

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**In the Matter of** )  
**Developing a Unified** )  
**Intercarrier Compensation Regime** ) **CC Docket No. 01-92**

**In the Matter of ASAP Paging, Inc.** )  
**Petition for Preemption of Public Utility** )  
**Commission of Texas Concerning Retail** ) **WC Docket 04-6**  
**Rating of Local Calls to CMRS** )  
**Providers** )

**COMMENTS OF ASAP PAGING INC.**

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NOW COMES ASAP PAGING, INC. (“ASAP”), though its counsel, and submits these relatively brief Comments in response to the Further Notice of Proposed Rulemaking (“FNPRM”) in Docket 01-92. ASAP’s Comments will be mostly related to the pending and separate proceeding initiated by ASAP in WC Docket 04-6,<sup>1</sup> so ASAP has included that proceeding in the caption above and will simultaneously file in that case as well.

**1. ASAP requests a decision under the current rules in Docket 04-6 without holding it hostage to prospective intercarrier compensation reform.**

Docket 04-6 requests a ruling on the current rules. While the issues in that case may provide some guidance and insight into how the rules should be amended on a prospective basis, the request in Docket 04-6 should be expeditiously resolved by interpretation of the rules as they exist today.<sup>2</sup> ASAP filed the request for preemption in

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<sup>1</sup> The *FNPRM* mentions Docket 04-6 in notes 401-403 and seeks comment on the issues raised in Docket 04-6.

<sup>2</sup> Then Chairman Powell and Commissioner Abernathy each separately indicated disappointment that the *ASAP* case (as well as the *Sprint Declaratory Ruling Sprint Petition for Declaratory Ruling*

December of 2003.<sup>3</sup> To date, CenturyTel still refuses to honor ASAP's rate center assignments and still requires CenturyTel local customers to dial 1+ and pay toll to reach ASAP's customers that have numbers associated with the extended local calling area that includes San Marcos, Texas. CenturyTel continues to insist that ASAP must (1) locate a POI within CenturyTel's franchised local calling area AND (2) "negotiate" a § 252 interconnection agreement with CenturyTel before it will treat ASAP's local numbers as local numbers.

**2. The Commission has in fact already answered the question in the context of porting.**

As it pertains to porting, this Commission has already ruled that LECs cannot require CMRS carriers to have an interconnection agreement or a POI in the local calling area before they honor a CMRS carrier's rate center associations.<sup>4</sup> Therefore if ASAP were to use a ported number to serve its customers in an extended local calling area

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*Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92 (2002) and *@ Communications Petition for Declaratory Ruling*, CC Docket No. 02-4 (2002) have not been disposed. The *FNPRM* indicates in note 297 that the decisions in the *Sprint Petition for Declaratory Ruling* and the *@ Communications Petition for Declaratory Ruling* will clarify the application of current rules. The Commission should also expeditiously resolve Docket 04-6 based on current rules.

<sup>3</sup> CenturyTel performed the translations in its local switch to require 1+ in April of 2001. This controversy has therefore existed for over 4 years. Small businesses like ASAP simply cannot survive such extraordinary delay and expense when it comes to the lifeblood of their business.

<sup>4</sup> *Central Texas Telephone Cooperative, Inc. v. FCC*, No. 03-1405, \_\_\_ F.3d \_\_\_ (D.C.Cir., March 11, 2005), reviewing Memorandum Opinion and Order, *In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireless-Wireless Porting Issues* CC Docket No. 95-116, FCC 03-237 (Rel. Oct. 2003) ["...the relevant location is not – as petitioners argue – the location of the switch or point of interconnection."]; *USTA and CenturyTel v. FCC*, No. 03-1414 (D.C.Cir. March 11, 2005), ["...in short the order requires wireline carriers to port telephone numbers without regard to the physical location of the subscriber, the equipment, or the carrier..."] The FCC emphasized in its briefing to the DC Circuit that the ILEC has the duty under existing rules to cover the cost of any transport out of its area to the Point of Interconnection of the CMRS carrier. *See*, Brief of Respondent Federal Communications Commission, *United States Telecom Ass'n, et al v. Federal Communications Commission*, Nos. 03-1414; 03-1443 (July 9, 2004) at pages 32-33 ["Rural ILECs have [ ] always been required to deliver traffic to other carriers through direct or indirect interconnection – even when a wireless carrier's switch is not located in the rural ILEC's rate center."]

served in whole or in part by CenturyTel, CenturyTel could not require 1+ dialing and the state could not authorize or require them to do so because of the FCC's porting rules.

Ported numbers retain their original retail rating,<sup>5</sup> so if CenturyTel honored extended local calling when it (or another ILEC in the extended local calling area) held the number, then CenturyTel is clearly required by the FCC's rules to continue to retail rate as local after the number is ported. In the same vein, CenturyTel could not require establishment of a POI or any other kind of presence in the rate center.<sup>6</sup> It would be quite incongruous to conclude there are different rules for retail rating for ported numbers and non-ported numbers. CenturyTel must honor rate center assignments of ported numbers, but appears to assert that if the number is not ported it can ignore the rate center assignment unless and until ASAP establishes a POI in the extended local calling area and "negotiates" a § 252 agreement. This Commission, however, indicated that the treatment should be the same "as if the wireless carrier had assigned the customer a new number rated to that rate center."<sup>7</sup> Clearly this Commission expects both ported numbers

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<sup>5</sup> See, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, *In the Matter of Telephone Number Portability CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, ¶ 22, CC Docket 95-116, FCC 03-284 (Nov. 10, 2003) ("*Wireline-Wireless Portability Order*") ["We conclude that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port."]

