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

In the Matter of	)	
	)	
	)	**CC Dkt. 01-92**
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF ALLIED NATIONAL PAGING ASSOCIATION
IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING
("NPRM")

I. BACKGROUND AND SUMMARY

For more than forty years, the Allied National Paging Association ("Allied") has represented the interests of FCC-licensed providers of interconnected paging services. Though the paging industry has to some extent been supplanted in consumer markets by cellular and other two-way technologies, there are approximately fourteen million pagers currently in service throughout the United States.[1] Among the primary users of the service include government agencies, emergency personnel (e.g., physicians, police and other first responders), and others who value the unique features of paging, which include superior coverage, greater building penetration, reliability, and low costs.

[1] The number of paging units in service country-wise declined from an estimated 40.8 million in 1997, to 14.5 million in 2004. Revenues have fallen proportionately. *See In the Matter of Assessment and Collection of Regulatory Fees [etc.],* Report and Order (June 24, 2004), Attachment C; see also paragraph 21 of the Report and Order in the same matter dated July 25, 2003.

For many years landline interests fought the inclusion of paging carriers among those entitled to the rights described in the Telecommunications Act of 1996 ("Act"). Various landmark cases affirmed those rights. For example:

- *Pacific Bell v. Cook Telecom, Inc.*, 197 F.3d 1236 (9th Cir. 1999) which held that the one-way nature of most paging services did not take away from the fact that such services are considered "telecommunications" for purposes of the Act.

- *TSR Wireless v. U S West Communications, Inc.*, 15 FCC Rcd 11166 (2000), aff'd 252 F.3d 11166 (D.C. Cir. 2000), which held that the facilities cost sharing rules embodied by 47 C.F.R. Section 51.703(b) and 51.709(b) applied to the facilities used to link paging switches with landline switches, regardless of whether or not there was a formal agreement between the carriers under Section 251-52 of the Act.

- *Mountain Communications Inc. v. Federal Communications Commission*, 355 F.3d 644 (D.C. Cir. 2003), which held that an ILEC's obligations to pay for facilities used to carry ILEC-originated traffic applied even where the facilities in question extended beyond the local calling area of the of the originating party.

The paging industry has an obvious interest in retaining the rights it has fought for over the past eight years. At the same time, the industry recognizes the need to simplify and clarify certain basic principles. Among these are:

1. **Rating and Routing**: Paging carriers have the same right as other licensees to numbers that are rated to the areas that the carriers serve and to their customers' community of interest. Like other licensees, paging providers often find that network efficiency requires that calls be routed to different locations than the rate point. Nonetheless, some ILECs refuse to do this and suggest that interconnecting carriers must maintain physical connections to each landline rate center to which they rate their numbers.

2. **Single POI:** Like two-way CMRS providers, paging carriers desire the option to interconnect with landline carriers at a single point of interconnection ("POIs") in each MTA or LATA where it is technically feasible to do so. There should be no proliferation of POIs unless they are demonstrably more efficient from the vantage point of all parties.

3. **MTA Rule:** Again like the two-way CMRS providers, paging carriers oppose re-defining telecommunications traffic in a way which would require additional, needless network construction, or which would have the effect of expanding the current access charge regime.

4. **Bill and Keep**: Allied believes that a mandatory "bill and keep" rule would likely run afoul of the explicit language of the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act") and would needlessly cause great disruption to the competitive market by the courts. However, Allied believes that the Act would allow "bill and keep" to be a preferred default in the many situations where formal interconnection agreements have not been approved.

5. **Universal Service**: Allied opposes independent local exchange carrier demands for "revenue neutrality." To the extent the Commission is convinced that some form of universal support should continue, Allied recognizes that all carriers (including VOIP providers) should contribute, in proportion to their revenues, to support the verified costs of providing universal service. Any system that requires contributions to be based on numbers in service, or "connections" to the PSTN, rather than on actual revenues would be discriminatory. In addition, as a practical matter, it would penalize, and quite possibly destroy industry segments that provide low-priced services to a highly competitive market.

