

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the matter of )  
 )  
ASAP PAGING, INC. ) WC Docket No. 04-6  
 )  
Petition for preemption of the Public Utility )  
Commission of Texas Concerning Retail )  
Rating of Local Calls to CMRS Carriers )

To: Secretary, Federal Communications Commission

Attn: Wireline Competition Bureau

COMMENTS ON PETITION

The American Association of Paging Carriers and Metrocall Holdings, Inc. (the “Joint Paging Commenters”),<sup>1</sup> who comprise a representative cross-section of the paging/messaging industry, respectfully submit their comments to the Federal Communications Commission concerning the petition filed by ASAP Paging, Inc. (“ASAP”) on December 22, 2003,<sup>2</sup> requesting certain preemptive relief in connection with an order entered by the Public Utility Commission of Texas (“TPUC”) in a complaint proceeding initiated by ASAP against CenturyTel of San Marcos, Inc.<sup>3</sup> As their comments in response to the Petition, the Joint Paging Commenters respectfully state:

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<sup>1</sup> The American Association of Paging Carriers is a trade association that represents CMRS paging carriers operating national, regional and local systems. Metrocall Holdings, Inc. is one of the largest CMRS paging carriers in the country.

<sup>2</sup> ASAP Paging, Inc., Petition for Preemption, December 22, 2003 (the “Petition”). By Public Notice DA 04-92, released January 20, 2004, the Commission requested public comments on the Petition by March 23, 2004 and reply comments by April 23, 2004.

<sup>3</sup> Order entered October 9, 2003, in PUC Docket No. 25673, SOAH Docket No. 473-02-2503 (the “PUC Order”). The PUC Order is attached as Exhibit 1 to the Petition.

### Summary of Position

The core issue raised by ASAP's Petition is whether the NXX codes assigned to CMRS providers are entitled to equal and non-discriminatory treatment at the hands of Incumbent Local Exchange Carriers ("ILECs") and Competitive Local Exchange Carriers ("CLECs").<sup>4</sup> The Joint Paging Commenters emphatically submit that this an essential right of paging and other CMRS carriers under the Communications Act of 1934, as amended (the "Act") and should be fully vindicated in this proceeding. Accordingly, the Commission's decision herein should clearly affirm that to the extent a CMRS carrier is using NXX codes to provide its authorized services in a local calling area, including mandatory extended service areas established under state law, those codes must be treated for customer dialing and local rating purposes the same as NXX codes assigned to wireline carriers.

### Background

ASAP is a Commercial Mobile Radio Service (CMRS) carrier providing paging service throughout central and south Texas via 20 base station transmitters licensed by this Commission.<sup>5</sup> ASAP's service area covers the San Marcos, Kyle, Fentress and Lockhardt wireline exchanges, all of which are part of an Expanded Local Calling Service ("ELCS") area mandated by the TPUC.

The San Marcos exchange is served by CenturyTel of San Marcos, Inc. ("CenturyTel"), whose end office subtends the Greenwood tandem office in Austin operated by Southwestern Bell Telephone Company ("SWBT"). The Lockhardt exchange similarly is served by SWBT

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<sup>4</sup> The particular facts in this case involve only ILECs, but the Joint Paging Commenters do not believe there is any principled difference in the ILECs' obligations and the CLECs' obligations to afford equal treatment to CMRS carriers' NXX codes.

<sup>5</sup> The facts recited in these comments have been abstracted as appropriate from the Petition and the PUC Order and are understood by the Joint Paging Commenters to be uncontested.

and subtends the Greenwood tandem office; while the Kyle and Fentress exchanges are served by Verizon Southwest (“Verizon”). ASAP has obtained the NXX codes from NANPA and associated them with the exchanges as follows: 512-265, associated with the Fentress exchange; 512-384, associated with the Lockhardt exchange; and 512-580, associated with the Kyle exchange. ASAP does not currently have an NXX code associated with the San Marcos exchange, nor does it have a Point of Interconnection (POI) in the San Marcos exchange.

Insofar as here relevant, ASAP has only a Type 2A interconnection with SWBT’s Greenwood tandem office in Austin, which is in the same LATA as the San Marcos, Lockhardt, Kyle and Fentress exchanges; and ASAP’s paging terminal/switch likewise is located in Austin.<sup>6</sup> Thus, calls to ASAP’s paging customers from San Marcos must be delivered by CenturyTel to SWBT’s Greenwood tandem, and SWBT then must switch the traffic and deliver it to ASAP’s paging terminal/switch in Austin. SWBT and CenturyTel have established a trunk group between the San Marcos end office and the Greenwood tandem office with a “meet point” at an SWBT-owned “hut” in San Marcos.

In addition to its CMRS paging service, ASAP uses its interconnection facilities to provide telephone network access for five Internet Service Providers (“ISPs”). ASAP assigns one telephone number out of its NXX codes to each ISP in order for its customers to have “dial-up” access to the internet. These calls likewise must be delivered by the originating wireline office to SWBT’s Greenwood tandem. SWBT then switches the traffic and delivers it to ASAP’s paging terminal/switch in Austin, where ASAP in turn switches and delivers it to the ISP’s servers for access to the internet.

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<sup>6</sup> After the record was closed in the PUC proceeding, ASAP established another paging terminal/switch within one of the ELCS exchanges, but does not appear to otherwise rely on this fact in its Petition.

