

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	CC Docket No. 01-92
)	
Sprint Petition for Declaratory Ruling)	
Obligation of Incumbent LECs to Load)	
Numbering Resources Lawfully Acquired)	
And to Honor Routing and Rating Points)	
Designated by Interconnecting Carriers)	

**COMMENTS OF ALLIED NATIONAL PAGING ASSOCIATION
REGARDING RATING/ROUTING ISSUES**

Respectfully Submitted,

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY	1
II. THE BELLSOUTH OPPOSITION IS DIRECTLY COUNTER TO SETTLED LAW	3
III. EXISTING ROUTING, RATING, AND COST ALLOCATION RULES ARE THE ONLY LEGALLY AND TECHNICALLY ACCEPTABLE ONES AVAILABLE TO THIS COMMISSION	8
IV. ALLEGATIONS OF ABUSE OF CURRENT RATING/ROUTING RULES DO NOT APPLY TO CMRS PROVIDERS, AND IN ALL CASES MAY BE DEALT WITH ON AN AD HOC BASIS	13
V. CONCLUSION.....	16

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RATING/ROUTING ISSUES**

Allied National Paging Association (“Allied”) has represented the interests of paging and other wireless carriers for more than 30 years. Membership includes both national and locally based providers of wireless messaging services.¹

I.

INTRODUCTION AND SUMMARY

Allied supports the Sprint PCS Petition (“Petition”). The Petition was initially sparked by BellSouth’s refusal to program NXX codes homed for routing purposes in a BellSouth tandem, but rated to independent telco locations elsewhere in the LATA. BellSouth now claims to have programmed the codes, but in a lengthy response (the “Opposition”) contends that the utilization of separate rating and routing points within the same LATA results in “compensation

¹ Arch Communications; Access Paging; Autophone; Benbow PCS Ventures; Cal Autofone; Cook Paging; Contact Wireless; Glenayre Electronics; Kern Communications, Inc.; Kern Valley Dispatch; Lubbock Radio Paging Service, Inc; Madera Radio Dispatch; Metrocall; Motorola, Inc.; MTCO Communications; Natcom, Inc.; Nationwide Paging; Network Services; Paging Dimensions; Paging Systems, Inc.; Power Page; Radio Call Acquisitions, LLC; Repco; Standard Telecom; Starpage; Telephone Connection of Los Angeles; United Communications Corporation; Verizon Wireless; Weblink Wireless; Western Paging; Wildgate Wireless.

inaccuracies”. BellSouth’s subsequent discussion threatens nearly all of the interconnection rights granted to CMRS providers by the Communications Act of 1996, 47 U.S.C. § 151 et seq. (“Act”), and subsequent regulations and decisions. Stripped of circumlocutions, the Opposition effectively seeks:

1. To repeal the Commission definition of “local calls” (at 47 C.F.R. § 51.701(b)(2)) for purposes of allocating transport and termination costs;
2. To repeal the requirement (at 47 C.F.R. § 51.305 and 47 C.F.R. § 251(c)(2)(b) that ILECs allow competing CMRS carriers to interconnect at any technical feasible point in the network;
3. To require competing CMRS carriers to establish – at their own cost – physical links to multiple ILEC local calling areas in order to take delivery of ILEC-originated calls, thus repealing the rule (47 C.F.R. § 51.709(b)) that originating carriers pay transport costs relating to their own calls; and
4. To require terminating carriers to compensate originating carriers for intra-MTA calls transported beyond the originating local calling area, which is contrary to the current prohibition on such charges. 47 C.F.R. § 51.703(b).

The Petition and Opposition go far beyond the original Florida-based dispute between BellSouth and Sprint PCS. Taken together they raise important federal issues which have bedeviled recent negotiations between CMRS providers and ILECs.² These issues are the subject of at least three recent Commission decisions, which are not necessarily consistent.³ If

² On July 26, 2002, Florida Commission staff recommended that the BellSouth request for declaratory relief be denied, in part because issues of CMRS interconnection are matters of federal jurisdiction. See Memorandum dated July 26, 2002 and filed in Docket No. 020415-TL (Florida Public Service Commission).

³ Compare *TSR Wireless, LLC v. U S West Communications, Inc.*, 15 FCC Rcd. 11166 (2000), *aff’d sub nom. Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001); (“TSR”); In the Matter of Petitions of WorldCom, Inc.,

the Commission fails to clarify and to unambiguously reaffirm current rules on the rating, routing and transiting of intra-MTA calls, the impact on competing carriers and their customers could be disastrous.

