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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Requests for Clarification of the Commission's Rules Regarding Interconnection Between LEC's and Paging Carriers	))))	CCB/CPD 97-24 CC Docket 96-98 CC Docket 95-185

To: Chief, Common Carrier Bureau
Chief, Competitive Policy Division

COMMENTS ON REQUEST FOR CLARIFICATION

Contact New Mexico, L.P. ("Contact"), by counsel and pursuant to the Commission's May 22, 1997, Public Notice, DA-97-1071, comments on the April 25, 1997 letter filed by Southwestern Bell Telephone Company ("SWBT") requesting "clarification" of the Commission's rules regarding interconnection between local exchange carriers ("LECs") and paging carriers.[1/]

I. SWMT's April 25, 1997, letter is but one more example of an LEC denying paging carriers co-carrier status.

1. This controversy arises from the continued recalcitrance of LECs to treat paging providers as co-carriers. Stemming from decades of employing their bottleneck access to the public switched telephone network to deny such carriers compensation for terminating LEC originated traffic, and indeed often charging such carriers to deliver their LEC originated traffic to paging carriers for termination, some LECs persist in ignoring Congress's clear mandate in the Telecommunications Act of 1996 that paging carriers are not LEC customers, but are instead co-carriers in the telecommunications marketplace. As a result, many LECs continue to

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1/ Other relevant filings responsive thereto are also addressed herein.

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bill paging carriers for the facilities used exclusively to deliver LEC originated traffic to paging carriers for termination, and refuse to compensate paging carriers for their costs in terminating that traffic.

2. Some LECs, such as reportedly Bell Atlantic, to their credit have recognized their obligations under the Telecommunications Act and the Commission's implementing rules, and have in good faith agreed to provide interconnection facilities without charge and to pay termination charges to paging carriers terminating their traffic. In Contact's experience, however, these LECs are the exception. It appears the bulk of LECs will fulfill their duties under the Telecommunications Act only if they are dragged out of them amid kicking and screaming. SWMT's letter is but one example.

A. Contact's interest and experience in interconnection negotiations indicates that LECs are stonewalling their obligations under the Telecommunications Act of 1996.

3. Perhaps Contact's experience in attempting to negotiate an interconnection agreement would be instructive to the Commission. Contact and its related entities provide paging and other commercial mobile radio service ("CMRS") throughout several western states, including the states of Colorado, New Mexico and Texas. In recent negotiations with a major LEC, Contact has had to endure endless dronings that Contact, a paging carrier, does not terminate traffic, that its paging switch is not a switch, and that the LEC will not enter into an agreement which fails to recite these fallacies. It is clear what the LEC intends. It will only

enter into an interconnection agreement with Contact if Contact in effect denies its co-carrier status. Of course, the carrier expects Contact to pay all charges incurred by the LEC for the facilities necessary for the LEC to deliver its traffic to Contact, and the LEC denies any obligation to pay Contact for terminating its traffic.[2/]

[2/] The LEC supports this position by arguing the twin absurd positions that (1) Contact is not terminating traffic to its subscribers, but that the LEC is terminating the traffic to Contact; and (2) to the extent Contact terminates traffic for the LEC, to receive compensation for terminating that traffic, compensation must be reciprocal. Since Contact does not send traffic to the LEC for termination, so goes this argument, the arrangement is not reciprocal and therefore the LEC is not required to compensate Contact.

With regard to the LEC's first argument, this is merely a variant of the theme that Contact is its customer and not a co-carrier. The LEC seems to think delivering the traffic to Contact's paging switch, which it denies is a switch, is the termination of the communication. BellSouth takes such a position in its May 16, 1997, Ex Parte Communication. *See* CC Dockets 95-185 and 96-98, Letter of Ben G. Almond regarding May 16, 1997 contact with various Common Carrier Bureau and Wireless Telecommunications Bureau personnel. This is false, however, since Contact then delivers the communication to its subscriber via its CMRS network.

