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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-~~158~~ 185

PETITION FOR LIMITED RECONSIDERATION

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PETITION FOR LIMITED RECONSIDERATION

Arch Communications Group, Inc. ("Arch")[1] hereby files this Petition for Reconsideration of the *First Report and Order* issued in the above-captioned proceeding.[2] By this petition, Arch seeks reconsideration of a limited, but important aspect of the *Order* dealing with the establishment of interim default proxy rates. As demonstrated below, the Commission's decision not to prescribe interim proxies for "paging-only" carriers, as it did for CMRS entities that provide paging combined with other CMRS offerings, will create a competitive imbalance which the Commission presumably did not foresee.

Introduction and Summary

The *Order* issued in this proceeding will have dramatic implications for the entire telecommunications industry. It represents the Commission's first step toward

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1 Arch provides paging service to approximately 3 million units in 38 states. Arch's operations include both common carrier and private paging systems; local, regional and nationwide paging systems; nationwide narrowband PCS operations through its investment in PCS Development Corp., and regional narrowband PCS operations through its investment in Benbow PCS Ventures, Inc.

2 *First Report and Order*, 61 Fed. Reg. 45476 (Aug. 29, 1996) ("*Order*").

implementation of recent Congressional directives governing the interconnect services provided by local exchange carriers ("LECs") to all segments of the telecommunications industry. In addressing the statutory requirements set forth in Sections 251 and 252 of the Telecommunications Act of 1996,[3] the Commission was faced with an extremely daunting and complex task, particularly given the strict timetables imposed by Congress. While Arch does not agree with each and every aspect of the *Order*, it believes the Commission did a commendable job in accommodating the varied interests of the affected parties consistent with the framework envisioned by Congress.

Arch seeks reconsideration, however, of one, limited aspect of the *Order* which, it believes, will produce unintended results. As discussed below, the Commission adopted interim default proxy rates for CMRS providers that are to take effect immediately for "new entrants," and no later than 9 months from now in the case of incumbent CMRS providers. The Commission declined, however, to adopt interim proxy rates applicable to paging-only providers. Arch asks the Commission to reconsider this decision because it will create an unfair competitive imbalance between carriers that provide paging services only, and other CMRS providers that include paging as part of their service offerings. This latter group of entities will be compensated for the termination of pages that originate on LEC networks, while paging-only companies will receive no such compensation for the identical services for an indefinite period.

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[3] Pub. L. No. 104-104, 110 Stat. 56 (1996).

I. THE INTERIM PROXY RULES ADOPTED BY THE COMMISSION WILL COMPETITIVELY DISADVANTAGE PAGING-ONLY CARRIERS

The record in this proceeding demonstrates overwhelmingly the existence of a persistent and widespread pattern of abuse involving LEC-CMRS interconnection. The Commission concluded, based on this extensive record, that LECs routinely fail to compensate CMRS providers for landline calls terminated on wireless networks, and in some cases even impose charges for such calls, both in violation of Section 20.11 of the Commission's rules.[4] The abuses associated with LEC-paging interconnection were shown to be especially acute.[5]

In light of this record, the Commission properly concluded that interim protective measures should be adopted, particularly given the superior bargaining strength currently enjoyed by the LECs. In this regard, the Commission, in essence, compartmentalized CMRS providers into three categories — new entrants, incumbents and paging-only companies — and it established distinct sets of interim rules applicable to each of the categories.

New CMRS entrants, because of their "relatively weak bargaining position,"[6] are afforded immediate protective measures. Most notably, LECs must provide interconnect services to these entities upon request, with rates set at 0.4 cents per minute of use for end-office switching, and 0.15 cents per minute for tandem switching.

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[4] 47 C.F.R. § 20.11.

[5] *Order* at ¶ 1084.

[6] *Id.* at ¶ 1065.

These rates are only to take effect in those states that have not yet prescribed rates based on forward-looking economic cost studies. States are directed to adopt "true-up" mechanisms to ensure that no carrier is disadvantaged by an interim rate that differs from the rate established following arbitration.[7]

Incumbent CMRS providers are treated somewhat differently. For these entities, the Commission established a default proxy rate scale ranging from 0.2 cents to 0.4 cents, which can be utilized by state commissions that have not completed the requisite forward-looking cost studies by the end of the prescribed statutory period.[8]

Paging-only carriers are subject to yet a different set of interim rules which provide for no current compensation and set no timetable regarding when such compensation may be forthcoming. Specifically, the Commission declined to prescribe <u>any</u> interim proxy rate for such carriers, based on the determination that there was a "lack of information in the record concerning paging providers' costs to terminate local traffic."[9] The Commission announced that it would initiate a further proceeding for purposes of determining an appropriate proxy for paging costs, and perhaps set a specific paging default proxy, but it set no timetable for initiation or completion of this supplemental proceeding.[10]

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[7] *Id.*

[8] *Id.* at ¶ 1060.

