

B. IMPLEMENTATION OF COMPENSATION ARRANGEMENTS

2. JURISDICTIONAL ISSUES: Arguments That The
Commission Lacks Jurisdiction Over CMRS
Interconnection Rates Are Without Merit

The LECs and several state regulatory commissions argue that the Commission lacks the jurisdiction to prescribe terms and rates for nondiscriminatory and fully compensatory CMRS interconnection agreements. Several go so far as to state that the Telecommunications Act of 1996 effectively moots this proceeding.³⁰ PageNet anticipated these arguments, and has already addressed them in its initial comments. Below, PageNet briefly summarizes the LEC arguments and its responses thereto.

The LECs found their argument on the premise that § 252 of the 1996 Act gives state regulators plenary authority over interconnection rates, and so supersedes the Commission's authority to set CMRS interconnection rates under § 332 of the Omnibus Budget Reconciliation Act of 1993.³¹ These arguments are effectively rebutted by PageNet and a number of other carriers in their initial comments.³² Specifically PageNet and other

³⁰ See, e.g., BAMS at 2; Bell Atlantic at 14; Pacific at 3-4; SBC at 2-3, 6-7.

³¹ E.g., Ameritech at 12, Bell Atlantic at 5; BellSouth at 5-7, 8,12; GTE at 6-9; NYNEX at 41; Pacific at 3; U S West at 21, 57-62.

³² E.g., PageNet at 29-40; AT&T at 19-26; General Services Administration at 3-5; MCI at 16; PCIA at 15-18.

supporting carriers show that LEC claims that the 1996 act supersedes Commission jurisdiction over CMRS interconnection are inconsistent with the plain language of the statute, which contains a "savings" clause that perpetuates the effect of § 332.³³

Similarly, PageNet has shown that the argument by some LECs that § 332 only governs charges imposed by CMRS providers, and not charges imposed by LECs on CMRS providers³⁴ is without merit. In a co-carrier environment, in which LEC charges to CMRS providers become inputs in the determination of the charges CMRS providers impose for their services, the Commission must exercise jurisdiction over both, or its jurisdiction over CMRS rates under § 332 becomes illusory.³⁵

Moreover, even if the Commission were to accept the LEC arguments in this regard -- and PageNet reiterates that such arguments represent a flagrant misreading of the 1996 Act -- the Commission would remain fully empowered to provide the relief requested by PageNet. PageNet has requested: 1) that the Commission prescribe rates, based on LEC access charges, that LECs must pay to paging carrier's for termination compensation, and 2) that the Commission prohibit LECs from charging paging companies for the transport from the LEC switch to the MTSO,

³³ E.g., PageNet at 33, citing § 332(c)(3) of the 1996 Act.

³⁴ Pacific at 98.

³⁵ PageNet at 32.

which is already recovered through access charges paid by IXCs or end users. Prescribing the rates that PageNet, as a terminating carrier, may charge the LECs clearly is a rate charged by a CMRS provider, and so unequivocally falls within the ambit of § 332. Moreover, the Commission is fully empowered under §§ 201(b), 202(a) and 251(i) of the Act to prevent the LECs from imposing excessive or duplicative charges on CMRS providers for interstate services.³⁶ Therefore, there are no jurisdictional impediments to the relief requested by PageNet.

Finally, some commentators argue that CMRS traffic is severable into interstate and intrastate components, and claim that states may exercise jurisdiction over rates for intrastate CMRS interconnection.³⁷ Not only is this argument incorrect, it is irrelevant. Section 332 expressly provides for plenary Commission jurisdiction over CMRS rates therefore the issue of jurisdictional severability *vel non* is irrelevant. In addition, as demonstrated by PageNet and several other commentators, the nature of paging renders the service inherently interstate.³⁸ PageNet illustrated that a typical paging call is transmitted from a number of antennae covering a multistate region, or nationwide. Moreover, because paging customers are itinerant by

³⁶ As discussed below, the means by which paging services are provisioned renders all paging service jurisdictionally interstate.

³⁷ Pacific at 101; NYNEX at 33, 38-39; U S West at 20.

³⁸ PageNet at 33-36 & Diagram 1; Celpage at 12-13.

nature, it is impossible to determine whether any particular call is interstate or not. Because the traffic is not severable, and indeed is not measurable, the traffic must be considered jurisdictionally interstate.

