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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY COMMENTS OF THE PAGING AND NARROWBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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

REPLY COMMENTS OF THE PAGING AND NARROWBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

Pursuant to the Public Notice released May 22, 1997,[2/] the Paging and Narrowband PCS Alliance ("PNPA") of the Personal Communications Industry Association ("PCIA")[3/] hereby replies to the comments filed with respect to the

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1/ Pursuant to the Commission's Public Notice requesting these reply comments, PNPA understands that a copy of these reply comments will be filed in the record associated with CC Docket Nos. 96-98 and 95-185.

2/ DA 97-1071.

3/ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 Mhz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems,

(continued...)

captioned requests of Southwestern Bell Telephone ("SWBT") and AirTouch Communications, Inc., AirTouch Paging, AT&T Wireless Services, Inc. and Paging Network, Inc. (collectively, the "Paging Companies") with respect to interconnection arrangements between local exchange carriers ("LEC") and paging providers. The following is respectfully shown:

I. Introduction and Summary

Not only is there unanimous support in the paging industry for the positions advocated by the Paging Companies, but some LEC interests, through their actions and in their comments filed in this proceeding, recognize their obligations under the Act. Members of the paging industry that submitted comments with respect to the requests have demonstrated or uniformly supported the position that (1) paging companies are telecommunications carriers under the Telecommunications Act of 1996 (the "Act"),[4/] (2) paging companies are entitled to compensation for the transport and/or termination of LEC-originated traffic pursuant to Section 251 of the Act,[5/] (3) LECs must cease charging paging providers for the facilities used to deliver LEC-

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3/ (...continued)
and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

4/ Allied PCIA Comments, p. 2; Contact New Mexico Comments; pp.1-2.

5/ Best Comments, p. 4; Metrocall Comments, p. 4; PageNet Comments, pp. 5-7; Allied PCIA Comments, p. 2; Contact New Mexico Comments, pp. 1-2, 5-6; Arch Comments, pp. 3-5; TSR Comments, pp. 4-5; Joplin Comments, p. 7.

originated traffic to the paging network for termination,[6] and (4) swift Commission action with respect to the requests and confirmation of the Commission's intent to enforce its rules are critical.[7]

Some LECs have taken positions which are diametrically opposed to those taken by the Paging Companies and their supporters. The LEC position can be summarized in four broad (and erroneous) statements: (1) paging companies are not telecommunications carriers under the Act and do not transport or terminate telecommunications, (2) paging companies are not entitled to reciprocal compensation due to the one-way nature of paging traffic, (3) facilities charges have not been prohibited by the Act or the rules, and (4) LECs do not recover the costs of their facilities from end-users, so they must be permitted to recover these costs from paging companies. Notably, a number of LECs have recognized their obligations under the Act and the rules, and have ceased assessing the charges which are prohibited.[8] One of these LECs, Sprint, filed comments in this proceeding reflecting its belief that LECs are no longer entitled to charge for the facilities used to

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6/ Metrocall Comments, p. 4; Joplin Comments, pp. 3-7; Arch Comments, pp. 5-13; Allied PCIA Comments, *passim.*; Best Comments, pp. 4-7; TSR Comments, pp. 4-8; Advanced Comments, pp. 4-5; PageMart Comments, pp. 3-5.

7/ Arch Comments, pp. 5-7; TSR Comments, pp. 4-5; Joplin Comments, p. 8; Best Comments, p. 4; Metrocall Comments, pp. 8-10; Contact New Mexico Comments, pp. 4, 10; Advanced Comments, p. 4.

8/ Bell Atlantic, NYNEX, Southern New England Telephone Company and Sprint each have ceased to assess charges for the facilities used to deliver telecommunications to the paging network.

deliver traffic to the point of interconnection between the LEC and paging networks.[9/]

PNPA respectfully submits that the paging industry commenters have demonstrated that the consensus reached by the paging industry is consistent with the language and intent of the Act and the Commission's rules. Contrary positions advocated by some LECs are inconsistent with the Act and the Commission's rules, and are not supported by FCC or state commission interpretations of the Act or the rules. Therefore, those positions must be rejected.

II. Discussion

A. Commission Action is Critical

PNPA supports the commenters urging the FCC to assert its primary jurisdiction over LEC-paging interconnection matters and to require prompt compliance with its rules.[10/] The commenters explained that some LECs have refused to comply with the Act and the FCC's rules in an effort to gain concessions from paging companies during discussions relating to interconnection arrangements. These LECs are using to their advantage the threat of forcing paging companies into arbitration proceedings in 50 states to ensure LEC compliance with the Commission's

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9/ Sprint Comments, p. 2.

