PCIA Personal Communications Industry Association

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July 27, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, NW
Room 200
Washington, DC 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers*, CCB/CPD No. 97-24 ("SWBT clarification request")

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report & 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 Complaint of Metrocall against Various LECs, File Nos. E-98-14-18

Dear Ms. Salas:

On July 24, 1998, the attached document, *The Interconnection of One-Way Messaging Networks and the Public Switched Telephone Network*, was delivered to the FCC staff indicated on the attached correspondence.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this notice, document and personalized cover letters for each referenced docket (a total of eight sets) 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, Esq.
Government Relations Manager

Attachments

• 500 Montgomery Street • Suite 700 • Alexandria, VA 22314-1561 •
• Tel: 703-739-0300 • Fax: 703-836-1608 • Web Address: http://www.pcia.com •

PCIA Personal Communications Industry Association

VIA HAND DELIVERY

July 24, 1998

Mr. Paul Gallant
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers*, CCB/CPD No. 97-24 ("SWBT clarification request")

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Dear Mr. Gallant: Paul

I have enclosed a newly published PCIA reference guide entitled *The Interconnection of One-Way Messaging Networks and the Public Switched Telephone Network*. I am hopeful that you will find this book useful - and that it will be a handy guide to which you will refer frequently.

Be assured that, pursuant to § 1.1206(b) of the Commission's rules, I have placed this document, the associated distribution listing, and copies of this letter on the record with Secretary Salas' office for each of the above-referenced dockets.

I will appreciate hearing from you as I am interested in your comments and feedback. Feel free to contact me at 703-739-0300, extension 3027.

Sincerely yours,

Angela E. Giancarlo

Angela E. Giancarlo, Esq.
Government Relations

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VIA HAND DELIVERY

July 24, 1998

Mr. Larry E. Strickling
Federal Communications Commission
Office of General Counsel
1919 M Street, N.W.
Washington, D.C. 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers*, CCB/CPD No. 97-24 ("SWBT clarification request")

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PCIA Personal Communications Industry Association

VIA HAND DELIVERY

July 24, 1998

Mr. Kevin J. Martin
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LEC's and Paging Carriers*, CCB/CPD No. 97-24 ("SWBT clarification request")

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PCIA Personal Communications Industry Association

VIA HAND DELIVERY

July 24, 1998

Mr. Steve Weingarten
Federal Communications Commission
Wireless Telecommunications Bureau
2025 M Street, N.W.
Washington, D.C. 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers*, CCB/CPD No. 97-24 ("SWBT clarification request")

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July 24, 1998

Mr. Tom C. Power
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers*, CCB/CPD No. 97-24 ("SWBT clarification request")

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The Personal Communications Industry Association

THE INTERCONNECTION OF ONE-WAY MESSAGING NETWORKS AND THE PUBLIC SWITCHED TELEPHONE NETWORK

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ANSWERS TO COMMON QUESTIONS

First Edition
July 1998

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Introduction:
The Personal Communications Industry Association

The Personal Communications Industry Association ("PCIA") has more than 1,500 members worldwide and represents the chief providers of wireless voice and data communications. As the leading international trade association for the personal communications industry, PCIA's member companies include paging and messaging, broadband PCS, ESMR, SMR, and mobile data service providers as well as site owners and managers, manufacturers, distributors, technicians, and others providing services and products to the wireless industry.

PCIA's activities are based on an advocacy platform designed to highlight the fundamental public policy goals necessary for the continued growth of wireless technologies -- one of the most productive and competitive segments of our nation's economy. PCIA's advocacy platform, *The Agenda for a Wireless America*, is based on a simple but critical policy goal: achievement of a regulatory environment that fosters a competitive wireless industry by promoting market entry and growth. The tenets of the *Agenda* are:

1. Fair Interconnection
2. Wireless Tax Relief
3. Infrastructure Development
4. Network Coordination
5. Long-Term Spectrum Planning
6. Fostering International Opportunities

The following materials have been prepared by PCIA as part of its continuing effort to lead the charge to forge the regulatory changes necessary to ensure that wireless communications will be a viable alternative to local phone service.

Executive Summary

The Commission has under review a series of petitions for reconsideration, applications for review, requests for clarification and motions for a stay of the rules and rulings governing LEC/paging interconnection arrangements. In an effort to assist decision makers in synthesizing the paging industry's position from the ever-growing record of the proceedings, PCIA has prepared the material which follows.

