authority to arbitrate interconnection agreements sought under Section 251 does not deprive the Commission of its jurisdiction to enforce the overall Communications Act.

²⁶ 47 U.S.C. § 253(e).

For example, Section 208 gives the Commission general authority over complaints regarding acts by "any common carrier subject to this Act, in contravention of the provisions thereof." Section 251(c)(2) requires the interconnection agreements negotiated under that section under rates, terms and conditions that are just, reasonable and nondiscriminatory, "in accordance with the terms and conditions of the agreement and the requirements of this Section and Section 252." Under Section 252, clearly, the states have jurisdiction to determine, with respect to co-carriers not exempted by Section 332, the extent to which the agreement is just, reasonable and nondiscriminatory. In this context, it would appear that CMRS providers could petition the states to determine that a particular agreement was unjust, unreasonable and discriminated against them in a manner which would make the agreement unlawful under Section 251. However, in this context, a CMRS provider also is expressly permitted to seek redress from the FCC under Sections 201, 202 and 208. In fact, Section 251(i) of the 1996 Act expressly contains a savings clause with respect to Section 201 which states: "Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under Section 201."²⁷ Further, there is no indication in the 1996 Act that Sections 202 or 208 were intended to be superseded by Sections 251 and 252, and the Act cannot be so interpreted. It is Sections 201 and

²⁷ 1996 Act, sec. 101 § 251(i).

202, implemented by Section 208, that gives the Commission authority to, for example, remedy any unreasonable discrimination. For CMRS providers, this means, in effect, that Sections 201 and 202 govern the reasonableness of interconnection between CMRS providers and LECs. At least with respect to the states, their only authority is to approve or disapprove the agreement. The states appear, in the context of CMRS, to have no independent basis to order the elimination of discrimination.

X. Conclusion

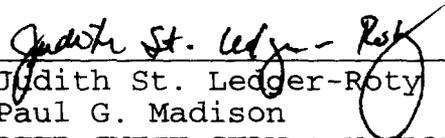
The Commission must act now to adopt a national interconnection policy. Even though there are different jurisdictional bases for the Commission's oversight of interconnection, a uniform, nondiscriminatory policy can be developed that would be applicable to all ILEC interconnection. The existing interconnection arrangements that have been negotiated between LECs and CMRS paging carriers reflect extreme and wholly unjustified variations in pricing for identical interconnection components. A superficial review of the LEC pricing practices makes it clear that currently effective interconnection arrangements are wholly unsupported and unreasonably discriminatory. This rulemaking provides the Commission with a perfect opportunity to create a national interconnection policy that is free of unreasonable discrimination and that will significantly benefit end users in the form of better communications services at lower prices.

WHEREFORE, in light of the foregoing, PageNet respectfully requests that the Commission adopt regulations and policies in accordance with its comments herein.

Respectfully submitted,

PAGING NETWORK, INC.

By:



Judith St. Ledger-Roty
Paul G. Madison
REED SMITH SHAW & MCCLAY
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-3317
(202) 414-9237

Its Attorneys

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AFFIDAVIT OF VIC JACKSON

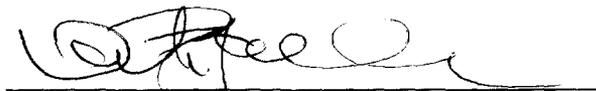
I, Vic Jackson, am employed as Director of Interconnection with Paging Network, Inc. ("PageNet").

In that capacity, I am responsible for all issues for PageNet subsidiaries that deal with the terms and conditions under which the paging facilities of those subsidiaries are interconnected with the public switched telephone network. I have negotiated interconnection terms and conditions with all of the Bell Operating Companies ("BOCs"), and many of the largest independent local exchange carriers ("LECs") and interexchange carriers.

It is my belief that the negotiated process that has led to the CMRS interconnection arrangements that currently are in effect is highly disadvantageous to paging carriers and other CMRS providers, which have no bargaining leverage with the LECs.

As a result of this inferior negotiating position, PageNet has had to accept interconnection arrangements that: (1) are excessively priced; (2) allow LECs to receive double -- and sometimes triple -- compensation for the same facilities; and (3) unreasonably discriminate against paging carriers.

I have read the foregoing Comments of Paging Network, Inc., and declare, this 15th day of May 1996, that the information contained therein is true and correct to the best of my knowledge, information and belief.



Vic Jackson