10/ Best Comments, p. 8-11; Metrocall Comments, pp. 8-10; TSR Comments, pp. 5-6; Joplin Comments, p. 8.

rules.[11/] PNPA agrees with these commenters that the Commission must act swiftly and assert its primary jurisdiction over these matters. LECs cannot continually violate the FCC's rules nor threaten multiple-jurisdiction enforcement remedies in order to arrive at interconnection arrangements which are favorable to them and contrary to the intent of the Act. PNPA also supports the requests of commenters for Commission clarification that LECs can not continue to threaten termination of service or "non-provisioning" of service based upon paging carriers' good faith refusal to pay prohibited charges.[12/]

B. The Paging Industry Has Demonstrated That Paging Providers Are Telecommunications Carriers Who Transport and/or Terminate Telecommunications Traffic

The LECs' assertion that paging companies are not telecommunications carriers[13/] is contrary to the Act, the rules, and FCC and state commission rulings.

11/ As evidence of this, LEC commenters have indicated the belief that the reciprocal compensation obligations in the Act and the rules are not triggered unless and until the paging carrier requests negotiation of an interconnection arrangement pursuant to Section 251 of the Act (which, if agreement could not be reached, would result in arbitration). SWBT Comments, p. 2; BellSouth Comments, pp. 1, 4-5.

12/ BellSouth seeks to impermissibly limit carriers' ability to cease paying prohibited charges, urging the Commission to require payment of prohibited charges notwithstanding evidence that the charges are illegal.

13/ US West Comments, p.10; GTE Comments, pp. 4-5; Independent Alliance Comments, pp. 3-4, 6-7; these commenters assert that paging companies are mere end-users, subscribe to the same services as do other business users, and that the call completion functions they perform constitute a separate call and are not termination functions at all. Each of these assertions is wrong. There is substantial record evidence that paging companies perform several functions with respect to incoming

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Paging industry commenters have demonstrated that paging providers fall squarely within the definitions relating to telecommunications carriers contained within the Act and the Commission's rules.[14/] The FCC and state commissions have ruled that paging companies are telecommunications carriers.[15/]

The paging commenters also demonstrated that paging providers transport[16/] and/or terminate telecommunications which originate on the LEC

13/ (...continued)
traffic, unlike end-users. The call, once received, is translated, routed and delivered to the paging subscriber. These functions are identical to those performed by other carriers in the termination of telecommunications. These functions are performed, and the call completed, as a single communication. The Independent Alliance's assertion to the contrary is not accurate. The Independent Alliance appears to have misunderstood a reference made in a filing by PageNet which explains that so-called "two-way" paging service actually consists of two one-way calls.

14/ See 47 U.S.C. §§3(44), 3(46); 47 C.F.R. §§51.5, 20.3.

15/ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15499 (1996), para. 1008 ("*Interconnection Order*"); see also, Application of Cook Telecom., Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish and Interconnection Arrangement with Pacific Bell, Application No. 97-02-003 (Cal PUC 1997) (Interim Decision) ("Cook Decision"); Petition of AT&T Wireless Services, Inc. for Arbitration of an Interconnection Agreement with US WEST Communications, inc. Pursuant to 47 U.S.C. § 252, OAH Docket No. 3-2500-11080-20, MPUC Docket No. P-421/EM-97-371 (MN PUC 1997) (Recommended Arbitration Decision) ("AT&T Wireless Decision").

16/ The LECs argue that paging companies do not transport telecommunications traffic and therefore are not entitled to compensation. This statement is incomplete and misleading. While most interconnection arrangements between LECs and paging companies provide for the delivery of LEC-originated traffic to the paging network via LEC-owned facilities, in such instances, paging companies would not expect
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network. This is consistent with FCC and state commission rulings.[17] These rulings were based upon substantial evidence in the record regarding the specific services paging carriers provide with respect to incoming traffic. This record evidence demonstrates that paging carriers switch, translate, route, and deliver traffic in the same manner as other telecommunications carriers when terminating traffic.[18]

In sum, the paging industry commenters have demonstrated that their positions are consistent with the Act, the FCC's rules and FCC and state commission rulings. The LECs may not now, under the guise of a clarification request, proffer contrary positions in an effort to secure reconsideration or reversal of these rulings. To the extent that such reconsideration is requested, it must be denied. The Act and the FCC's rules are clear, and the FCC and state commission rulings are based upon (and consistent with) full and complete record evidence.

16/ (...continued)
compensation for transport. In that instance, neither should paging companies be required to pay the LEC for those facilities. See Cook Decision. There are, however, instances in which paging companies do provide the facilities used to transport LEC-originated traffic to the paging network. In those instances, paging companies must be compensated for such facilities.

