BEFORE THE

Federal Communications Commission

WASHINGTON, DC 20554

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

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To: The Commission

REPLY OF ARCH COMMUNICATIONS GROUP, INC.

Arch Communications Group, Inc. ("Arch"), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. §1.429, respectfully submits this Reply in response to Oppositions filed against Arch's Petition for Limited Reconsideration ("Petition") in the captioned proceeding.

DISCUSSION

The record developed in this proceeding demonstrated convincingly that LECs have been engaged in a persistent and widespread pattern of unfair interconnection practices against CMRS providers. The Commission concluded, on the basis of this compelling record, that interim protective measures should be adopted in order to provide immediate relief for the CMRS industry.

The rules adopted, in effect, compartmentalized CMRS providers into three separate categories — new entrants, incumbents and paging-only companies — and the Commission established distinct interim rules applicable to each of the categories. LECs were ordered to provide interconnection to new entrants at 0.4 cents per minute of use for end-office switching

and 0.15 cents per minute of use for tandem switching, subject to a later true-up when final rates are set pursuant to negotiation or arbitration. Incumbents were authorized to renegotiate existing contracts in order to obtain compensation at the current LEC rate for termination of calls originated on LEC networks. The Commission also established a default proxy rate scale for these entities from 0.2 cents to 0.4 cents to be utilized by state commissions that have not completed the required forward-looking cost studies within the prescribed statutory period.

Paging-only carriers, however, were singled out for separate treatment. With respect to these entities alone, the Commission declined to adopt any interim proxy rates, claiming that there was insufficient information on the record to establish an appropriate rate. While the Commission did announce that a separate proceeding would be initiated to explore paging interconnection costs, it set no timetable for commencement or completion of this supplemental proceeding.

Arch's Petition pointed out that these disparate interim rules will create a competitive imbalance which the Commission presumably did not foresee. As noted by Arch, non-paging-only new entrants (such as Sprint Spectrum and other PCS providers) and incumbents (such as AT&T Wireless) are incorporating paging into their package of services on a large-scale basis. Under the interim rules, these entities will receive compensation for the termination of pages originated on LEC networks — revenues that can be applied toward a reduction in prices for their paging services — whereas paging-only companies will receive no compensation for performing the identical functions. To remedy this disparity, Arch requested that the Commission establish an interim default proxy rate for paging-only CMRS providers, consistent with the

compensation scheme applicable to entities that provide paging in addition to other CMRS offerings.[1]

Several LECs oppose this request, and some even go so far as to suggest that paging carriers should never be compensated for termination of calls originated on LEC networks.[2] It should be noted at the outset that not all of the LECs concur with this extreme position. Ameritech, for example, asserts that state commissions are the "proper audience" to determine the appropriate compensation due paging companies for terminating traffic,[3] and USTA expresses its support for the proposition that "the Commission wisely has decided to refrain from precipitous action and has committed to initiate a proceeding to determine an appropriate proxy for paging costs."[4] These parties thus agree that paging companies should be compensated for terminating calls that originate on LEC networks.

The LECs that take a contrary view claim that Congress did not intend for reciprocal compensation to be applied when compensation flows exclusively one way, as would result with traffic between LEC networks and paging networks.[5] As noted by SNET, "[w]hile Section 251(b)(5) mandates reciprocal compensation in certain circumstances, Section 252(d)(2) makes plain that a carrier must provide such compensation to an interconnecting carrier for terminating

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1 Arch noted that the establishment of a proxy rate would assist those state commissions that are unable to determine appropriate rates within the statutorily-prescribed period.

2 *See, e.g.*, Opposition of Southern New England Tel. Co. ("SNET") at 15; Opposition of Bell Atlantic at 11-12; Nynex Comments at 30-34; U S WEST, Inc. Comments at 18-19.

3 Ameritech Opposition at 40-41.

4 USTA Opposition at 38.

5 *See* Nynex Comments at 31; GTE Opposition and Comments at 44-47; SNET Opposition at 15.

a call originated on the first carrier's network only if the origination and termination of traffic by customers of the two carriers is 'mutual and reciprocal.'"[6] Section 252(d)(2), however, neither states nor intends what SNET and other LECs suggest. Pursuant to this provision, state commissions may not find reciprocal compensation terms and conditions just and reasonable unless each carrier recovers the "costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." The clear intent of this requirement is to ensure that carriers are compensated for terminating other carriers' calls.

Under the LECs' tortured interpretation, since the LEC originates but does not terminate any calls in the paging scenario, the paging carrier is not entitled to compensation for the termination functions it performs on behalf of the LEC. There is nothing in the statute, however, to suggest that one carrier must forego compensation for termination expenses incurred on behalf of another carrier simply because the other carrier has no similar expenses. The LECs are requesting a "free ride" which Congress clearly did not intend.[7] Since all pages originate on the LECs' networks, the statute provides that paging companies are to be compensated for the costs they incur in the transport and termination of such calls. LECs, in contrast, are not entitled to receive any compensation because they do not incur any termination costs in this context. Because each carrier receives what it is due, the requirements of the statute are met.