<sup>6</sup> *Central Texas Telephone Cooperative, Inc. v. FCC*, No. 03-1405, \_\_\_ F.3d \_\_\_ (D.C.Cir., March 11, 2005), reviewing Memorandum Opinion and Order, *In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireless-Wireless Porting Issues* CC Docket No. 95-116, FCC 03-237 (Rel. Oct. 2003). ["...the relevant location is not – as petitioners argue – the location of the switch or point of interconnection."]; *USTA and CenturyTel v. FCC*, No. 03-1414 (D.C.Cir. March 11, 2005), ["...in short the order requires wireline carriers to port telephone numbers without regard to the physical location of the subscriber, the equipment, or the carrier..."]

<sup>7</sup> *Wireline-Wireless Portability Order* ¶ 28 ["We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same. As stated above, a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported

and non ported numbers to have the same retail rating – based on rate center assignments.<sup>8</sup>

**3. ASAP is not seeking preemption of state determinations of the geographic definition of “local calling areas.” ASAP sought preemption because the state discriminated between ILEC and CMRS numbers associated with that area.**

The states have traditionally determined the geographic area within which a call would be retail “local” as opposed to “toll.” ASAP has not sought preemption of any state decision on any geographic area. As the Commission has observed on many occasions, the industry has devised the “rate center” concept to implement state local calling area determinations. Each carrier will select the rate center that will “hold” a number. Then all calls within that rate center, or between that rate center and any other rate center in the state-determined local geographic area, are and must be retail rated “local” and not “toll.” In order for the current numbering system – upon which every LEC and CMRS carrier depends – to work, it must be the rule that every carrier (and every ILEC in particular) honors all other carriers’ rate center assignments for retail rating purposes. If an ILEC is allowed to discriminate between NXXs associated with rate centers in a state determined local calling area based on any number of potential criteria, then the entire numbering system will collapse and “local” numbers will have no meaning.

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number will continue to be rated in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.”]

<sup>8</sup> It bears repeating that ASAP’s Petition has nothing to do with intercarrier compensation; it entirely pertains to retail rating by ILECs. ASAP would reiterate, however, that under the current intercarrier compensation rules, it would be entitled to per minute compensation from CenturyTel for the entire universe of traffic between them, since it all either both originates and terminates in the same MTA or is ISP-bound. *See*, 47 C.F.R. § 51.701(b)(2); Order, *Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, FCC 04-241, WC Docket No. 03-171 (Rel. October 18, 2004) (“*Core*”) [ILECs must pay compensation to all telecommunications carriers for ISP-bound traffic]. ASAP has not, however, ever sought such compensation and would be more than satisfied if the ILECs would merely not impose toll on calls to ASAP’s “local” numbers.

This is not just a “CMRS” problem. CLECs are beginning to face hostility from ILECs if the CLEC supports (on a wholesale basis) IP-based voice service providers such as Vonage or even cable companies like Time Warner and Comcast. ILECs have recently challenged the right of a CLEC to provide wholesale service to IP-based voice service providers and interconnect with the ILEC to exchange “local” calls.<sup>9</sup> Some ILECs are refusing to honor rate center assignments if the ILEC believes that some or all of the CLECs customers may not be “physically” within the local calling area at the time of the call.<sup>10</sup> This discrimination is based on numbering, not the state’s determination of which geographic areas should be “local” to each other. The state should retain that determination; this Commission, however, must retain and execute its power over the use of numbering to prohibit incumbent LECs from preventing competitive entry (especially in rural areas). If this Commission does not ensure that local numbers are in fact “local” then there will not be any “local” competition.

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<sup>9</sup> For example in Texas, Brazos Telecommunications, Inc. has denied it has any duty to negotiate with Sprint Communications Company, is not subject to arbitration based on “rural” status, and that Sprint cannot interconnect in order to provide wholesale service to Time Warner. *See*, Brazos Telecommunications, Inc. Motion to Dismiss the Petition of Sprint Communications Company, L.P for Compulsory Arbitration, Texas PUC Docket 31038 (filed May 13, 2005). ASAP notes that Brazos uses the same law firm as CenturyTel and both assert they are rural carriers protected by § 251(f). ASAP invites either Brazos or CenturyTel to explain how its demand that ASAP “negotiate” a § 252 agreement to secure local calling can be squared with Brazos’ assertion that it has no duty to negotiate under § 252 and is not subject to arbitration if negotiations fail.

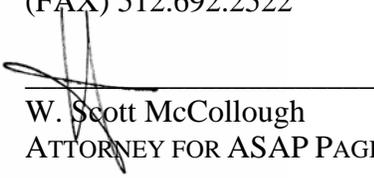
<sup>10</sup> ASAP is not addressing any regulatory requirements related to E911 and any need to determine physical location of a customer at the time of a call in order to protect safety. The ILECs are simply refusing to interconnect at all, or they attempt to impose toll when an ILEC customer calls a competitive carrier’s customer and use lack of physical presence in the local calling area as the justification. This simply cannot be allowed. The state can continue to define the geographic area, but this Commission must preempt the use of numbers to discriminate between carriers and customers once a number is associated with the local calling area.

**CONCLUSION**

ASAP respectfully requests that the Commission decide the issues in Docket 04-6 under the current rules and to do so in an expeditious manner. Simply stated, the cost and delay is killing ASAP. If any new rules flowing from Docket 01-92 affect the outcome of Docket 04-6, then they will apply on a prospective basis and ASAP will adjust to them along with the rest of the industry. ASAP can not continue to survive if its very existence continues to be threatened every day the FCC dawdles over the new rules that will govern prospectively in Docket 01-92.

Respectfully submitted,

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