[9] *Id.* at ¶ 1093.

[10] *Id.*

The decision to adopt disparate interim rules applicable to each of the three designated categories of CMRS service providers perhaps makes sense when the entities in one category provide services that are distinct from those provided by entities in another category. A point that may have been overlooked, however, is that CMRS providers in each of the three categories provide identical paging services. Sprint Spectrum, for example, has incorporated a paging function into its PCS handsets which is widely advertised. This paging function is expected to be a standard feature in the service offerings of most other PCS providers.[11] As "new entrants," PCS providers will receive compensation from LECs at a rate of 0.4 cents per minute for pages terminated over their networks that are switched through the LECs' end offices. These revenues can be translated into reduced prices for consumers of these CMRS providers' paging services. Paging-only companies, in contrast, will receive no compensation for these same services for an indefinite period of time.

The disparate interim rules also create a competitive imbalance between paging companies and other incumbent CMRS providers. As cellular carriers transition to digital technologies, it is anticipated that they, too, will incorporate a paging function into their service offerings. In the event these entities are unable to negotiate new interconnection agreements with LECs, they can at least rest assured that the state

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11 *See, e.g., Western Wireless Kicks Off Latest PCS in the Salt Lake City MTA*, Mobile Data Report, Jul. 15, 1996; Gregory Quick, *PCS Makes Clear Retail Connection*, Computer Retail Week, Sept. 23, 1996, at 1; *PCS (Personal Communications Service) And the New Wireless Marketplace Expanding the Family Telecommunications Frontier*, PR NewsWire, Sept. 10, 1996, *available in* LEXIS, CURNWS Library.

commissions will implement the default proxy rate (insofar as the states are unable to complete their assigned tasks within the prescribed period). As the Commission has acknowledged, the existence of the proxy provides a strong incentive for LECs to bargain seriously.[12] The absence of a proxy, in contrast, creates an environment in which the LECs would be expected to delay payment of any compensation to paging companies until they are absolutely forced to do so by the state commissions or by the Commission, a process which can extend well beyond a year.

II. INTERIM PROXY RATES SHOULD BE ADOPTED FOR PAGING-ONLY CARRIERS

In order to level the playing field for all providers of paging services, Arch seeks a limited reconsideration of the Commission's decision. Specifically, Arch respectfully requests that the Commission establish an interim default proxy rate for paging-only CMRS providers, consistent with the compensation scheme adopted for entities that provide paging services in addition to other CMRS offerings. The optimum solution would be adoption of a default rate that would become effective immediately, as is the case with new entrants, subject to a "true-up" mechanism when final rates are negotiated or set by the state commissions following arbitration.

A less favorable alternative would be the establishment of a default proxy that could be utilized by state commissions unable to complete the requisite deliberations by the end of the statutorily-prescribed arbitration period. This is the scheme adopted for incumbent, non-paging-only CMRS providers. Proxies were developed in this context

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12 *Order* at ¶ 1060.

based on the Commission's recognition that "it may not be feasible for some state commissions conducting or reviewing economic studies to establish transport and termination rates using our TELRIC-based pricing methodology within the time required for the arbitration process, particularly given some states' resource limitations."[13] There is every reason to anticipate that the states will confront similar difficulties in completing their review of paging industry cost studies in a timely fashion.[14] If the states cannot complete their proceedings within the prescribed period,[15] the process will end up back before the Commission, delaying compensation for paging carriers indefinitely.[16]

Thus, although the Commission has concluded unequivocally that "paging providers, as telecommunications carriers, are entitled to mutual compensation,"[17] the practical impact of a regulatory scheme which does not include an interim proxy rate will be the indefinite denial of this entitlement to paging-only carriers. This state of affairs

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13 *Id.*

14 Indeed, state commissions have historically analyzed LEC network costs in connection with the establishment of local rates. In stark contrast, however, most states have had no experience regulating any aspect of the paging industry. This may result in a lengthier learning curve and a more protracted cost study review process.