II. COMMENTS

1. Rating and Routing

Paging customers, like other telecommunications customers, desire a telephone number that is identified with their community of interest. Historically, paging carriers either obtain so-called Type 1 numbers from each ILEC rate center in the paging service area, or they obtain number blocks that are routed (or "homed") to an ILEC tandem, but rated to individual end offices. Paging practice is entirely consistent with that of two-way CMRS providers, and is rooted in the obvious fact that in order to compete, carriers must be able to give their customers numbers that will be "local" for most of the people calling them.

The current, industry-wide practice for rating and routing telecommunications was described in the Commission's *Virginia Arbitration Order,* 17 F.C.C.R. 27039 (2002), which explains (at paragraph 301) that ILECs rate calls by reference to the rate centers assigned to the NPA/NXXs of the calling and called parties.[2] Some ILECs complain that the airline mileage between rate centers is not necessarily the same as the actual distance over which the call must be transported. But this is no anomaly. It is inherent in the hierarchical nature of traditional landline switching (i.e., a call between customers served by different end offices will often be routed through a remote tandem office). It is also the natural outcome of the congressional decision in 1996 to open local markets to competition. When the customer of one carrier calls the customer of another carrier, the call must first be delivered to the terminating carrier's network before being completed at the called party's location. In some cases this means that the actual distance over which the originating carrier transports a call will be less than the distance for which it can charge the calling customer. In other cases the transport distance may be greater than the rating distance.

As indicated in the NPRM, various ILECs have sought to revise current rating and routing practices in a way that would penalize competing carriers for maintaining multiple rate centers within a LATA. In the *Virginia* arbitration, Verizon sought to impose a twenty-five mile limit on the distance over which it would transport its own calls without an additional charge to terminating carriers. In *Mountain Communications*, supra, U S West had imposed a twenty-mile

---

[2] See also NPRM at paragraph 141.

limit on the distance over which it would transport U S West-originated calls. In still other situations, ILECs have simply refused to program CMRS codes as "local" unless the CMRS provider – at its own expense – establishes direct connections to each local rate center.[3]

Competing carriers must be left free to rate telephone numbers to the rate centers established by the ILEC within its own service area. They also have a right to dialing parity under the Act. As acknowledged by this Commission, access to locally rated and locally dialable numbers is essential to competition. *First Numbering Resource Optimization Order, 15 F.C.C.R. 7574, 7577, note 174 (2000) and Numbering Resource Optimization Notice of Proposed Rulemaking, 14 F.C.C.R. 10322, 10371 (1999).* Potential abuses cited by the ILECs are easily controlled.[4] For one thing, it is the ILECs themselves which dictate the configuration of their own rate centers. Moreover, it is the originating ILEC which remains free to establish whatever type of connection it believes is most efficient for the carriage of its own calls to terminating CMRS providers provided it does so in a way that maintains the principles of dialing parity and non-discrimination. Finally, this commission and the state commissions have direct control over the rare situations where transport distances are truly excessive.

---

[3] See NPRM at paragraph 142, which suggests that originating LECs may be able to convert even local, seven-digit calls, to ten-digit toll calls. At paragraph 143, the NPRM asks if the Commission has authority to pre-empt state jurisdiction over the rating of intrastate calls. Allied believes that the issue should not arise provided the Commission's order is limited to a requirement (1) that calls to CMRS numbers be rated and dialed on a basis that is no less favorable than that applied to land-to-land calls, and (2) that intra MTA calls to CMRS end users be subject to the provisions of 251(b)(5) rather than to the previous access regime. Allied also notes paragraph 1043 of the Local Competition Order, which declared that intra-MTA CMRS calls should not be subject to interstate <u>or</u> intrastate access charges.

[4] Allied does not defend or condone the practice of rating numbers to remote rate centers which are not served by the competing carrier, and which are not in the community of interest of the called party. Nor does it defend the use of so-called "virtual" rate centers that have the effect of disguising interexchange traffic as local. It is to be noted that while the ILECs have alleged these kinds of abuses by certain CLECs, they have not credibly charged wireless carriers with such conduct.