Section II below restates the current law governing post-1996 CMRS/ILEC interconnect agreements and shows how BellSouth and other ILECs threaten this existing law. Section III will demonstrate how the current regime is the only legal and practical one in a competitive context. Section IV discusses the abuses alleged by certain ILECs, and how existing case law may be harmonized in a way that preserves the legitimate interests of ILECs and CMRS providers alike.

II.

THE BELLSOUTH OPPOSITION IS DIRECTLY COUNTER TO SETTLED LAW

After years of negotiation and litigation, it is established that:

1. Jurisdiction: This Commission has primary jurisdiction over CMRS/ILEC interconnection questions. 47 U.S.C. § 332(c). State tariffing requirements cannot override federal policy on such questions. TSR, at paragraph 29; see note 2 above.

2. Technically Feasible Interconnection: Incumbent LECs must interconnect at any technically feasible point on their networks and have the burden of proving infeasibility when a particular point of interconnection (“POI”) has been designated by a competing carrier. An ILEC tandem is a technically feasible interconnection point. 47 U.S.C. § 251 (c)(2)(B); 47 U.S.C. § 51.305. A telecommunications carrier may also connect indirectly with other carriers.

[etc.], CC Dkt. Nos. 00-218, 00-249, et al. and 00-251 (Memorandum Opinion and Order, July 17, 2002) (“WorldCom/ Verizon”), and Mountain Communications v. Qwest Communications, File EB-00-MP-017 (Order on Review) (July 23, 2002) (“Mountain Communications”).

47 U.S.C. § 251 (a)(1); Implementation of the Local Competition Provisions [etc.], CC Dkt. Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd. 15499 (“First R & O”) at paragraph 997 (1996).

3. Rating and Routing: There is no obligation for a CMRS provider to duplicate the physical facilities of the ILEC. For this reason, physical interconnect links are not required to be built to every rate center within a LATA. Instead, calls addressed to different rate centers may be routed to one or more “technically feasible points” designated by the terminating carrier. Since rating and routing points differ, the originating carrier in some cases may be required to route a call over a longer distance than it may be rated. In other cases, the transport distance will be shorter than the rating distance. See Section III below.

4. Originating Carrier Responsibilities: When calls are “local”, the originating carrier is obligated to pay termination compensation to the terminating carrier. An originating carrier is equally obligated to pay for facilities utilized to transport its own calls to the terminating carrier’s network. 47 C.F.R. §§ 51.703(b), 51.709(b); TSR at paragraph 31. These regulations follow necessarily from the requirement in the Telecommunications Act that all carriers are responsible for the costs of transport and termination of their own customers’ calls. 47 C.F.R. § 252(d)(2).

5. Definition of “Local Calls”: A CMRS call is deemed “local” when it originates and terminates in the same MTA. 47 C.F.R. § 51.701(b). For local calls, the originating carrier is obliged to pay transport and termination compensation, measured at TELRIC rates, to the terminating carrier. Access charges are not appropriately charged for originating or terminating Local Calls. First Report and Order, Implementation of Local Competition Provisions [etc.], CC Dkt. Nos. 96-98, 95-185, 11 FCC Rcd. 15499 at paragraphs 1033 et seq.

6. Transit Obligations: An ILEC also has the obligation to transit calls originating or terminating on third party networks, subject to reasonable compensation by the originating party. 47 U.S.C. § 251(a)(1); First R & O at paragraph 997.

The BellSouth Response is at sharp variance with all of the above principles. Most pertinent are BellSouth's contentions that (a) it has no duty to perform transit functions at all, (b) that it has no obligation to transport its own customer calls beyond the local calling area where they originate, and (c) has no duty to pay termination compensation for local calls where the rating and routing points assigned to the called number are in different locations within the MTA. Thus:

– While BellSouth will not for the present block calls to NXXs with different rating and routing points, BellSouth nevertheless believes that such arrangements result in, at a minimum, “inappropriate intercarrier compensation mechanisms”⁴ including various forms of intercarrier compensation and reciprocal compensation. Instead BellSouth proposes that access charges or intercompany settlements apply to this traffic. Opposition, paragraph 4.⁵

⁴ The BellSouth letter of January 30, 2002, attached to the Sprint Petition, focused on the separation of rating and routing points in a transit context:

“By this arrangement, establishing a rate center in the third party's service area and a routing center in BellSouth's, normal, local and toll options, associated with landline end user calls, will be rated in a manner inconsistent with the routing of the calls. ...BellSouth will not support activation of NPA/NXX applications where the rate center is in a company other than BellSouth and the routing center is in BellSouth.”