Common questions relating to LEC/paging interconnection are posed and answered. To assist the reader, the questions and answers are organized under broad headings. An extensive index also is provided for ease of reference.

Viewed as a whole, the document establishes a number of fundamental principles that serve to frame the paging industry position. Among the most salient points:

- Paging service providers are telecommunications carriers with substantial obligations under the Communications Act and they are legally entitled to the same statutory rights and protections enjoyed by other telecommunications carriers which provide Commercial Mobile Radio Service ("CMRS").

- Among other rights, paging carriers are entitled to reasonable, non-discriminatory interconnection arrangements with LECs so that paging carriers can compete on a level playing field with other CMRS providers.

- Paging carriers have powerful competitive incentives to establish efficient, cost-effective interconnection arrangements under the current Commission rulings.

- The Commission was correct in ruling that LECs are not entitled to charge paging carriers for the portion of the interconnecting facility used to deliver LEC-originated traffic to paging carriers for local termination. This ruling clearly was given immediate effect by the Commission, which was well within its authority under Section 332 of the Communications Act. Inconsistent state tariff provisions must be deemed preempted.

- Paging carriers are entitled to compensation for communications terminated locally over their paging networks. The claim by some LECs that one-way services don't qualify for reciprocal compensation is completely without merit.

- The interconnection rights of paging carriers derive from multiple statutory provisions, not just from Sections 251 and 252 of the Communications Act. The claim by some LECs that paging carriers can only exercise or enjoy their interconnection rights by proceeding with negotiations under Sections 251/252 is wrong as a matter of law.

- The ruling that paging carriers are entitled to terminating compensation has survived a court challenge and has been endorsed by multiple state public utility commissions. Revising the ruling now would create disruption and risk reversal on appeal.

- The actions the Commission has taken to protect and promote paging interconnection rights are well within the Agency's authority under multiple provisions of the Communications Act. The Commission can and should further exercise its lawful authority by establishing a federal forum for setting terminating compensation rates to be paid to CMRS providers if voluntary negotiations fail.

I. Definitions

1. What does the phrase "one-way messaging" encompass?

As used here, "one-way messaging" encompasses tone-only, tone-plus-voice, numeric and alpha-numeric paging in which the end-to-end communication travels in one direction from the initiator of the paging message to the paging unit. The phrase does not refer to talk-back paging, response-paging, two-way paging and other interactive two-way messaging services.

In this series of questions and answers, the terms "paging service provider" and "paging carrier" refer to a provider of one-way messaging services.

2. Are paging service providers "telecommunications carriers" under the Communications Act of 1934, as amended?[1]

Yes. The Communications Act defines a telecommunications carrier as one which provides, for a fee, a service to the public (or a substantial portion of the public) by which information of the user's choosing is transmitted between or among points.[2] The Federal Communications Commission (the "FCC" or "Commission") has determined correctly that paging service providers meet this definition.[3]

3. Does the fact that paging carriers are classified as "telecommunications carriers" under the Communications Act give rise to any obligations and/or benefits?

Yes. Paging carriers are obligated, among other things, to pay into the Universal Service Fund, to abide by restrictions regarding the use of Customer Proprietary Network Information ("CPNI") and to interconnect directly or indirectly with other requesting telecommunications carriers. Having assumed these responsibilities under the Communications Act, paging companies are legally entitled to receive the

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[1] 47 U.S.C. §§ 151 et seq. (1998) (the "Communications Act").

[2] 47 U.S.C. §§ 3(44) (defining "telecommunications carrier") and 3(46) (defining "telecommunications service").

[3] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15,499 (1996) (Local Competition First Report).

benefits accorded to telecommunications carriers, including the right to interconnect with each local exchange carrier ("LEC") on reasonable, non-discriminatory terms and conditions.

4. Do paging service providers offer a "commercial mobile service" as defined in the Communications Act, and "Commercial Mobile Radio Service" ("CMRS") as defined by the Commission?

Yes. The Communications Act defines "commercial mobile service" as any one-way or two-way mobile radio communication service interconnected to the public switched telephone network (the "PSTN") that is provided for a profit to a substantial portion of the public.[4] The Commission has explicitly recognized that paging service providers meet this definition.[5] The Commission adopted the term CMRS when defining the category of carriers who provide "commercial mobile service" under Section 332 of the Communications Act.[6] Thus, there is no difference between "commercial mobile service" as used in the Communications Act and commercial mobile radio service (or CMRS) as used by the Commission.