15 Pursuant to Section 252(a)(4)(C) of the Act, states must complete their deliberations within nine months after the date on which the LEC received the request for interconnection.

16 Section 252(e)(5) provides that if a state commission fails to carry out its responsibilities under this section, the Commission is to preempt the state within 90 days after being notified of such failure, and it is to assume the state commission's responsibilities at that time. There is no separate statutory deadline for Commission action under this scenario.

17 *Order* at ¶ 1092.

might be considered tolerable if all similarly situated entities were subject to the same regulatory regime. As noted above, however, only those CMRS providers that exclusively offer paging services will be burdened in this manner. By contrast, PCS and cellular providers that also offer paging services — services which compete directly with the services offered by paging-only providers[18] — will operate under a different set of rules. These entities will be compensated (immediately in the case of new entrants and no later than 9 months in the case of incumbents) for completion of pages, and they — unlike their paging-only counterparts — will be able to apply these revenues toward reduced prices for consumers.

A remaining question to be decided is what would be an appropriate proxy for paging-only carriers. It should be noted in this regard that Arch is in the process of quantifying its interconnection expenses, a task commenced following issuance of the *Order*. Nevertheless, paging companies obviously incur costs in connection with the completion of calls originated on LEC networks. These expenses include, among other things, the costs of switches, transmitters and other facilities and operational expenses

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18 *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 61 Fed. Reg. 47284 (Sept. 6, 1996), at ¶ 333 (the Commission itself has determined that paging carriers are increasingly facing competition from non-paging CMRS providers); *see also* Rebecca Buckman, *Pagers Face New Rivals in Fancy Phones*, Wall Street Journal, Aug. 12, 1996, at A5; Mark Moore, *PCS Carriers to Woo Paging Users With New Services*, PCS Week, Aug. 26, 1996, at 33; Dan Sweeney, *Talk and Backtalk*, Cellular Business, June 1995, at 58; *Western Wireless Kicks Off Latest PCS in the Salt Lake City Area*, Mobile Data Report, Jul. 15, 1996.

associated with the RF network.[19] We expect that, notwithstanding the Commission's preliminary assessment that "LECs' costs are likely higher than paging providers' cost[s],"[20] the evidence will prove to the contrary. Nonetheless, as the Commission has done with new entrants, it should adopt an interim proxy rate now which will be subject to "true-up" procedures when actual costs are demonstrated.[21] This will assure that all carriers — including LECs — will be treated fairly when new rates are established pursuant to negotiation or arbitration.

In the alternative, the Commission should establish a default rate that can be imposed by those state commissions that have not completed the requisite determinations in the prescribed period. Adoption of this proposal will not put paging companies on a par with new entrant PCS companies that also provide paging services, but it will at least (i) provide assistance to state commissions; (ii) ensure that some form of compensation is received by paging-only companies within nine months after a request for interconnection is submitted to the LEC; and (iii) create an environment more conducive to fair negotiations in the interim.

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19 The Commission concluded that carriers must be compensated for terminating calls originated on another carrier's network. In this context "termination" is defined as "the switching of traffic . . . at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." *Order* at ¶ 1040.

20 *Id.* at ¶ 1092.

21 The Commission adopted this procedure for new entrants despite the absence of any data in the record concerning new entrants' interconnection costs.

Finally, the least desirable alternative relates to the Commission's announcement in the *Order* that it would initiate a further proceeding to determine an appropriate proxy for paging interconnection.[22] While Arch continues to believe that adoption of an immediate proxy rate (with later "true-up") is the most appropriate and fair remedy given the competitive disparities described above, resolution of these disparities in the context of a supplemental proceeding would not be too objectionable as long as that proceeding is completed on an expedited basis. Otherwise, all CMRS providers, except paging-only companies, will continue to enjoy a distinct competitive advantage in the marketing of paging services. The Commission presumably did not intend such a result, given Congress' clear direction that the Commission's rules should promote competitive parity for like services.[23]

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22 *Order* at ¶ 1093.

23 Congress amended Section 332(c) of the Communications Act "to provide that services that provide equivalent mobile services are regulated in the same manner. [Section 332(c)] directs the Commission to review its rules and regulations to achieve regulatory parity among services that are substantially similar." H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 259-60, *reprinted in* 1993 U.S.C.C.A.N 378, 586-87.

For the foregoing reasons, Arch seeks limited reconsideration of the *First Report and Order* issued this proceeding to the extent described above.

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