The LECs also contend that termination payments to paging companies will amount to a subsidy for paging subscribers. The logic here is faulty. The LEC's customer seeks to send a

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[6] SNET Opposition at 15.

[7] It is noteworthy that two proponents of this theory — GTE and SNET — are two of the carriers that routinely have imposed charges on paging companies for terminating LEC-originated calls.

page, and the paging company performs transport and termination functions on behalf of the LEC so that the call can be completed. The analysis is no different with calls originated on a LEC network that are terminated on a cellular or PCS network. The fact that the call to a handset can result in a two-way conversation, while the call to a pager merely sends a signal or brief message, is irrelevant for purposes of compensation. In both cases, the terminating carrier is incurring costs to complete a call originated on another carrier's network. Consistent with the intent of Congress, the terminating carrier is entitled to compensation for providing this service.

On a separate matter, some LECs object to the Commission's holding that all calls by CMRS providers within the same Major Trading Area ("MTA") should be deemed local calls for purposes of applying reciprocal compensation obligations. Arch submits that the Commission's use of MTAs in this context is entirely proper and warranted. CMRS local calling areas have never coincided with local exchange areas, a fact well understood by Congress in 1993 when it completely revamped the jurisdictional scheme applicable to CMRS services by amending Sections 2(b) and 332(c) of the Communications Act of 1934. The LECs' efforts to shoehorn natural CMRS local calling areas into the much smaller local exchange areas should be rejected.[8]

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[8] The Commission should also reject Kalida Telephone Company's contention that it should not be required to compensate CMRS providers in situations where the calls originate on another LEC's network, traverse Kalida's network, and terminate on a CMRS network. Arch agrees with AirTouch that, in such circumstances, Kalida should be compensated by the originating LEC for the costs Kalida incurs in delivering the traffic to the CMRS network, including the terminating costs due the CMRS provider. Kalida would then compensate the CMRS provider accordingly. This is the only workable solution since paging companies have no means of knowing whether a call originates on a LEC's network or simply traverses that network. *See* Comments of AirTouch Communications, Inc. at 8, n.23, and pp. 11-12, n.32.

A final word is appropriate regarding the scope of the Commission's authority under Section 332 of the Act. Bell Atlantic asserts that Comcast and Vanguard rely on Section 332(c)(3)(A) of the Act as the basis for the Commission's authority to regulate the rates for intrastate LEC-CMRS interconnection. Comcast/Vanguard, in fact, did not even mention Section 332(c)(3)(A). They relied, instead, on the relevant provision for this purpose — Section 332(c)(1)(B) — and they could not have been clearer on this point:

> Section 2(b) generally preserves state jurisdiction over "intrastate" telecommunications. The Budget Act of 1993, however, amended Section 2(b) by excepting Section 332 from the reservation of state authority under Section 2(b). Section 332(c)(1)(B), moreover, in conjunction with Section 201 of the 1934 Act, grants the FCC authority to regulate interconnection between LECs and CMRS providers.[9]

It is not surprising that Bell Atlantic wants to deflect the Commission's attention away from Section 332(c)(1)(B). That provision directs the Commission to respond to requests for interconnection made by "any" CMRS provider — whether interstate or intrastate — and the Commission is to do so pursuant to its authority under Section 201, which requires that interconnection services must be provided at just and reasonable rates. The addition of Section 332(c)(1)(B), coupled with the amendment to Section 2(b), clearly authorizes the Commission to regulate intrastate LEC-CMRS interconnection rates. For this reason, moreover, Bell Atlantic's contention that "the Commission can't set interconnection rates for local traffic...,"[10] is simply wrong in the context of CMRS traffic.

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[9] Comcast Cellular/Vanguard Cellular Joint Petition for Reconsideration and Clarification at 22.

[10] Bell Atlantic Opposition at 2.

CONCLUSION

For the reasons stated in its Petition for Limited Reconsideration, and the arguments raised in Arch's Opposition and the instant Reply, Arch urges the Commission to eliminate an unintended competitive imbalance by prescribing interim proxies for "paging-only" carriers, as it did for CMRS entities that provide paging combined with other CMRS offerings. The Commission should also retain MTAs as the local calling area for CMRS traffic.

Respectfully submitted,

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Date: November 12, 1996

CERTIFICATE OF SERVICE

I, Joy Griffiths, hereby certify that copies of the foregoing Reply Comments in Response to Oppositions to Petitions for Reconsideration were served this 12th day of November, 1996, by first-class postage prepaid to the following:

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