While the Florida litigation described by BellSouth purported to be limited to a state tariff issue, BellSouth clearly seeks something much broader, i.e., a declaration that existing rules about transport and termination cost allocations should not be applied whenever a concededly local (i.e., intra-MTA) call is transported outside of an ILEC's own local calling area.

⁵ BellSouth does not dispute that the calls in question originate and terminate in the same MTA and are therefore “local” under 47 C.F.R. § 51.701(b).

– BellSouth claims that Sprint utilizes “virtual NXX arrangements”. BellSouth incorrectly defines such an arrangement as a “mechanism for transporting traffic where the rating point is in an exchange that is different than the interconnection point.” BellSouth claims that the terms on which such arrangements may be offered are exclusively questions of state law and requests that the Commission not issue the declaratory ruling sought by Sprint PCS. Opposition, paragraphs 5-7.

– BellSouth contends that “this dispute resolves around the financial consequences of a wireless carrier’s decision to have a single point of interconnection”. This issue is said to be “unresolved” and subject to the Commission’s action in the intercarrier compensation proceeding.⁶

While more carefully phrased, BellSouth’s argument is little different than that made by Verizon in WorldCom/Verizon, supra. There Verizon argued that “it should not have to bear the cost of inefficient network design choices made by competing LECs”, and specifically objected to bearing “the entire cost of transporting traffic to competitive LEC points of interconnection”. Verizon objected that it must “incur the cost to transport the call to the competitive LEC’s chosen point of interconnection, which may be outside the originating local calling area”, and claimed that the competing LECs were offering a “virtual FX” or “virtual foreign exchange service” insofar as they were assigning NPA-NXX codes associated with a particular rate center or local calling area to customers physically located outside of that rate center or local calling area. Verizon claimed that this practice “allows these customers to receive calls rated as local rather than toll even though the FX customer is located in a different local calling area”.

⁶ Opposition at paragraph 7. See Developing a Unified Intercarrier Compensation Regime, CC Dkt. No. 01-92, Notice of Proposed Rulemaking 16 FCC Rcd. 9610 (2001) (“Intercarrier Compensation NPRM”).

“[Verizon] incurs costs to transport traffic bound for a competitive LEC’s virtual FX customer in another local calling area, yet it would not receive toll revenues from its own enduser, nor would it receive compensation for originating access services from the competitive LEC. Instead, Verizon would be required to pay reciprocal compensation to the competitive LEC for what it regards as toll traffic.” See WorldCom at paragraphs 36, 48.

To remedy this allegedly unjust situation, Verizon proposed multiple “geographically relevant interconnect points” (or “GRIPS”) from which the competitive LECs would be required to assume financial responsibility for further transport. WorldCom/Verizon at para. 50.

On July 17, 2002, the Wireline Competition Bureau (“WCB”) rejected the Verizon argument, finding that:

“Under the Commission’s Rules, Competitive LECs may request interconnection at any technically feasible point [citation omitted]. This includes the right to request a single point of interconnection in a LATA [citation omitted]. The Commission’s rules implementing the reciprocal compensation provisions in Section 252(b)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC’s network [citing 47 C.F.R., Section 51.703(b)]. Further, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.” WorldCom/Verizon at para. 52.

The so-called “virtual NXX” argument is dealt with by WCB at paragraphs 289 et seq. of WorldCom. Here again Verizon objected to defining “local calls” for purposes of termination compensation by reference to the rating points associated with the calling and called numbers. Verizon proposed that instead of being compensated, the terminating carrier “should assume financial responsibility for virtual FX traffic by paying Verizon for transport from the calling area of the Verizon caller to the Petitioner’s POI.” Id at para. 299.

WCB at paragraph 301 finds that industry-wide practice rates calls by comparing the rate centers of originating and terminating NPA-NXX codes. Verizon’s proposal to revert to the

actual geographical starting and ending points of a call would seem to raise billing and technical issues “that have no concrete, workable solutions at this time.” Id at para. 301.