5. Do paging service providers offer "telephone exchange service" as that phrase is used in Section 251(c)(2) of the Communications Act?

Yes, although the rulings of the Commission in the Local Competition First Report[7] and the Local Competition Second Report[8] failed to confirm earlier rulings to this

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[4] 47 U.S.C. §§ 3(27), and 332(d).

[5] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd. 1411, 1450 (1994) (the "Regulatory Parity Order").

[6] Regulatory Parity Order, at 1413.

[7] Local Competition First Report, 11 FCC Rcd. 15,499 (1996).

[8] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19,392 (1996) ("Local Competition Second Report").

effect.[9] A long line of Commission decisions predating the Telecommunications Act of 1996 (the "1996 Act")[10] recognize that radio common carrier ("RCC") paging service companies that are interconnected with the PSTN provide exchange service within the meaning of the Communications Act.[11] Similarly, the Court which oversaw the breakup of the Bell System through the Modification of Final Judgment (the "MFJ") ruled that paging was an exchange service and therefore awarded the Bell System's paging assets to the divested Bell Operating Companies (the "BOCs"), rather than to AT&T.[12] Subsequently, the 1996 Act broadened the definition of "telephone exchange service" to encompass other "comparable service."[13] So, the rationale for including paging within the category of telephone exchange service was strengthened as a result of the 1996 Act.

II. Basic Entitlements of Paging Carriers

6. Does it matter whether paging is classified as "telephone exchange service?"

Yes, it could. The classification of paging services as telephone exchange service could be construed — though in the view of the paging industry it shouldn't be — to affect: (a) the obligations of LECs to provide dialing parity; (b) the scope of the protections accorded to paging companies under Section 251(c)(2) of the Communications Act; and, (c) the scope of the rights to most favored nation

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[9] The Local Competition First Report and Second Report failed to place paging service on the list of wireless services that are considered telephone exchange services. See First Report, para. 1013; Second Report, para. 333, n. 700. This omission is under reconsideration before the Commission.

[10] Pub. L. No. 104-104; 110 Stat. 56 (codified at 47 U.S.C. §§ 151 et seq.).

[11] See, e.g., Mobile Tariffs, 1 FCC 2d 830 (1969); Tariffs for Mobile Service, 53 FCC 2d 579 (1975); MTS & WATS Market Structure, Phase I, 49 Fed. Reg. 7810, para. 149 (March 2, 1984).

[12] United States v. AT&T, slip. op. 82-0192 (D.D.C. Nov. 1, 1983) at pp. 4-6.

[13] 47 U.S.C. § 3(47)(B).

treatment under Section 252(i) of the Communications Act.[14]

7. Did paging service providers have interconnection rights and rights to terminating compensation prior to the adoption of the 1996 Act?

Yes. The Commission long ago ruled under Sections 201 and 202 of the Communications Act that RCCs licensed under Part 22 of the Commission's rules to provide either one-way messaging service and/or two-way radio telephone service were entitled to interconnect with LECs on reasonable terms and conditions. For example, in 1977 and again in 1980, the FCC adopted memoranda outlining principles of fair interconnection between RCCs and LECs.[15] Basically, these long standing rulings provide that paging carriers are entitled to any interconnection arrangement that is economically reasonable and technologically feasible.

Substantial CMRS interconnection rights also arise out of Section 332 of the Communications Act which was modified in 1993 to further empower the FCC to order LECs to interconnect with CMRS carriers on a reasonable, nondiscriminatory basis.

The right of CMRS carriers to receive terminating compensation also was recognized prior to the 1996 Act by the FCC's adoption in 1994 of Section 20.11(a)(1) of its rules. This Section provides that: "A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier."[16]

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[14]/Sections 251(b)(3) and 251(c)(2) of the Communications Act could be read to accord special protections to telephone exchange service providers. Regardless of whether paging carriers are confirmed to be providers of telephone exchange service, the paging industry is of the view that the same protections should be extended to paging carriers under the antidiscrimination provisions of Section 201.

[15]/See 1976 Memorandum of Understanding, 63 FCC 2d 87 (1977); 1980 Memorandum of Understanding, 80 FCC 2d 357 (1980).

