DOCKET FILE COPY ORIGINAL

96-98

RECEIVED

FEB - 3 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
Clarification of the Commission's Rules	)	
Regarding Interconnection Between	)	CPD 97-24
LECs and Paging Carriers	)	

AMERITECH'S APPLICATION FOR REVIEW

I. Introduction

Ameritech[1] respectfully files this Application For Review in the above-captioned matter, seeking review of an interpretation of the Commission's rules as articulated in a recent letter by the Chief of the Common Carrier Bureau ("Bureau").[2] Pursuant to Section 1.115(b)(2), Ameritech seeks review of this interpretation because (a) it involves a question of law or policy which has not previously been resolved by the Commission, and (b) it involves application of a precedent or policy which should be overturned or revised.[3]

[1] In this pleading, "Ameritech" means Illinois Bell, Indiana Bell, Michigan Bell, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

[2] Letter from A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission, to Keith Davis, Southwestern Bell Telephone, Kathleen Abernathy, AirTouch Communications, Inc., Judith St. Ledger-Roty, Kelley Drye & Warren, Cathleen A. Massey, AT&T Wireless Services, Inc., and Mark Stachiw, AirTouch Paging, dated December 30, 1997 (hereinafter "Bureau letter").

[3] 47 CFR § 1.115(b)(2)(ii), (iii).

The Bureau issued a Public Notice[4] seeking comment on letters sent by Southwestern Bell Telephone ("SWBT") and several paging service providers to various personnel at the Federal Communications Commission ("Commission"). These letters[5] argued that the Bureau should assign a novel meaning and effect to the language contained in two rules[6] governing the concept of reciprocal compensation under the Telecommunications Act of 1996.[7] After receiving public comment from Ameritech[8] and others, the Bureau Chief published the interpretation at issue; i.e., that "the Commission's current rules do not allow a LEC to charge a provider of paging services for the cost of LEC transmission facilities that are used on a dedicated basis to deliver paging service providers local telecommunications traffic that originates on the LEC's network."[9]

The obvious effect of the interpretation at issue would be that, as a matter of policy, telecommunications carriers offering paging services are entitled to a full subsidization of their telecommunications transport expenses by the country's local exchange service consumers. Neither Congress nor the Commission could have intended this absurd result, and the Commission should so hold by adopting an Order to that effect. Alternatively, the Commission should remand the

---

[4] Public Notice, DA 97-1071 (rel. May 22, 1997).

[5] Letter from Paul Dorin, SWBT to Regina Keeney, Chief -- Common Carrier Bureau, dated April 25, 1997; letter from Paul Dorin, SWBT to Regina Keeney, Chief -- Common Carrier Bureau, dated May 9, 1997; letter from Kathleen Abernathy, AirTouch Communications, Inc., Cathleen Massey, AT&T Wireless Services, Inc., Mark Stachiw, AirTouch Paging, and Judith St. Ledger-Roty, Kelly Drye & Warren, counsel for PageNet, Inc., dated May 16, 1997.

[6] 47 CFR § 51.703(b); 47 CFR 51.709(b).

[7] 47 U.S.C. § 251(b)(5).

[8] In the Matter of Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Carriers, CPD 97-24, Comments of Ameritech (filed June 13, 1997); Reply Comments of Ameritech (filed June 27, 1997).

[9] Bureau letter (p. 3).

interpretation at issue to the Bureau, with instructions to reconsider it in light of appropriate policy considerations.

II. Argument

In adopting its rules implementing the interconnection requirements of the 1996 Telecommunications Act, the Commission elected to apply the principles of reciprocal compensation to LEC-CMRS interconnection arrangements.[10] This application of the LECs' duty of reciprocal compensation to such arrangements was founded upon the Commission's conclusion that Section 251 of the 1996 Act was "designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and conditions that are just, reasonable, and fair."[11] To deal with specific allegations (by PageNet) of overreaching by some LECs which had previously charged a per-call fee for termination of traffic directed to paging providers' customers -- instead of compensating these providers for the costs which they incurred in such termination[12] -- the Commission specifically prohibited "charges such as some LECs currently impose on CMRS providers for LEC-originated traffic."[13] A rule[14] dealing with this specific problem -- unjustified, non-cost based charges assessed by some LECs for paging

---

[10] "... LECs' reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers." In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Dockets No. 96-98 and 95-185, First Report and Order, rel. August 8, 1996 (hereinafter "First Report and Order"), at 499 (¶ 1041).