The result in WorldCom should determine the result here. Competing carriers, whether CMRS or LEC, have the right under the Act to choose one or more technically feasible interconnect points on the network. It is neither technically, nor legally required for the competing carrier to go to every local calling area the ILEC has chosen to create. Yet, in order to compete, they require customer numbers that are rated to such local calling areas. But while an originating ILEC may calculate distance-sensitive charges to its own customers by reference to these rate points, common sense, and existing law, require the originating ILEC to route such calls to the designated interconnection point, which may be the mobile switch or other interconnect point designated by the CMRS provider within the relevant MTA and LATA.⁷

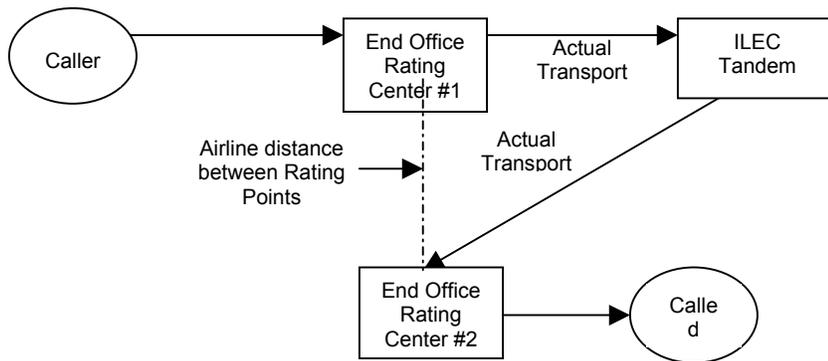
III.

EXISTING ROUTING, RATING, AND COST ALLOCATION RULES ARE THE ONLY LEGALLY AND TECHNICALLY ACCEPTABLE ONES AVAILABLE TO THIS COMMISSION

Despite the implications drawn by BellSouth, Verizon, and other ILECs, transport and rating distances have never been identical. Wherever ILEC switching systems are hierarchical, calls between exchanges must be routed differently than they are rated. Thus:

⁷ 47 U.S.C. §§ 251(a)(1); 251(c)(2)(B); 47 C.F.R. §§ 51.305(2); 51.709(b).

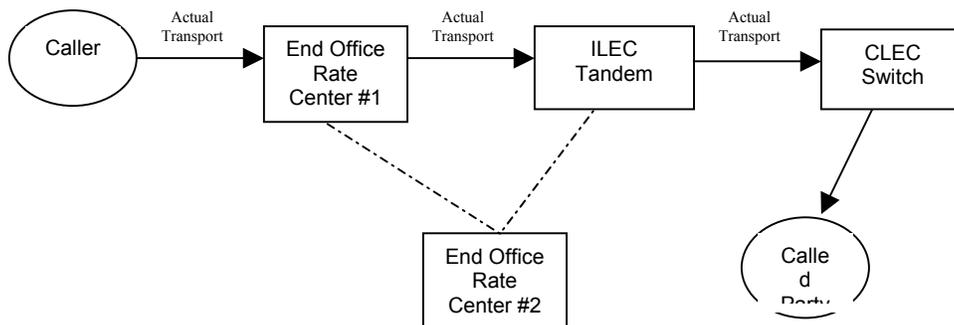
Figure 1 – ILEC Customer to ILEC Customer)



As should be clear, the total transport distance in the above example is greater than the airline distance between the rating points assigned to the calling and called parties. No ILEC, to Allied’s knowledge, has claimed that this discrepancy, which is a necessary result of system architecture, is in some way “inappropriate”. It is simply a matter of network efficiency.