[16]/47 C.F.R. § 20.11 (1994).

8. Did one-way paging service providers receive any additional interconnection rights as a result of modifications of the Communications Act by the 1996 Act?

Yes. The Communications Act, as amended by the 1996 Act, accords significant interconnection rights to every "telecommunications carrier." For example, Section 251(b) of the 1996 Act places special obligations upon LECs to interconnect with other telecommunications carriers. As earlier noted, all CMRS providers, including all paging service providers, are telecommunications carriers under the Communications Act, and thus are beneficiaries of these special interconnection provisions.

9. Have LECs generally complied with the FCC's paging interconnection rulings?

No. The Commission repeatedly has found it necessary to intervene because LECs refused to accord paging companies reasonable interconnection. Prior FCC rulings reflect: (a) LEC refusals to treat paging companies as co-carriers rather than end users; (b) LEC unwillingness to offer interconnection arrangements suited to the short messaging lengths of typical pages; (c) discriminatory treatment between paging competitors and the LECs' own paging affiliates; (d) persistent LEC refusals to make Type 2 interconnection arrangements available to paging companies; (e) LEC imposition of excessive numbering charges; (f) refusals to pay terminating compensation as required by repeated FCC rulings; and, most recently, (g) unwillingness to abide by the FCC's requirement that the LECs bear the cost of facilities used to deliver LEC-originated traffic to paging carriers for local termination.[17]

10. Does the FCC have jurisdiction to regulate any intrastate aspects of LEC-paging interconnection arrangements?

Yes, under multiple statutory provisions. First, the FCC has plenary jurisdiction under Section 201 to regulate interstate aspects of LEC-CMRS interconnection, and incidental authority over intrastate arrangements to the extent that they are inseparable from the interstate component. Second, the Omnibus Budget

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[17] See Appendix A to the Joint Comments of AirTouch Paging, AirTouch Communications and Arch Communications Group in Opposition to the Applications for Review in CCB/CPD 97-24 filed February 23, 1998 (offering an historical record of the LEC/paging interconnection relationship and related filings).

Reconciliation Act of 1993[18] amended Section 2(b) of the Communications Act to provide that the authority granted to the FCC under Section 332 of the Communications Act, which includes the power to regulate CMRS interconnection, is an exception to the normal restrictions on federal regulation of intrastate services. As a result, under 332(c)(1)(B), the FCC is empowered to regulate intrastate interconnection arrangements, by ordering physical connections "pursuant to Section 201," which means that the FCC can assure that the terms of the interconnection are "just and reasonable."[19]

11. Why can't LECs simply elect to forego the costs associated with delivering traffic to paging service providers based upon their own determination that the ability to initiate such pages is not important to their landline customers?

Section 201(a) of the Communications Act requires that common carriers (such as the LECs) establish physical connections with other telecommunications carriers whenever it is technically feasible and economically reasonable to do so. Section 332(c)(1)(B) of the Communications Act requires that the Commission order a common carrier to establish physical connections with CMRS providers upon reasonable request. Section 251(a)(1) of the 1996 Act imposes a general duty on all telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. And, Section 252(b)(2) of the 1996 Act imposes additional interconnection obligations on incumbent LECs. These statutory provisions establish that the obligation of a LEC to interconnect with a paging service provider is not elective.

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[18]/Consolidated Omnibus Budget Reconciliation Act, Pub.L.No. 103-66.

[19]/In upholding the FCC's LEC/CMRS interconnection rules, the Eighth Circuit expressly recognized that Section 332 of the Communications Act accords the FCC extensive jurisdiction over CMRS interconnection matters. Iowa Utilities Board v. FCC, 120 F.3d 753, n. 21 (8th Cir. 1997).

III. Preemptive Authority of the FCC Over Interconnection

12. Does the FCC have the authority to preempt state tariff provisions that purport to govern LEC/paging company interconnection arrangements?

Yes. The Supremacy Clause of the U.S. Constitution empowers Congress to preempt state or local laws.[20] A federal agency acting within the scope of its congressionally delegated authority may also preempt state regulation.[21] Preemption may occur either by express provision, by implication, or by a conflict between federal and state law.[22] In the case of LEC/paging interconnection, the authority of the FCC to override state law derives from Section 332 of the Communications Act (among other authorities).

