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FEDERAL COMMUNICATIONS COMMISSION
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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
		DOCKET FILE COPY ORIGINAL
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers Department of Public Utilities Regarding Area Code Relief Plan for Area Codes 508 and 617	)	CC Docket No. 95-185

To: The Commission

OPPOSITION TO AND COMMENTS REGARDING CERTAIN PETITIONS FOR RECONSIDERATION

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. § 1.429(f), hereby opposes and provides its comments with respect to certain petitions for reconsideration in response to the *Second Interconnection Order*.[1] In support thereof, the following is respectfully shown:

I. State Commissions Should Be Prohibited From Ordering Wireless Takebacks

Several petitioners requested that the Commission rule on reconsideration to prohibit state commissions from ordering

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1 *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, 92-237, NSD File No. 96-8, IAD File No. 94-102, Second Report and Order and Memorandum Opinion and Order at ¶290 (released August 8, 1996) ("*Second Interconnection Order*").

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wireless takebacks when implementing splits of NPAs.[2] The reasons for not providing for mandatory recapture of Type 2 wireless numbers are compelling. They include the fact that there is an unfair burden associated with the change of a wireless number when compared to wireline numbers. In addition, wireless takebacks do not comport with the Commission's stated goal to have a technology-blind area code relief process that does not burden or favor a particular technology. Moreover, Type 2 wireless numbers that are served out of tandem switches are not tied to a fixed location.[3] For these compelling reasons, the Commission must provide that there can be no relinquishment of Type 2 telephone numbers required of wireless customers upon the opening of a new NPA.

II. Contrary To The Assertions Of MFS And Teleport, Overlays Are An Appropriate Form Of Number Relief With Interim Portability

In the Commission's *Second Interconnect Order*, it expressly refused to condition the use of overlay NXX code relief options on the implementation of permanent number portability. At least

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2 *See e.g.* AT&T Corp. Petition at ¶¶ 12-33; AirTouch Paging Petition for Partial Reconsideration and Clarification at ¶ 19; Paging Network, Inc. Petition for Limited Reconsideration at ¶ 7.

3 Wireline numbers served out of wire centers are tied to a fixed location.

two competitive local exchange carriers ("CLECs"), MFS Communications Company, Inc. ("MFS") and Teleport Communications Group Inc. ("Teleport"), seek reconsideration of that refusal.[4] Based on unsubstantiated claims concerning the competitive impact of overlays, they in effect contend that it is preferable to endure number shortages than to have numbers made available by what they view as less than perfect means. They insist that nothing less than permanent number portability will justify the use of overlays. Teleport, indeed, goes even further. It contends that overlays should be permitted only when "each certificated carrier has sufficient NXXs from the existing NPA to serve its entire service territory." Teleport Pet. at 7.

The proposed conditions are wholly inconsistent with the Commission's number administration principles. Those principles stress the importance of the timely availability of numbering resources and technology neutrality.[5] If adopted, the proposed

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4 *See MFS Communications Company, Inc., Petition for Partial Reconsideration of Second Report and Order*, dated October 7, 1996, at 2-10 ("MFS Pet."); *Petition for Reconsideration*, filed by Teleport Communications Group Inc., dated October 7, 1996, at 7-12 ("Teleport Pet.").

5 In its *Second Interconnection Order*, the Commission reaffirmed that numbering administration should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and <u>timely</u> basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3)

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conditions would create the risk of number shortages with an inherently discriminatory impact on wireless carriers.[6]

Wireless NXX code fill factors tend to range at or above the 90% level. The same is not true for wireline service which, typically, has a separate NXX code for each rate center, and there can be a large number of rate centers within a single area code. Consequently, average wireline NXX code fill factors commonly are at the 50% level and sometimes even less. As a result, wireline carriers usually have numbering resources that they can use to get them past periods of short supply.[7] As noted, the same is not true for wireless carriers.

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not unduly favor one technology over another." *Second Interconnection Order* at ¶281 (emphasis supplied).

6 Due to limits on the assignability of relief NXX codes during the implementation of a split until after a period of permissive dialing and number aging, overlays have a much greater ability to provide effective numbering relief quickly. The dramatic increase in the frequency with which area code relief is required, coupled with the chronic failure of code administrators to forecast accurately NXX code exhaust dates, makes this characteristic of an overlay particularly important. Increasingly, relief plan implementation is being delayed to a point in time at which it is impossible or difficult to implement a split without creating a shortage of NXX codes. The Commission itself has recognized that overlays can be implemented more quickly than splits. *See Second Interconnection Order* at ¶283.

7 It may be that a subscriber must temporarily accept a number that is not rated to his or her service location, but this is ordinarily preferable to having no service at all.