[11] First Report and Order, at 488, (¶ 1023).

[12] PageNet's specific complaint was that "despite the fact that paging companies must terminate incoming incumbent LEC calls, the paging companies pay the LECs for call origination, rather than receive compensation for call termination." First Report and Order, at 494 (¶ 1030, fn. 2457), (emphasis added).

[13] Ibid., at 500 (¶ 1042).

[14] 47 CFR § 51.703(b).

providers' termination (not transport) of LEC-originated traffic – was adopted by the Commission as a means to eliminate the specific type of overreaching alleged by PageNet.

In the instant matter, the paging providers seek to use this narrowly-tailored preventive measure for a purpose not intended by the Commission: to evade their part of the overall "reciprocity" arrangement extended by the Commission to LEC-CMRS interconnection. Despite earlier contentions that Section 251 was not applicable to interconnection between incumbent LECs and CMRS providers[15], the paging carriers' letter asked the Bureau to ignore the intended application of this preventive measure, and to permit them to refuse LECs' requests for payment of the standard tariffed rates which apply to all other carriers who purchase the same LEC services for the transport of traffic. This is nothing less than an explicit subsidy in favor of paging providers, to be borne by all other customers subscribing to local exchange services.

The policy result of the Bureau's interpretation is clearly not the result which the rule was intended to achieve. Rather than engaging in the specific overreaching conduct cited by the Commission in adopting this narrowly-drawn protective rule, the LECs seek only to recover compensation for their costs of transporting traffic originated by LEC customers -- costs which LECs are explicitly permitted by the Commission's rules[16] to recover in reciprocal compensation arrangements. In essence, the shield given to paging providers against a particular perceived abuse has effectively been fashioned by the Bureau into a sword with which the paging providers would escape from their duties

---

[15] First Report and Order, at 493 (¶ 1030, fn. 2454, citing Comments of PageNet).

[16] 47 CFR § 51.701(e).

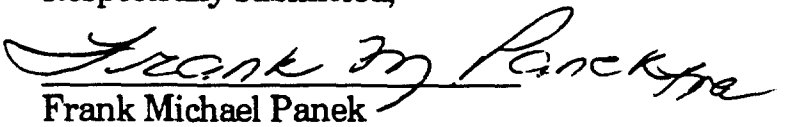
under the Act, the LECs' lawful (and long-standing) transport tariffs, and the bodies of state and federal law that enforce those duties and tariffs.

If the paging carriers are permitted to succeed in this blatant attempt to simply cease paying LECs the tariffed rates for transport services, the obvious result will be a literal free ride for these few paging providers upon the shoulders of subscribers to all other regulated telephone services. Neither Congress nor the Commission could have intended that result as a matter of policy.[17]

III. Conclusion

For the reasons set forth above, the Commission should adopt an Order reversing the interpretation contained in the Bureau letter, which would effectively grant paging providers a blanket exemption from their duty to pay LECs for their transport services. In the alternative, the Commission should remand this interpretation to the Bureau, with specific instructions to reconsider the matter in light of the intended policy result.

Respectfully submitted,



Frank Michael Panek
Attorney for Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(847) 248-6064

Dated: January 30, 1998

[17] The Commission said as much while adopting the rules at issue here, stating that implicit and explicit subsidies in the pre-1996 Act environment acted 'at the expense of deterring or distorting competition." First Report and Order, at 8 (¶ 5). Needless to say, complete subsidy such as that sought here by the paging carriers would "distort competition."