13. Has the FCC ever exercised its authority to preempt state tariffs governing LEC-CMRS interconnection?

Yes. In the Local Competition First Report, which was adopted in 1996, the Commission ruled at paragraph 1042 that:

> As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.

This ruling is embodied in Section 51.703(b) of the FCC's rules which provides:

> A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

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[20] Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).

[21] Id. at 369.

[22] Fidelity Federal Savings & Loan Assn., 458 U.S. 141, 153 (1982).

Because "local" telecommunications traffic is largely intrastate,[23] this regulation constitutes a direct regulation of intrastate interconnection arrangements.

The FCC also has preempted certain state tariff provisions pertaining to the charges imposed by LECs for telephone numbers used by interconnecting carriers. Recurring number charges are now prohibited and one-time "set-up" charges must be cost-based and limited to the administrative costs associated with setting up numbers in the LEC central office. Notably, several LECs have expressly acknowledged the FCC's authority over such intrastate matters by voluntarily modifying their state tariffs to bring them into conformance with the federal pronouncements.

14. Has the FCC fully exercised its jurisdiction under Section 332 of the Communications Act with respect to CMRS interconnection?

No, but it should. The public interest justification for the preemption of state authority over CMRS rates and entry is that CMRS services operate without regard to state boundaries, and the proliferation of these services will be inhibited by a patchwork of inconsistent state regulatory requirements. The same public interest considerations support a federal solution to paging terminating compensation rates rather than leaving the determination of such rates to 50 separate state commissions.

IV. The FCC Rules Governing LEC/CMRS Interconnection

15. When did Section 51.703(b) of the interconnection rules take effect?

Section 51.703(b) was adopted in the Local Competition First Report, which was released on August 8, 1996, and printed in the Federal Register on August 28, 1996. The rules adopted therein took effect on September 30, 1996. On October 15, 1996, the United States Court of Appeals for the Eighth Circuit temporarily stayed Section 51.703 along with certain other rules, pending appeal.[24] Fifteen days later, the Court lifted the stay of Section 51.703 based upon a showing that the rule had mistakenly

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[23] Section 51.701(b)(2) of the FCC's rules defines "local" telecommunications traffic in the LEC/CMRS context as traffic that originates and terminates in the same "Major Trading Area" ("MTA"). Many MTAs are wholly encompassed within a single state.

[24] Iowa Utilities Board v. FCC 109 F.3d 418 (8th Cir. 1996).

been deemed a "pricing" rule.[25] On July 18, 1997, the Court issued a decision on the merits of the challenge to the LEC/CMRS interconnection rules and, in the process, upheld Section 51.703 as it applies to interconnection between LECs and CMRS providers.

Thus Section 51.703(b) has been in effect continuously since November 1, 1996. Moreover, because the circumstances indicate that the brief stay of this rule was granted in error, the effective date should be deemed to revert back to the original effective date of September 30, 1996.[26]

16. On what statutory basis did the Commission regulate LEC/CMRS interconnection in general, and adopt Section 51.703(b) of the rules in particular?

The FCC adopted the interconnection rules promulgated in the Local Competition First Report under authority of Sections 251 and 252 of the 1996 Act, but also recognized that Section 332 of the Communications Act provided an independent basis of authority with respect to the CMRS interconnection rules.[27] Ultimately, the U.S. Court of Appeals for the Eighth Circuit found the Commission's LEC/CMRS interconnection rules to have been within the Commission's authority under Section 332 of the Communications Act.[28] Subsequently, the Commission released a Public Notice[29] specifically identifying the rules which were in effect pursuant to the FCC's

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[25] Order Lifting Stay in Part, No. 96-3321 (8th Cir. Nov. 1, 1996).

[26] Middlewest Motor Freight Bureau v. U.S., 433 F.2d 212, 226 (8th Cir. 1970), cert. denied, 402 U.S. 999 (1971).

[27] Local Competition First Report, para. 1023.

[28] Iowa Util. Bd. v. FCC, supra 120 F.3d 753 at n. 21. The Court ruled: "Because Congress expressly amended Section 2(b) [of the Communications Act] to preclude state regulation of entry of and rates charged by [CMRS] providers . . . and because Section 332(C)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carries, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers [including Section 51.703(b)]." Id.

[29] Public Notice, Summary of Currently Effective Commission Rules for Interconnection

(continued...)

authority under Section 332 of the Communications Act following the Eighth Circuit decision. Section 51.703(b) of the rules was specifically listed.