The CLEC claims that overlays are anticompetitive and consumer unfriendly are simply incorrect. It is splits that are consumer unfriendly because they mandate heavy expenses for existing customers in the printing of new stationery, business cards, advertising, vehicle identification and any other normal communication of a customer's phone number. Most of their unsubstantiated claims concerning the competitive impact of overlays are based on the supposition that new numbers are less familiar and therefore less acceptable to the public, and that CLECs alone will be forced to compete with the new numbers. These claims are not supported by any hard evidence. A new area code's initial unfamiliarity is at most a matter of temporary concern. Promotion can resolve that concern and, in a relatively small amount of time, will most certainly do so. Incumbent LECs, moreover, will also have to compete with the new less familiar numbers. If that were not true, there would be no need for number relief in the first place.[8]

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8 The fact that LECs typically have a large number of unassigned numbers from the existing area code at the time area code relief is required simply reflects the fact that there are practical limitations on the sharing of numbers between wireline rate centers. In those rate centers where local competition is likely to be the most intense, incumbent LECs are just as likely to be limited to new numbers as the CLECs. PageNet doubts that the CLECs really disagree. Their primary interest in promoting splits is that splits give them an increased opportunity to market

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Similarly, public acceptance of overlays, like splits, is simply a matter of education. In the past, the public has made similar adjustments to the mixing of telephone exchanges, which, like area codes, once were assigned exclusively to a single geographical area. It has also adjusted to changes in dialing requirements, such as the shift from 4- to 7-digit dialing for local calls. There is no reason why it will not adjust to overlays with 10-digit dialing. In essence, overlays with 10-digit dialing involve simply a shift from 7- to 10- or 11-digit dialing -- something that experts agree will happen eventually anyway or will necessarily happen given the normal increase in the population.

Overlays, when implemented in a competitively neutral manner -- which the Commission has assured by banning service-specific overlays and mandating 10-digit dialing[9] -- provide a means of assuring that numbering resources will always be available on a

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their services. Again, it is splits that are consumer unfriendly necessitating additional expenses to be borne by existing customers.

9 PageNet agrees with the CLECs and others that the additional requirement imposed by the Commission to ensure that all carriers have access to at least one old NXX code is inappropriate. PageNet strongly believes that requirement should be dropped as ineffective, unnecessary and an inappropriate restriction on the possible use of overlays.

timely basis and that inherently discriminatory NXX code shortages are avoided. Indeed, if implemented with a small modicum of care, overlays can be implemented as a tentative solution to a threat of NXX code exhaust pending a final selection of a relief plan which can still include a split. There is, consequently, absolutely no justification for placing any further limits on the use of overlays as a relief option.

III. The Commission Erred In Excluding Paging Carriers From The Definition Of Those Carriers Providing "Telephone Exchange Service"

In the *Second Interconnection Report*, the Commission did not implicitly include paging carriers within the definition of telephone exchange service providers. PageNet agrees with AirTouch[10] that excluding paging carriers from the definition of telephone exchange service providers is contrary to the Telecommunications Act of 1996 and prior precedent and should be reconsidered.

Paging carriers have been found to offer exchange service almost since their inception.[11] In interpreting the Modification of Final Judgment ("MFJ"), the court ruled that one-way paging

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10 AirTouch Petition at 7-14.

11 *See, e.g., Public Notice*, 1 FCC 2d 830 (1965), (paging and mobile telephone service found to be exchange service within the meaning of Section 221(b)).

services are "exchange telecommunications services" within the meaning of the decree and, thus, awarded the paging assets to the BOCs.[12] These decisions make clear that both the Commission and the courts have consistently held that paging services are "exchange services" under the 1934 Act. Clearly, then, paging services also fall within the broader definition of exchange service, which was expanded to include services comparable to exchange service "provided through a system of switches, transmission equipment or other facilities (or continuation thereof) by which a subscriber can originate and terminate a telecommunications service."

A failure to include paging within the definition of a telephone exchange service would, arguably, mean that LECs would not be obligated to provide services in a nondiscriminatory fashion to cellular, PCS, SMR and paging. Absent protections guaranteed elsewhere by the statute or by the Commission, that could severely handicap paging in competition with wireline and other wireless services and inhibit both existing and future competition. Accordingly, for the reasons stated, the Commission

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12 *See United States v. Western Electric Co.*, 578 F.Supp. 643, 645 (D.D.C. 1983)(reversed in part on other grounds).

must conclude on reconsideration that paging is a telephone exchange service.

IV. Fees Charged For NXX Code Opening Should Be Based Upon Forward-Looking Costs Of Number Administration

In the *Second Interconnection Order*, the Commission required that code opening fees charged by incumbent local exchange carriers ("ILECs") must not be unjust, discriminatory or unreasonable.[13] Unfortunately, and in contradiction to the *Second Interconnection Order*, there are wide variances in the ILECs' code opening charges. One petitioner, AT&T, proposed a solution by requesting that the Commission clarify that NXX code opening fees must be based on and limited to the forward-looking and economically efficient costs of number administration.[14] If any costs are justified at all, this requested clarification is necessary because it will bring both efficiency and fairness to the administration of vital number resources.

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13 *Second Interconnection Order* at ¶ 333.

14 AT&T Petition at pp. 10-12.

V. Conclusion

WHEREFORE, PageNet requests that the Commission adopt an order on reconsideration consistent with the comments provided herein.

Respectfully submitted,

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November 20, 1996

Certificate of Service

I, Courtenay P. Adams, hereby certify that, on this 20th day of November 1996, I sent a copy of the foregoing ***"Opposition To And Comments Regarding Certain Petitions For Reconsideration"*** by U.S. mail, first class, postage prepaid, to the individuals listed on the attached list.

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