PCIA Personal Communications Industry Association

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VIA HAND DELIVERY

EX PARTE OR LATE FILED

May 19, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street; Room 222
Washington, D.C. 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers*, CCB/CPD 97-24 ("*SWBT Clarification Request*")

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98, 95-185 ("*Interconnection Reconsideration Order*")

Formal Complaints of AirTouch Paging against GTE, File Nos. E-98-08, E-98-10

Formal Complaints of Metrocall, Inc. against Various LECs, File Nos. E-98-14-18

Dear Ms. Salas:

The attached letter pertaining to the captioned proceedings is being hand-delivered today by the Personal Communications Industry Association to Richard Metzger (Chief, Common Carrier Bureau) and other Commission personnel as indicated. Pursuant to Section 1.1206(b) of the Commission's ex parte rules, two copies of this letter and the enclosure for each proceeding (eight packets total) are hereby filed with the Secretary's office. Kindly refer questions in connection with this matter to me at (703) 739-0300.

Respectfully submitted,

Angela E. Giancarlo

Angela E. Giancarlo, Esquire
Government Relations Manager

Enclosure

No. of Copies rec'd 0+8
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PCIA Personal Communications Industry Association

COPY

May 19, 1998

VIA HAND DELIVERY

A. Richard Metzger, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Re: Interconnection Between Paging Service Providers and Local Exchange Carriers

Dear Mr. Metzger:

The Personal Communications Industry Association ("PCIA") hereby responds to the April 24, 1998 letter (the "SBC Response") to you from Michael K. Kellogg, counsel for Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (collectively, the "SBC LECs") which comments on PCIA's April 8, 1998[1/] letter regarding the above-referenced topic. There are several assertions in the SBC Response that cannot go unanswered including the inaccurate charges (1) that the paging industry is seeking "free" facilities; (2) that your letter of December 30[2/] has created rather than solved problems which are growing in magnitude; and, (3) that the entitlements of paging companies to reciprocal compensation and relief from facility charges are still open issues. These and other incorrect assertions are addressed below:

I. Paging Carriers Have No Incentive To Configure Inefficient Systems

The SBC Response repeats the oft-discredited but nonetheless perpetual claim that paging companies are looking for a "free ride."[3/] As PCIA and numerous individual paging carriers have pointed out repeatedly in their filings in CCB/CPD 97-24, paging companies are prepared to pay the portion of facilities charges that pertain to the delivery of non-local and/or non-LEC originated traffic. As an example, the Cook Telecom arbitration proceeding in California determined that 26% of the paging traffic between the carriers involved in that case was non-

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1/ See Letter of Robert L. Hoggarth and Angela E. Giancarlo to A. Richard Metzger dated April 8, 1998 (CCB/CPD 97-24).

2/ Letter of A. Richard Metzger to Mr. Keith Davis et al. dated December 30, 1997 (CCB/CPD 97-24) (the "December 30 Letter").

3/ SBC Response, p.1.

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local or non-LEC-originated.[4/] This is a sufficiently high percentage to eliminate any concern that paging companies have an incentive to request unnecessary facilities.

In the two-way CMRS context, industry figures indicate that approximately 80% of the traffic is mobile-originated and 20% is landline-originated. This means that the LECs are only paying 20% of the costs of facilities. Thus, in the paging context, even if the actual percentage of non-local, non-LEC-originated traffic is found to be well below 26%, which will be the case in many instances, it will not drop to zero, **meaning that paging companies will always have sufficient economic incentive to configure efficient interconnection arrangements**.

II. The December 30 Letter Is Having A Beneficial Effect

Prior to the release of the December 30 Letter, PCIA actively encouraged the Bureau to confirm the respective obligations of the LECs and paging companies with regard to facilities charges so that negotiations between these carriers could proceed on an informed basis. The resulting ruling is having the desired effect. The December 30 Letter has caused many paging companies to pursue interconnection discussions because they now have a better understanding of their legal entitlements. And, several LECs have expressed a willingness, at least on an interim basis,[5/] to abide by the obligations as reiterated in the December 30 Letter. Thus, contrary to the suggestions of the SBC LECs, progress is being made toward negotiated resolutions of these LEC/paging carrier interconnection issues. PCIA sees this as an extremely positive development.