17. Are the LEC/CMRS interconnection rules on appeal to the Supreme Court?

No. While several aspects of the Eighth Circuit decision are under consideration in consolidated appeals pending in the Supreme Court,[30] no party has challenged the portion of the decision upholding the LEC/CMRS interconnection rules.

V. Paging As Local Service

18. With the growth of wide-area, regional, and nationwide paging systems, have these services become completely interstate in nature, thereby eliminating the entitlement of paging carriers to receive local terminating compensation?

No. As is the case with other communications traffic, the jurisdictional nature of a call depends upon the points of origination and termination of the call, not upon the scope of the network or the manner in which the call happens to be routed. While many paging customers want to be reached on occasions when they are traveling out of their local area, the overwhelming majority of pages — even those to subscribers to nationwide or multi-state systems — are initiated and terminated in the same MTA; thus they constitute local telecommunications traffic.

19. How can a determination be made concerning the percentage of pages that constitute "local telecommunications traffic" when the location of the paging unit at the time the page is received is not always known?

The percentage of calls to pagers that originate and terminate within the same local transport area can be ascertained by a good faith estimate, as is done in a variety of other related regulatory contexts. For example, the nature and extent of a paging

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[29](...continued)
Requests by Providers of Commercial Mobile Radio Service, FCC 97-344 released Sept. 30, 1997.

[30] AT&T Corp., et al. v. Iowa Utilities Board, et al., Case No. 97-826, and related cases (Case Nos. 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099 and 97-1141).

company's obligations to the Telecommunications Relay Service Fund[31] and the Universal Service Fund[32] depend upon a calculation of interstate revenues, and the Commission has relied upon the carriers to make reasonable, good faith estimates of the portion of their revenues that pertain to interstate as compared to intrastate services. The same approach is appropriate with regard to ascertaining the extent of paging traffic that is terminated on a local basis.

20. If traffic delivered by LECs to Internet Service Providers ("ISPs") is found by the Commission to be interstate in nature, would it follow that paging traffic should also be characterized as interstate?

No. A paging message terminates at a specific location at a discrete point in time and thus can be characterized as being either local or non-local depending upon the points of origination and termination. A call to an ISP can be routed over time to one or more computer servers at diverse locations throughout the world wide web which means that the ability of the call to be characterized based upon the point of termination and point of origination is compromised. Because of the unique nature of ISP traffic, a ruling that it will be treated as interstate would not necessarily apply to paging traffic.

VI. LEC Responsibility for Facilities

21. Why should LECs now be required to bear a portion of the costs of paging interconnection facilities for which they have long been paid by paging carriers?

For multiple reasons. First, the historical relationship was dictated by the LECs through their monopoly control of essential bottleneck local exchange facilities. Paging service providers were unfairly accorded the status of mere end users rather than the co-carrier status they deserved. The 1996 Act was specifically designed to allow non-LEC telecommunications carriers, such as paging companies, to overcome the vestiges of government sanctioned monopolies by guaranteeing their right to interconnect with incumbent LECs on terms that are just and reasonable.

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[31] See 47 C.F.R. § 64.604(c)(4)(iii).

[32] See 47 C.F.R. §§ 54.703 and 54.709.

Second, paging service providers are competing against other telecommunications carriers who are not paying the LEC to deliver LEC-originated traffic for local termination. In order to be able to compete on a level playing field, paging carriers also should not be required to pay for interconnecting facilities to the extent they are used to deliver LEC-originated traffic.

Third, the landline telephone customer who initiates a page is properly viewed as the cost causer. For this reason, it is sound from a rate making and public policy perspective to have the originating carrier look to its own subscriber (in this case the LEC landline customer) for payment to cover the cost of delivering traffic to the point of interface with the terminating carrier.

22. Does the LEC obligation to bear a portion of the costs associated with the delivery of LEC-originated traffic to paging carriers for local termination pertain to both traffic sensitive and non-traffic sensitive costs?

Yes. This issue was specifically addressed in the December 30, 1997 letter from Common Carrier Bureau Chief A. Richard Metzger, Jr. to Mr. Keith Davis and others.[33] The conclusion that the obligation extends to both traffic sensitive and non-traffic sensitive costs is consistent with the sound regulatory principle that the originator of the call (in this case, the LEC landline customer who initiates a page) bear all costs associated with delivering the call to the terminating carrier.