17/ See *Interconnection Order*, para. 1008; Cook Decision, pp. 5-6; AT&T Wireless Decision, pp. 13-14.

18/ See Petition for Partial Reconsideration and/or Clarification of First Report and Order filed September 30, 1996 by AirTouch Paging, Cal-Autofone, inc. and Radio Electronic Products Corp. in CC Docket No. 96-98; Comments of Paging Network, Inc. filed on March 4, 1996 in CC Docket No. 95-185, Appendix D.

C. Paging Companies are Entitled to Reciprocal Compensation

The LECs continue to argue that paging companies are not entitled to compensation for the transport or termination services they provide because paging traffic typically is one-way in nature.[19/] PNPA notes that this issue is the subject of reconsideration petitions and/or appeals of the *Interconnection Order*, and thus is not an appropriate subject for the instant clarification request. Nonetheless, PNPA will address these arguments.

The Act provides for the recovery by *each* telecommunications carrier of its costs of transporting and/or terminating traffic originated on another telecommunications carrier's network.[20/] As demonstrated by the paging industry in comments submitted to the FCC during its interconnection rulemaking proceeding and to the California PUC during the Cook arbitration proceeding, this obligation pertains to the **nature** of the compensation relationship, **not the direction** of the traffic flow. FCC and state commission rulings confirm that this interpretation is correct. The FCC and the state commissions in California and Minnesota all agree that paging companies are entitled to compensation. These rulings are based upon substantial record evidence, including evidence of the imbalance of traffic flow. The LECs have

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19/ SWBT, Pacific, Nevada Comments, pp. 2-3; GTE Comments, pp. 5-6; Independent Alliance Comments, p. 6; Lexington Comments, p. 1; BellSouth Comments, p. 8.

20/ 47 U.S.C. § 251(b)(5); 252(d)(2)(A).

failed to provide any reason to disregard the statutory language and commission rulings which already have explicitly addressed this issue.

D. All Charges for Facilities Are Prohibited

The LECs argue that flat-rated charges for the facilities used to transport LEC-originated traffic to the paging network are permitted.[21/] The LECs argue that Section 51.703[22/] pertains only to usage-sensitive charges traffic and not to the flat-rated charges for facilities.[23/] The LECs assert that the only Commission rule precluding the assessment of charges for facilities is Section 51.709(b),[24/] which has been stayed by the Eighth Circuit. The LECs' assertions are wrong.

The Paging Companies and supporting commenters have demonstrated that Section 51.703(b) of the rules prohibits *all* charges for the facilities used to transport LEC-originated traffic.[25/] Indeed, Sprint agrees with this conclusion.[26/] Section 51.703(b) was promulgated to address the past actions of LECs in assessing charges on commercial mobile radio service ("CMRS") providers for LEC-originated

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21/ SWBT, Pacific, Nevada Comments, pp. 7-9; USTA Comments, pp. 2-3; BellSouth Comments, p. 7.

22/ 47 C.F.R. § 51.703(b).

23/ SWBT, Pacific, Nevada Comments, p. 9.

24/ 47 C.F.R. § 51.709(b).

25/ This prohibition applies to both Type 1 and Type 2 interconnection arrangements.

26/ Sprint Comments, p. 4.

traffic. The Commission's action was based upon significant evidence in the record relating to both flat-rated *and* usage-sensitive charges that LECs had historically imposed. Therefore, the rule prohibits *any* charges for LEC-originated traffic.[27/] The all-inclusive language of the rule clearly indicates that no category of charges is excluded from its application.

The Common Carrier Bureau has confirmed that this interpretation is correct. The Paging Companies requested clarification from the Bureau that *all* charges for facilities are prohibited, regardless of how denominated.[28/] The Bureau's ruling issued in response to the Paging Companies' request confirmed that all charges are prohibited.[29/] If only usage-sensitive charges had been prohibited, the Bureau's ruling would have so noted.

The LECs' assertion that Section 51.709(b) of the rules governs this issue is erroneous. Section 51.709(b) governs the recovery of costs of dedicated facilities where those facilities are shared by two carriers each using the facilities to transport traffic that originates on their network. The rule provides that the carrier

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27/ Best Comments, p. 5; Metrocall Comments, pp. 4-6; PageNet Comments, pp. 8-9; Allied PCIA Comments, p. 2; Arch Comments, pp. 11-12; TSR Comments, p. 6; Joplin Comments, pp. 5-6.

28/ Letter to Regina Keeney from the Paging Companies, dated May 16, 1997.