III. Creative Interconnection Alternatives Are Being Explored

The SBC LECs boldly contend that "the situation is deteriorating as more and more paging companies order more and more FX-type facilities for which they have no intention of

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4/ See Arbitrator's Report released January 21, 1998, Section N (Non-Compensable Traffic), In re: Application of Cook Telecom, Inc. Before the California Public Utilities Commission, Application No. 97-02-003. The percentage in any particular case may vary based upon the circumstances of the two interconnected carriers. The actual amount of traffic can be determined from data gathered by the involved LEC and paging carrier.

5/ Because requests for reconsideration of the Local Competition First Report and for review of the December 30 Letter remain pending, LECs generally are seeking to reserve their rights in the event that the prior rulings are overturned.

paying" and that "the magnitude of the problem is growing daily."[6/] This assertion is directly contradicted by information PCIA is receiving. Based upon direct feedback from our members, PCIA believes that unnecessary orders for FX lines are not on the rise at all.[7/] Rather, paging carriers are actively exploring alternatives to the use of FX lines. For example, some paging carriers are seeking tandem-level interconnections in which rating and routing are separated to allow blocks of numbers to be delivered to the paging switch while being rated out of different end offices. A configuration of this nature would enable various dedicated FX lines to be eliminated by making maximum efficient use of shared transport.

Notably, the separation of rating and routing is not new. For your information, we have attached a copy of Page 7 from Pacific Bell's *Statement of Generally Available Terms for Interconnection Access* filed with the California PUC pursuant to section 252(f) of the Telecommunications Act of 1996. See Attachment 1. The definitions of "Rate Center" and "Routing Point" in this tariff explicitly distinguish between rating and routing. Furthermore, the definitions provide, among other things, that "[t]he Routing Point need not be the same as the Rating Point, nor must it be located within the same Rate Center area, but must be in the same LATA as the NPA-NXX."[8/] This means, using the SBC LECs' oft-cited hypothetical example, that a carrier could, **under the existing tariff**, have a block of numbers routed to a San Francisco switch via a tandem level interconnection, yet have those same numbers rated out of the Eureka End Office (which is in the same LATA).

The willingness of paging carriers to interconnect in this manner completely belies the claim of the SBC LECs that paging carriers are seeking to unfairly deprive the LECs of intraLATA toll revenues, or are seeking wide-area toll free dialing.[9/] In the above-described

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6/ SBC Response, pp. 1, 3.

7/ The FX situations to which the SBC LECs are referring are not clear. For example, as a paging carrier adds customers, the LEC sends a greater volume of traffic over existing FX facilities. In some cases, the blocking rates on these facilities may exceed P01, causing the paging carrier to request that the LEC add additional facilities to reduce blocking. If this is the situation to which the SBC LECs are referring, they should not complain. The fact is that these additional facilities are necessary to the LEC to improve service to their customers.

8/ Attachment 1, para. 96.

9/ The SBC Response contends that PCIA "wants paging customers to be paged throughout an MTA at the cost to the caller of only a local call." This assertion mischaracterizes the objective. The paging industry wants to be treated like all other interconnecting

(continued...)

configuration, a call from a Eureka landline phone to a pager number rated out of Eureka would not incur an intraLATA toll charge (which is logical and equitable since the call originates and terminates within the same rate center). However, a call from San Francisco to a pager number rated out of Eureka would incur an intraLATA toll charge even though San Francisco and Eureka are in the same MTA and the same LATA. The LEC would charge the originator of the page for an intraLATA toll call to Eureka, but actually would hand the call off to the paging company at the access tandem interconnection point in San Francisco. Thus, the LEC would not only receive intraLATA toll, but in some instances the toll charge would reflect a rating greater than the distance the LEC actually transported the call. Certainly, the SBC LECs have no basis to complain if the Eureka hypothetical is addressed in this fashion. And, the reasonableness and technical feasibility of this solution already is established by virtue of the existence of similar LEC arrangements with other telecommunications carriers.

IV. The SBC LECs Are Flouting Valid, Effective Commission Rules

The SBC Response asserts that "the Bureau cannot responsibly sit by and do nothing."[10/] The reality is that the SBC LECs are the ones sitting back and doing nothing. Despite repeated explicit rulings from the Commission,[11/] the SBC LECs have declined to provide the relief from facility charges to which paging companies are legally entitled. By filing a Request for Stay, the SBC LECs have expressly acknowledged that Section 51.703(b), as interpreted by your December 30 Letter, is in full force and effect. Since no stay has been issued, the SBC LECs have an obligation to comply. Instead, they have engaged in a pernicious form of "self-help" by

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9/ (...continued)
telecommunications carriers. This means that paging companies must be able to secure numbers in multiple rate centers throughout the MTA so that a call that originates and terminates on a pager in the same rate center will be rated as a local call, not as a toll call simply because the paging company switch happens to be located in another rate center within the MTA. The LECs allow other telecommunications carriers to configure systems in an efficient manner to accomplish this objective. The LECs do not force other carriers to install switches in every rate center. Quite simply, paging companies seek this same right.