As to the LEC's second argument, the point of reciprocal payment arrangements for termination of traffic is the realization that a CMRS or other carrier terminating traffic for a LEC provides that originating carrier a service, and incurs costs doing so. As such, the CMRS carrier is entitled to compensation, just as the LEC would expect compensation to terminate traffic from the CMRS carrier. Any interpretation requiring that both carriers originate and terminate traffic results in the absurd situation that a carrier sending 99 percent of traffic for termination by another carrier over an interconnect facility and receiving over that facility one percent of the traffic for termination must compensate the other carrier for terminating its traffic, but is not required to do so if it sends 100 percent of the traffic over that facility for termination. In its recent ruling in *Cook Telecom, Inc.*, Application 97-02-003 (May 21, 1997), the

(continued...)

4. Contact's experience thus indicates that LECs are showing less than full good faith in their interconnection negotiations with paging carriers. It also indicates the need for clear and unambiguous guidance from the Commission to ensure that LECs will fulfill their duties as delineated in the 1996 Telecommunications Act.

B. SWMT's contentions.

5. On April 25, 1997, SWBT wrote the Chief of the Common Carrier Bureau requesting "clarification" of two issues arising under the Commission's rules relating to interconnection between LECs and paging carriers. First, SWBT raised the issue whether LECs may, under FCC Rule Sections 51.703(b) and 51.709(b), charge paging carriers for interconnection facilities used by the LECs to deliver traffic to paging carriers for termination. Second, given the Eight Circuit's stay of Section 51.709(b), SWBT inquired whether Section 51.703(b) independently prohibits LECs from charging for interconnection facilities used solely to transport LEC traffic for termination by paging carriers.

6. With respect to charging paging carriers for interconnection facilities, SWBT indicates that several large paging carriers have, in light of FCC Rule Sections 51.703(b) and

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[2/] (...continued)
California Public Utilities Commission rejected similar arguments advanced by Pacific Bell, and found the paging carrier before it was entitled to compensation for terminating LEC originated traffic. Contact requests the FCC, in issuing its ruling in this proceeding, to confirm and clarify that LECs must compensate CMRS carriers (including paging carriers) for terminating traffic without regard to whether the LEC also terminates traffic originated by the CMRS carrier.

51.709(b), declined to pay the LEC for the cost of facilities employed by SWBT to transmit traffic to these paging carriers for termination. SWBT appears to object to this, charging that this amounts to provisioning free service to the paging carriers and forcing SWBT and its ratepayers to shoulder much of the cost of paging carriers' services without compensation. SWBT also denies that it recovers its cost from its subscribers in connection with paging traffic and asserts that paging traffic causes it to incur otherwise uncompensated costs.[3/]

C. The Act and the Commission's rules plainly show SWMT's position is without merit.

7. SWBT's position is not well taken. The Commission's rules and the Act clearly show that LECs may not charge paging carriers for the facilities necessary for the LEC to deliver their originated traffic to the paging carrier for termination.

8. FCC Rule Section 51.703(a) provides that "each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting carrier." FCC Rule Section 51.703(b), in turn, provides that, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network. And FCC Rule Section 51.709(b) states:

[3/] At note two, SWBT indicates that where is both originates and terminates traffic it receives compensation from both the called party and the calling party to compensate it for its carriage of traffic. With a paging call, however, SWBT indicates that it receives compensation only from the calling party. Asserting that paging carriers desire the calling party to bear all the costs of delivery of paging traffic, SWBT suggests paging carriers want a "free ride."

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

These provisions were promulgated pursuant to Section 251(b)(5) of the Communications Act of 1934, as amended ("Act"). Section 251(b)(5) imposes a duty on all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." And it is clear, despite the spurious arguments of some LECs to the contrary,[4/] that paging carriers are telecommunications carriers within the meaning of the Act who are entitled to compensation. *See Implementation of Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15997-98 (1966); Section 3(44) of the Act (Telecommunications carrier defined as: "Any provider of telecommunications services, except" aggragators as defined by Section 226 of the Act).

9. Section 51.709(b) makes it clear that a LEC may charge a CMRS carrier for interconnection facilities the LEC provides only to the extent and then proportionate to the use of those facilities by the CMRS carrier to transport traffic to the LEC for termination. This implements the principle that the party sending traffic over an interconnect facility -- and thus receiving the benefit of the facility -- should pay the costs for that facility.