The dispute giving rise to the PUC complaint, and ultimately the Petition, concerns calls from the San Marcos exchange to numbers in ASAP's NXX codes associated with the Lockhardt, Kyle and Fentress exchanges. Initially, CenturyTel treated all such calls as "local" calls, similarly to calls from the San Marcos exchanges to numbers in NXX codes assigned to SWBT and Verizon in the Lockhardt, Kyle and Fentress exchanges. That is, CenturyTel's customers only were required to dial the customary seven digits for a local call to reach a number in one of ASAP's NXX codes, and CenturyTel rated all such calls the same as wireline-to-wireline ELCS calls, *i.e.*, as "local" calls.

However, on April 1, 2002, CenturyTel changed its switch translations and required its customers thereafter to dial 1+ or 0+ in order to reach numbers in ASAP's NXX codes. In addition, CenturyTel began charging its customers intrastate toll rates for all such calls.

ASAP immediately filed a complaint with the PUC and on April 18, 2002, was granted a preliminary injunction requiring CenturyTel to continue providing "local call" treatment for calls to numbers in ASAP's NXX codes. An evidentiary hearing was held on the complaint in October and November 2002; the Administrative Law Judge issued a Proposal For Decision denying the complaint on April 24, 2003; and, as noted above, the PUC issued its Order denying ASAP's complaint on October 9, 2003. ASAP's Petition followed.

#### Comments

Certain important matters should be clarified at the outset of this discussion. First, neither these comments nor the Petition address the intercarrier compensation issues that necessarily must be part of an overall agreement between a CMRS carrier and an ILEC or CLEC for the interchange of traffic where an ELCS area is involved. As ASAP repeatedly stresses, the issues raised by the Petition concern only the dialing arrangements and retail rating associated with

calls to ASAP's NXX codes, and do not address what ASAP terms the "wholesale carrier compensation" aspects of the traffic interchange. The Joint Paging Commenters believe that the "wholesale carrier compensation" issues ultimately motivated CenturyTel's conduct to a substantial extent, since CenturyTel initially provided local call treatment for calls to ASAP's NXX codes. Nonetheless, it is essential that the Commission clearly maintain this distinction in fashioning its order in response to ASAP's Petition.

Second, the Joint Paging Commenters do not address issues in the Petition related to ASAP's business of providing telephone access for customers of ISPs. While there is no doubt that ASAP is entitled to engage in such business under the Commission's rules,<sup>7</sup> it is a separate line of business from CMRS telecommunications carriage. Accordingly, the Joint Paging Commenters take no position on issues relating to ASAP's use of NXX codes for that line of business or the PUC's jurisdiction to require registration by ASAP for that purpose.

Turning to the substance of the Petition, the Joint Paging Commenters agree with ASAP's core conclusion that a CMRS carrier's NXX code associated with a rate center in a wireline local calling area should be entitled to equal treatment, for call rating and local dialing purposes, with NXX codes assigned to ILECs and CLECs. The same should be true for mandatory ELCS areas, such as the San Marcos/Kyle/Fentress/Lockhardt ELCS in Texas, and for mandatory Extended Area Service (EAS) areas, as they are often called in other states.

The PUC Order is premised on using the location of a paging carrier's terminal to determine whether a call is "local" or "toll," while the LEC industry itself compares the rate centers associated with the calling and called NXXs to make the same determination for its own traffic. This is precisely the same dichotomy in analysis that "befuddled" the United States Court of Ap-

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<sup>7</sup> Section 51.100(b) of the rules, 47 C.F.R. §51.100(b) states that an interconnected telecommunications carrier (which includes a CMRS carrier) is entitled to "offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well."

peals for the District of Columbia Circuit in the *Mountain Communications* case and resulted in the Court declaring that decision arbitrary and capricious.<sup>8</sup> Accordingly, the Commission should take this opportunity to state that ILECs and CLECs must use the same analysis they use for wireline-to-wireline calls, *i.e.*, comparing the rate centers associated with the calling and called NXX codes, to determine whether a call to a CMRS NXX code is “local” or “toll”. Allowing more favorable treatment for wireline-to-wireline calls than calls to CMRS providers would be discriminatory, in violation of 47 U.S.C. §§ 202(a) and 251 (c)(2). As the FCC stated in the *Local Competition Order*, under Sections 202(a) and 251(c)(2) of the Act, ILECs must provide interconnection to other telecommunications carriers, including CMRS carriers, on nondiscriminatory rates, terms and conditions.<sup>9</sup> Said the Commission: “[I]ncumbent LECs must not discriminate against parties based on the identity of the carrier (*i.e.*, whether the carrier is a CMRS provider, CAP or competitive LEC).”<sup>10</sup> Establishing that central principle of nondiscriminatory interconnection will, in the view of the Joint Paging Commenters, afford ASAP Paging the relief it requires to vindicate its rights under the Communications Act in its controversy with CenturyTel.

Respectfully submitted,

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<sup>8</sup> *Mountain Communications, Inc. v. FCC*, 355 F.3d 644, 646-649 (DC Cir. 2004).

<sup>9</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 15499, ¶¶ 217-218 (1996) (subsequent history omitted).

<sup>10</sup> *Id.* at ¶ 218.