10/ SBC Response, p.1.

11/ See, *e.g.*, Letter of Regina Keeney to Cathey Massey, et al. dated March 3, 1997; see also, the December 30 Letter.

choosing to ignore the Commission's valid order as interpreted by the Bureau. Thus, it is the SBC LECs that are acting irresponsibly, not the Commission.[12/]

As the Commission is aware, the Eighth Circuit upheld the Commission's LEC/CMRS interconnection rules.[13/] Nevertheless, the SBC LECs seek to limit the scope of the Eighth Circuit ruling as applied to paging carriers.[14/] Their claim that "the court never ruled on the propriety of Section 51.703(b) as applied to paging carriers" is demonstrably incorrect.[15/] The Commission adopted Section 51.703(b) to implement the reciprocal compensation provisions of the Communications Act. Paging carriers' entitlement to reciprocal compensation was specifically challenged by a group of appellants calling themselves the "Mid-Sized Incumbent LECs" in the Eighth Circuit, **and this challenge failed**. See Attachment 2. Based upon this case history, the SBC LECs simply cannot argue that the paging companies' entitlement to protections accorded by Section 51.703(b) remains an open issue.

V. The SBC LECs Are Seeking To Penalize Customers Unfairly For Calls To Paging Numbers

The SBC Response cites a "fundamental principle that costs should be imposed on cost causers."[16/] Properly applied, this principle should result in having the LEC landline customer who initiates a page bear the costs associated with delivering the call to the paging company for local termination. It would be a misapplication of this principle, however, to impose these costs on landline customers in an unfair fashion. Another fundamental regulatory principle is that rates not be discriminatory. It would be patently discriminatory to charge a landline customer a surcharge simply because his call terminates on a pager rather than on a cellular phone, PCS

12/ What is most amazing is that the SBC LECs are blaming the Commission for their own failure to follow Commission rules. Imagine if a licensee with a tower lighting violation defended itself by stating that the Commission is to blame for adopting lighting rules. Clearly the efficacy of the Commission rules will be destroyed if this approach is given further credence.

13/ Iowa Utilities Board v. FCC, 120 F.3d 753, n. 21 (8th Cir. 1997), appeal pending on other grounds.

14/ SBC Response, note 1.

15/ See Attachment 2 (Excerpts from the briefs in the Eighth Circuit demonstrating that the entitlement of paging carriers to reciprocal compensation was resolved in the appeal).

16/ SBC Response, p.2.

phone, standard telephone or two-way messaging device in the same locale.[17/] The harmful nature of this discrimination is particularly apparent when one considers that many two-way wireless voice service providers are integrating paging into their offerings in a manner that allows a call to terminate as a numeric page on the mobile handset. If the SBC LECs proceed as they threaten, paging messages delivered to a two-way voice carrier, who is in direct competition with paging-only companies would not be subject to the same surcharge that the SBC LECs impose on calls to carriers who provide only one-way messaging services.

VI. The SBC LECs Must Be Brought to the Negotiating Table

The SBC Response closes by stating that the December 30 Letter has created "too great a divide between the companies to make [interconnection] negotiations fruitful."[18/] This is a significant admission against interest because the SBC LECs are conceding that they — not the paging companies — are the ones refusing to sit down with paging companies in an effort to reach mutually acceptable interconnection arrangements. PCIA knows that many of its member paging carriers are attempting in good faith to discuss interconnection agreements with the LECs.[19/] The SBC LECs are not relieved of their obligations to negotiate in good faith simply because they don't like the Commission's rulings. This being the case, the Bureau must proactively encourage the SBC LECs to negotiate with paging carriers who are requesting interconnection, and alert the SBC LECs that the agency will not tolerate refusals to do so.[20/]

The SBC LECs clearly require a message from the Commission that the interconnection rules promulgated by the FCC and upheld by the Eighth Circuit will be enforced. The SBC

17/ The SBC Response claims, at page 2, that "the LEC is permitted to recover intraLATA toll charges from the caller." This has raised the concern that calls to paging numbers will be treated by the LECs differently than calls to other local numbers.