VI. OTHER: The Attempt By Some LECs To Exclude Paging Carriers From Equitable Interconnection Arrangements Are Patently Anticompetitive And Unreasonably Discriminatory

In the initial joint comments of Pacific Bell, Pacific Bell Mobile Services, and Nevada Bell ("Pacific"), Pacific argues that paging companies should be excluded from any CMRS interconnection rules that the Commission may adopt in this proceeding.³⁹ Pacific offers two arguments in support of this position: 1) at present, paging companies provide one-way traffic that does not compete with the services of LECs or other CMRS providers,⁴⁰ and 2) the conference report accompanying the Omnibus Budget Reconciliation Act of 1993 stated that "market conditions may justify differences in the regulatory treatment of some [CMRS providers]."⁴¹ Similarly, GTE argues against compensation for paging carriers because paging is an "an ancillary service" and not an exchange service.⁴² These arguments do not support the LECs' patently anticompetitive and unreasonably discriminatory proposal, and indeed, no support is possible.

The LECs' assertions that paging services do not compete with LEC services or the services of other CMRS providers

³⁹ Pacific at 107-08.

⁴⁰ *Id.* at 108.

⁴¹ *Id.* at 107.

⁴² GTE at 37.

are simply wrong. The Commission has already found that paging and landline services are substitutable to some degree.⁴³ Perhaps more significantly, the Commission found that paging services may provide the greatest competition to wireline LEC services in traditionally underserved areas:

[M]obile technologies are extending the range of telecommunications services available in areas where the provision of conventional wireline services is not economically feasible. This capability is illustrated by the fact that cellular and paging carriers are increasingly serving the communications needs of businesses and residents in rural areas; in many cases these needs had not been adequately met because of the prohibitive costs associated with furnishing conventional wireline service. We believe that . . . economic growth will be stimulated by the fact that business operations will be made more efficient and business productivity will be increased as a result of improved business access to the public switched network.⁴⁴

In addition, the Commission has expressly found that paging carriers may compete with PCS providers.⁴⁵ This finding is further supported in PageNet's initial comments, which include a brochure of Sprint Spectrum that promotes its paging services extensively.⁴⁶ The Commission has also found that cellular

⁴³ *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1470 (1994) (finding substitutability among paging, cellular and wireline services, although concluding that "the degree of cross-price elasticity has not been established in this record.").

⁴⁴ *Id.* at 1422.

⁴⁵ *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 8 FCC Rcd 7700, 7709 (1993).

⁴⁶ PageNet at Appendix A.

providers compete directly against paging companies, by offering paging over cellular frequencies.⁴⁷ These findings make clear that excluding paging carriers from compensatory interconnection arrangements would cripple paging carriers' ability to compete, not only against LECs, but against other CMRS providers. The LECs provide no credible grounds to justify such patently anticompetitive discrimination.

In addition, Pacific's reference to Conference Report language is fundamentally at odds with the way the Commission has implemented the Omnibus Budget Reconciliation Act of 1993. In adopting its interconnection policies, the Commission consistently has accorded similar treatment to paging carriers and other CMRS service providers. Such treatment is fully consistent with the Commission's policy imperatives, which were stated succinctly in the NPRM that initiated this proceeding: "We are concerned that existing general interconnection policies may not do enough to encourage the development of CMRS, especially in competition with LEC-provided wireline service."⁴⁸

Pacific and GTE have failed to identify any legislative, precedential or policy reason for establishing

⁴⁷ *Amendment of Parts 2 and 22 of the Commission's Rules to Permit Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service*, 3 FCC Rcd 7033, 7042 (1988).

⁴⁸ *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, CC Docket No. 95-185 (released January 11, 1996) ("NPRM").

interconnection policies that discriminate against paging carriers, and no such justification is possible. Indeed, the broad prohibitions against discrimination found in § 202 of the Communications Act of 1934, and throughout the Telecommunications Act of 1996, proscribe such action.⁴⁹

Each of these arguments is a smokescreen to avoid discussion of the real issues, that is, that paging carriers are entitled to recovery for their costs of terminating land-to-mobile traffic originated on LEC systems. Tellingly, no LEC argues that paging carriers don't incur costs for providing this service. They simply argue, as they have for years, both before this Commission and in the context of negotiations, that they don't want to pay these costs, despite both the reasonableness of LEC compensation for costs incurred and prior Commission pronouncements to that effect. Because no support exists for establishing CMRS interconnection rules that discriminate against paging carriers, these arguments must be rejected.

⁴⁹ See Allied at 9.

VII. CONCLUSION

For the reasons discussed above, PageNet respectfully requests that the Commission adopt rules and regulations concerning interconnection and co-carrier compensation for paging traffic in accordance with the discussion contained herein.

Respectfully submitted,

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March 25, 1996