29/ Letter to Paging Companies from Regina Keeney, dated March 3, 1997.

owning the facility may recover only those costs related to the proportional use of the facility by the other carrier for the transport of traffic originating on its network.[30/]

E. LECs Must Recover Costs from Cost-Causers

The LEC's claim that they cannot recover their costs without charging paging providers for the facilities used to transport LEC-originated traffic to the paging network for termination.[31/] The LECs' claim, however, is based upon both a mischaracterization of the LEC-paging interconnection arrangement and an illegal attempt to treat paging carriers differently from all other telecommunications carriers.

The LECs allege that paging providers are cost-causers and should pay for the facilities used to deliver traffic to the paging network.[32/] To the contrary, the calling party (the LEC subscriber) is the cost-causer because that party generates the telecommunication to be transported to the paging network.[33/] Applying the LECs' rationale, the calling party therefore must compensate the LEC for those facilities.

30/ Best Comments, p. 5; Metrocall Comments, pp. 5-6; Arch Comments, p. 13; TSR Comments, p. 7; Joplin Comments, pp. 6-7.

31/ US West Comments, p. 7; Ameritech Comments, p. 4; Lexington Comments, p. 1; BellSouth Comments, p. 10.

32/ SWBT, Pacific, Nevada Comments, pp. 5-6; BellSouth Comments, p. 10.

33/ Best Comments, p. 4; Metrocall Comments, pp. 6-7. In fact, the service provided by paging companies produces revenues for the LECs, since revenue is generated from each call initiated. In this regard, PNPA notes that LECs have established programs, e.g., calling party pays, to further capitalize on this revenue-producing opportunity.

The LECs claim that they are not compensated by the calling party for all of these facilities, and assert that they typically are compensated at both ends of a call to cover such costs. This claim is not accurate. Rate-making principles provide that LECs are compensated for the entire call by the calling party. The LECs also assert that paging companies would get a unique and unprecedented "free ride" if they were not required to pay for these facilities.[34/] This argument is also inaccurate. With respect to calls terminated by other telecommunications carriers, the LECs have not demanded compensation. By demanding compensation from paging carriers, the LECs are trying to treat paging companies differently. Such treatment would be discriminatory and in violation of the Act. In fact, the LECs' argument would result in LECs receiving the "free-ride" at the expense of paging carriers. While LECs would avoid the costs of terminating the traffic destined for the paging network,[35/] LECs also would receive compensation as if they had incurred those costs, thus producing a double recovery.

34/ SWBT, Pacific, Nevada Comments, pp. 2-6; Ameritech Comments, p. 4; USTA Comments, pp. 1-3; Independent Alliance Comments, pp. 1-2; BellSouth Comments, p. 10.

35/ Arch Comments, p. 8; Best Comments, p. 6; Allied PCIA Comments, p. 5; Contact New Mexico Comments, pp. 6-7. The LECs continue to deny that they receive any benefit from the interconnection of the LEC and paging networks. However, in addition to avoiding the costs of terminating traffic to paging subscribers, LECs receive revenue from each call originated. Consequently, LECs may have an incentive to generate traffic to the paging network in an effort to enhance these revenues. Although such actions may appear to be extreme, the LECs have boldly suggested that paging carriers, lured by the chance to receive termination compensation, may be enticed to employ auto-dialers to increase revenues.

The ability of the LECs to shift their costs to paging carriers is particularly egregious in light of paging carriers' statutory obligation to interconnect with the LEC's network and to terminate LEC-originated traffic over which they have no control.[36/]

III. Conclusion

The Paging Companies and their supporters have demonstrated that the Act and the Commission's rules require that LECs cease charging paging providers for telecommunications which originate on the LEC network. SWBT and its supporters seek to reverse the holdings of the FCC and the interpretation already rendered by the FCC. SWBT's request is contrary to the Act and the Commission's rules, and the arguments proffered in support of SWBT's request are without merit.

36/ PageNet Comments, p. 2.

WHEREFORE, for the foregoing reasons, PNPA respectfully requests that the Commission reject the request of SWBT for reconsideration and/or clarification of the Commission's rules, and affirm that the positions of the Paging Companies are consistent with the Act and the FCC's rules.

Respectfully submitted,

PAGING AND NARROWBAND
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June 27, 1997

Certificate of Service

I, Angela Giancarlo, hereby certify that I on have this 27th day of June, 1997 caused a true and correct copy of the foregoing Reply Comments of the Paging and Narrowband PCS Alliance of the Personal Communications Industry Association to be sent via first-class mail, postage prepaid, or hand delivered, to the following:

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