18/ SBC Response, p.3.

19/ The Commission's rulings entitle the paging carriers to relief from both traffic sensitive and non-traffic sensitive charges associated with the facilities used to deliver local LEC-originated traffic. There remain, however, significant areas that require discussion between the paging company and the LEC including the nature of the interconnection configuration, the percentage of the facility used to carry non-local or non LEC-originated traffic and the terminating compensation rate.

20/ As the Commission is aware, PCIA historically has played an important role in fostering model interconnection agreements between paging carriers and wireline carriers. PCIA remains willing to continue to play such a role.

LECs should not be allowed to use their seemingly endless quest for further clarification or reconsideration as an excuse to disregard currently effective requirements. The Commission must deliver an unambiguous message to the LECs that the agency expects its rules to be obeyed.

Kindly refer any questions in connection with this matter to the undersigned.

Very truly yours,

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Paging and Messaging

Angela E. Giancarlo, Esquire
Government Relations Manager

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ATTACHMENT 1

87. "Port" means a termination point in the end office switch. For purposes of general illustration, a Port includes a line card and associated peripheral equipment on an End Office Switch which serves as the hardware termination for line or trunk side facilities connected to the End Office switch. Each line side Port is typically associated with one or more telephone numbers that serve as the customer's network address.

88. "Public Safety Answering Point (PSAP)" means the designated agency to which calls to E911/911 services are routed.

89. "Rate Center" identifies the specific geographic point and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC (or CLC) for its provision of Exchange Services. The rate point is a geographic location identified by specific V&H (vertical and horizontal coordinates), which are used to measure distance sensitive end user traffic to/from the particular NPA-NXX designations with the specific Rate Center.

90. "Rating Point" means the Vertical and Horizontal ("V&H") coordinates associated with a particular telephone number for rating purposes.

91. "Real Time" means the actual time in which an event takes place, with the reporting on or the recording of the event practically simultaneous with its occurrence.

92. "Recipient" means that party to this Agreement to which Confidential Information has been disclosed by the other party.

93. "Recorded Usage Data" has the meaning set forth in Attachment 14.

94. "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration, including without limitation, the movement of Environmental Hazards through or in the air, soil, surface water or groundwater, or any action or omission that causes Environmental Hazards to spread or become more toxic or more expensive to investigate or remediate.

95. "Right of Way (ROW)" means the right to use the land or other property of a third party or governmental authority to place poles, conduits, cables, other structures and equipment, or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes or other locations.

96. "Routing Point" means a location which a LEC has designated on its own network as the homing or routing point for traffic inbound to Exchange Service provided by the LEC which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.

97. "Served Premises" means collectively, the CLC designated locations to which CLC orders Network Elements, Ancillary Functions or Combinations.

98. "Service Control Point" or "SCP" means a node in the CCS network to which information requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from a Service Switching Point ("SSP"), performs subscriber or application-specific service logic and then sends instructions back to the SSP on how to continue

ATTACHMENT 2

PCIA Personal Communications Industry Association

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March 17, 1998

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MAR 17 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers*, CCB/CPD 97-24

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; First Report and Order, CC Docket Nos. 96-98, 95-185

Formal Complaints of AirTouch Paging against GTE, File Nos. E-98-08, E-98-10

Formal Complaints of Metrocall against Various LECs, File Nos. E-98-14-18

Dear Ms. Salas:

This letter is a follow up to recent meetings between representatives of the Personal Communications Industry Association ("PCIA") and certain FCC staff members in which we discussed the fact that the entitlement of one-way messaging carriers to terminating compensation was specifically addressed in the appeal to the Eighth Circuit of the Local Competition First Report and was resolved in favor of the paging companies.[1/]

As requested by some of the meeting participants, PCIA is providing excerpts from the "Brief of the Mid-Sized Incumbent Local Exchange Carriers" filed November 18, 1996 in Case No. 96-3321 (and the related cases that were consolidated in the 8th Circuit). These portions of the brief contain the petitioners' argument that "the FCC's rules requiring mutual and reciprocal compensation of paging companies should be set aside" because " the origination and termination of traffic between a LEC's network and that of a paging company is not 'mutual and reciprocal' since the paging company's customers do not originate calls." MILEC Brief, p. 51.