23. Is there any regulatory benefit to having the LEC pay for the connecting facility rather than having the paging company do so and then recoup the cost through terminating compensation payments?

Yes. Having the LEC pay for what is in fact a dedicated facility results in a precise allocation of costs. Recovery of the cost of the facility through terminating compensation payments is less precise, and less likely to be purely "cost-based."

24. Do paging carriers have an incentive to order inefficient, "gold plated" interconnection facilities under the FCC's rulings?

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[33] The letter was issued with reference to the proceedings in Docket No. CCB/CPD No. 97-24.

No. The LEC only pays for the portion of the interconnection facility that is used to deliver its own traffic for local termination. The paging carrier is responsible for the remaining portion of the facility used to carry traffic that originates with a carrier other than the LEC, or that originates or terminates outside of the local area. The paging industry is so competitive that the obligation to pay a portion of the facilities charges creates powerful economic incentives for the paging carrier only to request essential cost-effective interconnection facilities.

25. If LECs must bear the cost of interconnection facilities to the extent they are used to deliver local LEC-originated traffic, do they have the right to configure these facilities as they see fit?

The LECs have a legitimate interest in seeing that paging interconnection facilities are configured in an efficient and cost-effective fashion. This does not mean that they have the unfettered unilateral right to dismantle existing facilities if doing so would disrupt service to the public. Rather, the LEC and the paging company should enter into good faith co-carrier discussions in order to agree upon an interconnection arrangement that is reasonable from both parties' points of view. If existing arrangements are appropriately reconfigured, a transition plan should be adopted to minimize service disruptions.

26. What if any benefits do LECs receive by interconnecting with paging companies?

LECs benefit in multiple ways. First, they receive substantial payments from paging carriers for interconnection facilities. Second, they avoid costs because paging carriers terminate calls for them and thus relieve the LEC of significant costs of termination. Third, more often than not a paging message leads to a return landline call that generates revenue for the LEC.

27. Should a paging service provider have an obligation to serve upon the LEC a formal request for a new or modified interconnection agreement pursuant to Section 251 of the Communications Act, and be subject to the negotiation, arbitration and mediation procedures of Section 252, as a precondition to being relieved of charges by LECs for connecting facilities used to deliver LEC-originated traffic to the paging carrier?

No. Paragraph 1042 of the Local Competition First Report expressly held that LECs must cease charging for the delivery of LEC-originated traffic as of the effective date of the order (September 30, 1996). The statutory scheme supports this ruling.

Sections 251(a) and (b) establish certain "minimum requirements" that must be honored by the LECs without further negotiation, mediation or arbitration. The requirement that LECs cease charging for the delivery of LEC-originated traffic falls into this category.

Moreover, Section 51.703(b) of the rules was upheld by the Eighth Circuit under Section 332 of the Communications Act, which means that this rule can and should be given effect outside of the negotiation, arbitration and mediation provisions of Sections 251 and 252.

28. By requiring LECs to bear the costs of delivering LEC-originated traffic to CMRS carriers for local termination, and establishing the local area as the MTA for CMRS traffic, was the Commission lifting the limitation on the RBOCs to haul traffic over LATA boundaries?

No. The Local Competition First Report did not alter the interLATA restrictions to which the RBOCs are subject.

29. Do paging carriers expect RBOCs to deliver intra-MTA calls across LATA boundaries?

No. Paging companies are willing to establish a meet point at the LATA boundary. However, if a paging company is deemed to pick up a call at this point, then the terminating compensation it receives should be calculated to allow the paging company to recover the costs of transporting and terminating the call from that point.

30. Are paging service providers entitled to be relieved of all charges for the facilities used to deliver paging traffic from the LEC, and to be paid terminating compensation for every completed page?

No. Under the FCC's rulings, paging carriers only are relieved of facilities charges, and only receive terminating compensation, with respect to that portion of the traffic they receive which qualifies as "local LEC-originated traffic." To the extent that traffic delivered to paging companies (i) originates outside of the local area; (ii) terminates outside of the local area; or (iii) originates on the facilities of a carrier other than the LEC who delivers it to the paging carrier, then it does not qualify as "local LEC-originated traffic," and paging companies are prepared to bear a pro-rated portion of the facility charges associated with this traffic and to forego local terminating compensation associated with this traffic.