10. SBMT's apparent argument is that LECs do not receive any benefit from interconnection facilities with paging carriers, and

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4/ *See* note two, supra.

that they incur costs to deliver paging traffic. First of all, this argument is fallacious. Second, it is irrelevant. From a network standpoint a call from a LEC subscriber to a pager is no different than a call to a cellular telephone, and not much different from a call terminating on the LEC's own network. In all three instances, the local subscriber has paid for the LEC to carry the call. It is true that in the instance of a call terminating on the LEC network, the LEC's customer has also paid for his local loop so that the call may be terminated. However, the LEC avoids local loop costs in the case of CMRS calls delivered to a paging or cellular carrier, and in the case of Type 2 interconnection, avoids the costs of at least one level of end office switching. Moreover, since evidence is overwhelming that the majority of calls to pagers are business related, these calls are generators of marginal revenue because business callers generally pay message unit rates.[5/] Accordingly, the suggestion that calls to pagers cause LECs to incur uncompensated costs is simply fallacious.

11. It is also irrelevant. Inasmuch as Rule Section 51.709(b) plainly prohibits a LEC from charging for interconnect facilities used to transport its traffic for termination, SWBT's argument concerning its alleged uncompensated costs is irrelevant. It represents nothing more than a belated, improper and largely unsupported request for reconsideration, and should be denied as such.

[5/] Undersigned counsel's law firm, for example, incurs a message unit rate from Bell Atlantic of $.0725 for each local call placed. Clearly the LEC makes money each time we page an employee.

12. SWBT's second point relates to the Eight Circuit's stay of the Commission's pricing and "pick and choose" rules. SWBT points out that the court's stay of FCC Rule Section 51.701 - 51.717 has only been lifted as to Sections 51.701, 51.703, and 51.717. SWBT contends that only Section 51.709(b) relates to the imposition of costs for interconnect facilities, and therefore argues that there is no basis for holding that it may not charge interconnecting CMRS carriers for the full costs of interconnection facilities which it provides.

13. SWBT's assertion must be rejected for the reasons persuasively set forth in the comments filed this day by the Personal Communications Industry Association. *See* PCIA Comments, at 7-11. Moreover, even if SWMT were correct in its assertion that only Section 51.709(b) governs the payment for interconnection facilities, it would not make a difference. Paging carriers are entitled by Section 51.703(b) to compensation for their costs in *transporting* and terminating traffic. Clearly, if they must pay a LEC for interconnect facilities to receive that LEC's traffic for termination, their cost for those transport facilities is a legitimate element for inclusion in computing their transport and termination charges.[6/] Thus, the Commission should make it clear

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[6/] An obvious problem, however, is that LECs are refusing to enter into arrangements to compensate paging carriers for traffic transport and termination. *See* note two, supra. Certainly to the extent LECs are refusing to pay paging carriers for terminating LEC traffic, paging carriers are justified in refusing to pay LEC charges allegedly due for interconnection facilities necessary to terminate that traffic.

that either (1) LECs provide interconnection facilities to CMRS carriers with the costs borne in proportion to the amount of traffic originated by the respective carriers, or (2) paging carriers are entitled to compensation for terminating LEC traffic which includes the cost incurred by the paging carrier to transport that traffic from the LEC so that the paging carrier may terminate it.

II. Conclusion.

14. In sum, the contentions contained in SWBT's letter must be rejected. The FCC's rules clearly provide that the costs of facilities necessary to transport traffic between carriers must be borne by a carrier in proportion to its origination of such traffic. Thus, in the case of LEC traffic transported to a paging carrier for termination, LEC's may not charge paging carriers for the facilities necessary for the LEC to transmit its traffic to the paging carrier for termination. Moreover, to the extent Section 51.709(b) alone governs charges for interconnect facilities -- and Contact believes it does not -- the stay of that provision by the Eight Circuit does not mean that LECs are entitled to force paging carriers to pay for facilities necessary for the LECs to transport traffic to paging carriers for termination. At the very least, paging carriers are entitled to include the cost of those interconnect facilities in their calculation of termination charges due from LECs.

15. The bulk of LECs still do not accept paging and other CMRS providers as co-carriers. Rather they persist in attempting

to treat paging and CMRS carriers as customers to supplement LEC profits. LECs are compensated, however, by their subscribers for originating paging traffic. And they forego the costs of terminating that traffic. Accordingly, the Commission should reaffirm the co-carrier status of paging carriers, and the principle that the party originating traffic is responsible for the costs of termination.

Respectfully submitted,

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