This issue was joined in the Court by the responsive brief filed jointly on behalf of the Commercial Mobile Radio Service ("CMRS") intervenors, to which PCIA was a party. Excerpts from the "Brief for CMRS Providers in Support of Respondents" filed December 23, 1996 also are attached. An entire section of this brief was devoted to the argument that the FCC properly found paging companies to be entitled to terminating compensation. The brief demonstrates that the statute

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1/ 11 FCC Rcd. 15499 (1996)

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does not require traffic to be reciprocal, or payments to be reciprocal, but rather requires that the obligation to compensate another carrier "for costs incurred" in terminating traffic be reciprocal. Since paging carriers originate no traffic, the LECs perform no termination functions and incur no costs. In this one-way context, the "reciprocal" recovery of costs properly results in payments flowing in one direction only.

Ultimately, the Court specifically upheld the Commission's LEC/CMRS interconnection rules **without denying paging carriers the benefits accorded other CMRS carriers.** Iowa Pub. Utils. Bd v. FCC, 120 F.3d 753, n. 21 (8th Cir. 1997). No party has challenged this ruling in the Supreme Court.

This analysis makes clear that the entitlement of paging companies to reciprocal compensation has been ruled upon by the Commission, upheld by the 8th Circuit on appeal and is now final. The Commission risks "snatching defeat from the jaws of victory" by revisiting this ruling now.

Pursuant to Section 1.1206(b) of the Commission's rules, two copies of this letter are being filed with the Secretary's office. In addition, copies of this filing are being delivered to the individuals listed below.

Kindly refer questions in connection with this matter to the undersigned.

Respectfully submitted,

Angela E. Giancarlo

Angela E. Giancarlo, Esquire
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Attachment

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EXCERPTS FROM

BRIEF OF THE MID-SIZED INCUMBENT LOCAL EXCHANGE CARRIERS

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Docket No. 96-3321 (and consolidated cases)

IOWA UTILITIES BOARD, et al.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION, et al.,

Respondents.

ON PETITIONS FOR REVIEW OF THE FIRST REPORT AND ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION

BRIEF OF THE MID-SIZED INCUMBENT LOCAL EXCHANGE CARRIERS

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telecommunications carriers." In turn, the Act requires state commissions to determine wholesale rates "on the basis of retail rates . . . excluding the portion thereof attributable to any marketing, billing, collection, and other costs **that will be avoided** by the local exchange carrier." § 252(d)(3) (emphasis added). Section 251(c)(4) thus requires wholesale rates to be based on costs **actually** avoided, not costs that a LEC might, could, or should avoid. Once again, however, the FCC has put a spin on the Act that is at odds with the ordinary meaning of its words. It has defined avoided retail costs as "those costs that **reasonably can be avoided** when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier." (Rule § 51.609(b))(emphasis added).

The FCC rests its interpretation, once again, not on the text of the Act but upon its unsupported understanding of the intent of the provision: "We do not believe that Congress intended to allow incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable." (Report ¶ 911). However, the FCC offers not a single citation to anything in the legislative history of the Act that supports its "beliefs" regarding Congress's intent. In any event, the best evidence of legislative intent is the language that Congress chose. Jones, 811 F.2d at 447. And § 252(d)(3) could not be clearer: wholesale rates are to be determined by reference to actual "avoided" costs, not hypothetically "avoidable" costs.

4. The FCC's rules requiring LECs to compensate paging companies for traffic that originates on the LEC's network is also contrary to the plain language of the Act. Section 251(b)(5) imposes upon incumbent LECs the duty to "establish reciprocal compensation arrangement for the transport and termination of telecommunications." Section 252(d)(2)(A) provides that, for the purposes of § 251(b)(5), the terms of a reciprocal

compensation arrangement must "provide for the mutual and reciprocal recovery by each carrier of 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." Read together, as they must be, these provisions of the Act make clear that a LEC must provide compensation to a fellow LEC for terminating a call that originated on the LEC's network only if the origination and termination of traffic by customers of the two carriers is "mutual and reciprocal."