The 1996 Telecommunications Act recognized that the customers of an ILEC might call customers of a competing local exchange carrier (“CLEC”), and vice versa. In such situations, it is of no technical good whatsoever for the originating carrier to transport the call to the rate point assigned to the called party’s number. Rather the originating carrier must deliver the call to a CLEC switch which in turn routes the call to the called party. Here too, there is little chance that rating distances and routing distances will be the same. Thus:

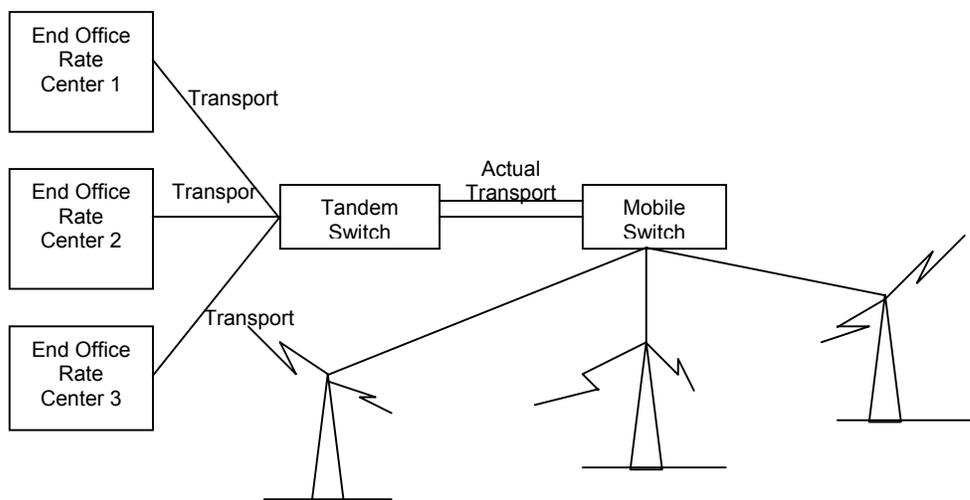
Figure 2 – (ILEC Customer to CLEC Customer):



As before, the rating distance for purposes of the ILEC’s bill to its own customer is the airline distance between rate centers. However, the transport distance, first to the tandem, and then to the CLEC switch, may be longer or shorter than the rating distance.

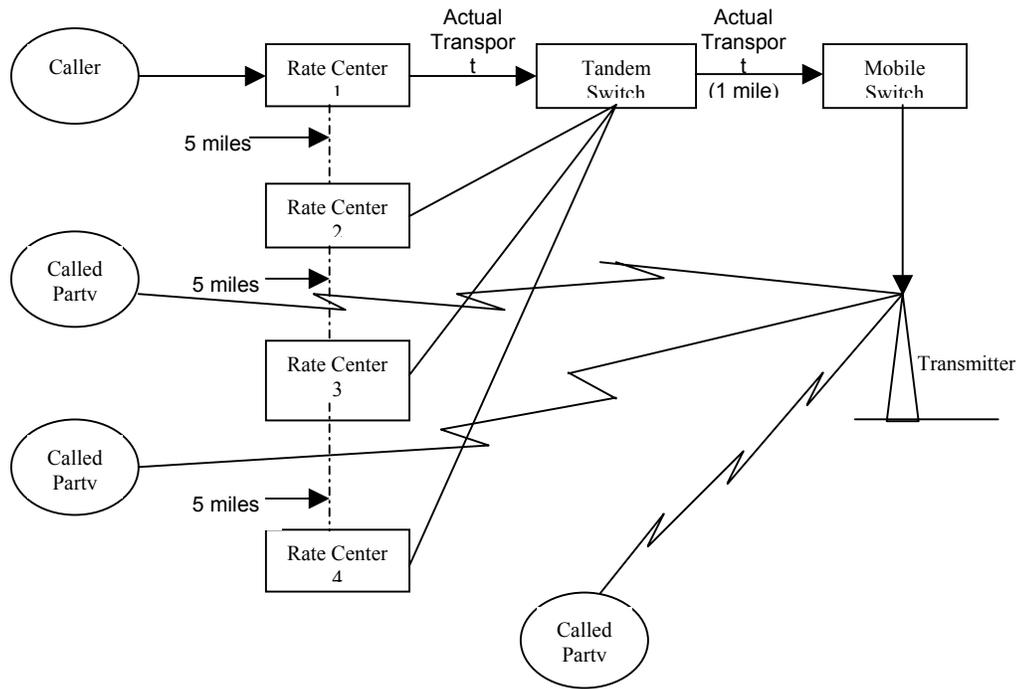
Where an ILEC customer calls a CMRS customer, the situation is much the same, except that the called unit is by definition “on the move”. Like CLEC switches, mobile switching offices (including paging terminals) control much larger service areas than the typical ILEC end office. Indeed, a CMRS paging, cellular or PCS switching facility controls transmitter locations in a great many ILEC local calling areas. By technical necessity, nearly all ILEC-originated calls must be transported beyond the originating local calling area so that they may be switched by the CMRS carrier to the called party. Hence, the classic “Type 2” interconnection schemes:

Figure 3 –(ILEC Customer to CMRS Customer via Type 2 Interconnection):



Here again, there is no necessary relationship between transport distance and the distance between rating centers identifying the calling and called parties. In some cases (as where the ILEC tandem is very close to the mobile switching facility), the transport distance may be very short even though rating centers may be far apart. For example:

Figure 4 – (ILEC to CMRS Rating vs. Routing Distances):



In the above illustration, the MSC is located only a mile away from the ILEC’s tandem. Where the caller is identified by a number in Rate Center 1, the call will be carried by shared or common transport for eight miles to the tandem, and an additional mile of dedicated transport to the MSC. The total transport distance (nine miles) is less than the rating distance between Rate Center 1 and Rate Centers 3 and 4 (ten and fifteen miles, respectively). However, the transport distance is greater than the rating distance where the caller has dialed a mobile number rated to either of Rate Centers 1 or 2 (zero and five miles respectively).

Is any of the above “unfair” or “irregular”? **Not at all:**

- Even prior to 1996, calls between two adjacent ILEC calling areas where routed to a distant tandem before being back-hauled to the called party. However, the rating of such calls was and is by reference the straight-line distance between rate centers identifying originating and terminating telephones.

- The most technically efficient way of exchanging traffic between the customers of competing carriers is to route calls not to the terminating rate center but to the terminating switching facility. To require a CLEC or CMRS carrier to maintain connections to every ILEC Local Calling Area would be wasteful, and would make mockery of the Act which allows competing carriers to interconnect “at any technically feasible point” in the ILEC network.⁸
- As illustrated above, rating distances may be greater or less than routing distances. Unhappily, BellSouth and the other ILECs say nothing about situations where they are able to bill their own customers substantial toll charges for calls to distant rate centers even though they have turned the call over to the CMRS carrier in or near the originating local calling area. And even where routing distances are greater than rating distances, the added cost to the originating carrier is de minimis. This is because transport costs are for the most part not distance sensitive. For example, based on California’s UNE rates for common switched transport, the cost to an ILEC of transporting a one-minute call for ten miles is \$.00154. The cost to transport the same call over a 30 mile distance is \$.00196, an increase of .79%, or forty-two one thousandths of a cent.⁹

⁸ It must be emphasized that the ILECs are not proposing to pay any part of the costs of these extraneous Type 2B links. Rather, they have taken the position that they are under no obligation to pay any transport costs outside of the originating local calling area. They also deny any responsibility to pay termination compensation for these calls, notwithstanding clear rules to the effect that termination compensation must be paid for calls originated and terminated in the same MTA.

⁹ Decision 99-11-050, Appendix A (California Public Utilities Commission) (November 18, 1999). It must be noted that this is the cost to the ILEC of the added transport under the status quo. If dedicated facilities were required to multiple end offices, the costs to competitive carriers would be far greater, since dedicated facilities are priced at special access rates rather than at TELRIC (notwithstanding the requirements of paragraph 672 of the First Report and order).

- Whatever minimal added transport costs incurred by ILECs from the current “single POI” regime, they would be offset by direct ILEC savings as a result of situations where the ILEC is able to rate calls over a longer distance than it must transport them.
- The current rule is a two-way street. Just as some land-to-mobile calls may be transported over a longer distance than would be the case with multiple interconnect points, so must mobile-to-land calls occasionally be carried over longer distances. And the rule is that CMRS providers must pay all costs of transporting mobile-originated calls from their systems to the ILEC networks, and that they must pay added compensation for whatever further transport and termination functions performed by the ILECs on their side of the point of interconnection. The irony of the ILEC position is that while the ILECs insist on full payment by CMRS providers of all transport and termination costs relating to mobile-to-land calls, they have a different attitude toward land-to-mobile calls, desiring to shift their own costs to the terminating carrier.

IV.