Inexplicably, the FCC's rules require reciprocal compensation to be provided to paging providers for terminating traffic that originates with LECs. (Rule §§ 51.701 - 51.717; Report ¶ 1008). But paging customers cannot originate a "telephone call," or any other kind of telecommunication's traffic, on the paging company's network for termination on the LEC's network. That is, traffic runs in one direction -- from the LEC's customers, to the paging company, and thence to the paging company's customer. As such, the origination and termination of traffic between a LEC's network and that of a paging company is not "mutual and reciprocal" since the paging company's customers do not originate calls. Under such circumstances, a requirement that LECs compensate paging companies for calls originating on the LECs' networks means that the LECs are effectively subsidizing the paging company. Nothing in §§ 251(b)(5) or (d)(2)(A) warrants so anomalous a result. Accordingly, the FCC's rule requiring mutual and reciprocal compensation of paging companies should be set aside.

* * * *

The net result of the FCC's rules on pricing, promotions, interconnection and unbundling described above is to disable incumbent LECs, particularly mid-sized and small

EXCERPTS FROM

BRIEF FOR INTERVENORS CMRS PROVIDERS IN SUPPORT OF RESPONDENTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-3321 (and consolidated cases)

IOWA UTILITIES BOARD, *et al.*,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

On Consolidated Petitions for Review of An Order
of the Federal Communications Commission

BRIEF FOR INTERVENORS CMRS PROVIDERS IN SUPPORT OF RESPONDENTS

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December 23, 1996

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Rule is so bound up with the technical, and exclusively federal, judgments involved in radio licensing that this Court should defer to the FCC's judgment on the issue.

C. The FCC Properly Applied § 251(b)(5)'s Reciprocity Requirement To Paging Companies.

The only specific reference to CMRS in petitioners' briefs is the assertion by the Mid-Size LECs ("MILECS") that "[t]he FCC's rules requiring LECs to compensate paging companies for traffic that originates on the LEC's network [are] . . . contrary to the plain language of the Act." MILEC Br. at 50. The MILECs argue that the one-way nature of paging traffic prevents a compensation arrangement between a LEC and a paging company from being "mutual and reciprocal." If this argument prevails, the LECs will actually charge the paging company for originating calls from the LECs own subscribers to paging units, rather than paying the paging company for termination services.

This argument makes no sense. Section 252(d)(2) specifically envisions the "recovery . . . of costs" incurred.[22] The undisputed evidence is that paging companies incur substantial costs for terminating LEC-originated calls.[23] Payment for call termination therefore involves no "subsidy" to paging carriers; indeed, the only subsidy occurs when LECs -- without any statutory support whatsoever -- charge for originating calls, even though origination costs are fully borne by the LECs' subscribers.[24]

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[22] If there is no traffic, there are no costs; thus, the absence of compensation in the absence of any traffic is entirely consistent with § 252.

[23] See Comments of Paging Network, Inc., CC Docket No. 96-98, filed May 16, 1996, at 11 (App. at 32).

[24] LECs benefit from paging interconnection because the ability to complete calls to pagers enhances the value of the LEC's network to its subscribers, which further undermines the subsidy argument.

The MILECS confuse "mutuality" of traffic flows with "mutuality" of obligation to compensate the other carrier for costs incurred. The FCC concluded that an obligation is "reciprocal" under § 251(b)(5) if each carrier is required to compensate the other for costs incurred in terminating the other carrier's calls, whether those costs are large, small, or nonexistent. That interpretation of the statute is reasonable and entitled to deference. Indeed, it is hard to see how the MILECs' definition of mutuality would not bar compensation whenever traffic flows were unequal, which they concede is often the case.[25]

Requiring paging companies to be compensated for terminating traffic also is necessary to avoid discrimination. Many telecommunications carriers offer paging along with other services, and will be paid for terminating pages as well as for terminating other communications over their facilities.[26] It would be unreasonable for a paging-only carrier not to be compensated for terminating a functionally equivalent one-way communication. Accordingly, the agency's interpretation of § 251(b)(5) as applied to paging companies must be upheld.

IV. The CMRS Provisions Are Severable From The Provisions Challenged By Petitioners.

Although petitioners attack only selected provisions of the FCC's 700-page Order, they have asked this Court to vacate the entire Order, including the many provisions which the LECs have not directly challenged or even mentioned. This "guilt by association" strategy cannot succeed absent an argument that the challenged and unchallenged provisions are so

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[25] LECs argued to the FCC that the imbalance in two-way mobile traffic flow entitled them to greater compensation than they would receive under a "bill and keep" arrangement. See Order ¶ 1109, at 537-38.

[26] LEC network architecture does not distinguish between calls that terminate as two-way voice communications and calls that terminate as pages.