**ALLEGATIONS OF ABUSE OF CURRENT RATING/ROUTING RULES
DO NOT APPLY TO CMRS PROVIDERS, AND IN ALL CASES MAY BE DEALT
WITH ON AN AD HOC BASIS**

There have been allegations that ILECs lose toll revenues where competing carriers are allowed to assign “local numbers” to their customers. While there is evidence of occasional abuse by some IXCs and CLECs, these abuses have related to one or both of the following situations:

- Numbers have been inventoried in rate centers where neither the end user nor the competing carrier has any physical presence. These are true “virtual NXXs” which may allow the CLEC to provide a sort of FX service to its customers, while shifting added transport costs to the ILEC.
- Multiple numbers with different rate centers have allegedly been assigned to the same end user’s unit, resulting in a pseudo-800 service for the end users and corresponding loss of access or toll revenues to the originating ILEC.¹⁰

Neither of the above scenarios applies to paging, cellular, or other CMRS providers. In nearly all cases, a single number with a single rate center is assigned to each mobile unit. This number is chosen by the customer and depends on his/her own community of interest. Calls to that number from the local community will be rated by the ILEC as local – just as would be the case if an ILEC customer called another ILEC customer in the same community. Where an ILEC customer from a different Local Calling Area calls the mobile unit, the ILEC may charge toll or long-distance rates, even as it does when one of its own customers calls another customer in a different local calling area. To Allied’s knowledge, no ILEC has shown that the ratio of local to toll/long-distance calls is materially different where mobile numbers are called (as opposed to land-line numbers).¹¹

¹⁰ See Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc. LLC, Dkt. No. 98-78, Maine PUC (May 22, 2002) (“Brooks Fiber”).

¹¹ See, Mountain Communications, supra note 1. While Mountain/Verizon will hopefully be construed as a case where the carrier assigned multiple numbers to a single unit, the record and the decision itself are ambiguous. Thus, while the decision seems to find that the carrier there had “obtained a wide area calling service for which it must compensate Qwest”, this factual conclusion does not appear to be supported in a rather sketchy record. What must be clear is that the overwhelming majority of paging customers receive a single number identified with a single rate center. Where there is no “reverse toll billing” arrangement in place, only calls from the same rate center (or EAS) will be treated as local by the CLEC. All other calls will be subject to the same toll/long-distance charges as would ILEC to ILEC calls between similarly rated numbers.

Mountain Communications has already caused great confusion. SBC Communications has construed the case as relieving it of any responsibility either to transport land to pager calls beyond the boundary of the originating local calling area or to pay termination compensation for such calls, even where they originate and terminate in the

There is no escaping the basic thrust of the Communications Act. The right of competing carriers, including CMRS providers, to interconnect at any technically feasible point in the ILEC network is statutory. The right of terminating carriers to be compensated for transporting and terminating another carrier's calls is also statutory. The obligation of an originating party to transport its own calls to the terminating carrier is not only clear in the regulations, but the regulations themselves necessarily result from a policy choice made by Congress. Broad as this Commission's rulemaking power is, it is not so broad that Congress may be ignored.

This does not mean that the regulators are disabled from dealing with abuse. Where (as arguably occurred in Brooks Fiber) numbers are assigned in a way which disguises inter-LATA traffic as intra-LATA, thus evading access charges, the appropriate Commission may act. The same is true in situations where multiple numbers are improperly assigned to a single end user unit, or where an assigned number is rated to a remote location where neither the customer nor the carrier has a physical presence.

Quite apart from this Commission's role in making and interpreting its rules is the obligation of the ILECs themselves to pursue the negotiation process. Many ILECs have successfully negotiated provisions requiring interconnection at all tandem locations within a LATA. Others have required that rating and routing points, though disparate, be assigned within the same LATA, and even within the same NPA. In other cases, the ILECs have created incentives (as by offering TELRIC pricing for intercarrier facilities) to move carriers to a preferred architecture.

same MTA (as required by 47 C.F.R. § 51.701(b)(2)). The SBC argument, as may be seen, appears to be on all fours with that of BellSouth, and has had a direct affect on the ability of Allied's members to obtain proper interconnection agreements with SBC.

V.

CONCLUSION

In conclusion, this Commission should reaffirm:

- The right of competitive carriers to interconnect directly or indirectly to one or more (at their choice) technically feasible locations on the ILEC networks;
- The right of CMRS providers to termination compensation for calls originating and terminating within the same MTA;
- The obligation of originating carriers to pay for transporting their own calls to the terminating carrier's designated point of presence within the LATA or MTA, as applicable; and
- The right of all competitive carriers to establish disparate rating and routing points for their NXX codes.

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