2. Single POI

Current law allows "direct or indirect" interconnection "at any technically feasible point" on a carrier's network. The costs of interconnect facilities are borne by the party which uses such facilities to carry its own traffic and where there is shared use, facilities costs are shared.[5]

Paging carriers, though they seldom originate calls, nonetheless pay (under the status quo) for a substantial part of the one-way facilities used by the ILECs to deliver land to pager traffic. This is because these facilities are often used to carry transited traffic from third party carriers. Despite the general "originating party pays" standard established by the Act, the transiting party does not generally pay for transport beyond the tandem office to which it connects. As a result, transport from the tandem to the paging switch must be borne by the paging carrier (the situation is the same for two-way CMRS providers).[6] This departure from the "originating party pays" rule has resulted in numerous disputes over shared facilities costs, transit percentages, and the nature of the transit charges imposed by the larger ILECs on smaller ILECs and CLECs and CMRS carriers.

Another anomaly in current practice is that, notwithstanding the commission's declarations allowing a terminating carrier to designate a single POI in each LATA, many ILECs insist that CMRS providers (including paging carriers) connect at multiple tandems (if there is more than one tandem in the LATA), or end offices (if traffic levels are high).

---

[5] Act, Sections 251(a)(1) and 251(c)(2)(B); 47 C.F.R. Sections 51.703 and 51.709.

[6] In *Mountain Communications, Inc., supra* at 649 the court asked why the Commission did not simply require the originating carrier to pay all transit related costs. The question was not really addressed in that case since Qwest indicated that it would provide the paging carrier with sufficient billing information to recover the costs from the originating carrier. For carriers other than Mountain Communications, however, the problem remains: despite the "originating party pays" rule, paging carriers rather than originating carriers must shoulder substantial transport costs in the context of transited traffic.

Finally, there is, as noted above, the fact that smaller ILECs will simply not honor CMRS NPA/NXXs as "local" unless a "local" end office connection is established at the terminating carrier's expense. The result is unneeded, multiple POIs.

The ICF proposal, as modified by CTIA, proposes a default rule under which each terminating carrier would designate one or more POIs in each LATA where it does business. Each carrier would pay all costs on its side of the POI.

The CTIA version of ICF has notable advantages:

- It is consistent with the Act in that the originating party would remain responsible for transporting its own calls to the POI. The original ICF version, which would have relieved rural carriers from this statutorily imposed obligation, is both discriminatory and contrary to Section 252(d)(2)(A) of the Act.

- The ICF/CTIA proposals would eliminate many of the current squabbles over transited traffic, and over the directionality of two-way traffic. As indicated by the Court in *Mountain Communications*, supra at 649, the originating party which elects to transit its calls to the terminating carrier should not thereby be relieved of its fundamental responsibility to pay not only tandem switching charges but also transport charges to the designated POI. In the transiting context under the status quo, the originating party pays switching charges imposed by the tandem service provider, but effectively shifts much of the transport obligation to the terminating carrier. Under the CTIA/ICF proposal, the originating party would pay all costs of getting its calls to the POI, irrespective of whether delivery is direct or indirect.[7]

- The proposal is technically and economically efficient in that it does not require wireless carriers unnecessarily to duplicate wireline network architecture. Absent severe traffic anomalies, which should be left to individual negotiations, a single POI in each network is the most efficient way of delivering/receiving exchanged calls.

3. <u>MTA Rule</u>

The NPRM at paragraphs 134 *et seq*. addresses the MTA rule (47 C.F.R. Section 51.701(a)). The rule is needed under the status quo in order to distinguish between so-called

---

[7] Allied agrees with the Commission's comments to the effect that transit services are essential to indirect interconnection, which is, as noted, mandated by the Act. See NPRM at paragraph 125. Allied also agrees that indirect interconnection is often the only practical way to complete calls where traffic volumes are insufficient to support a direct link. *Id*. at paragraph 126. Given these two facts, the Commission would seem to have inherent power to require ILECs to provide transiting services at rates that are neither discriminatory nor anticompetitive.

Section 251(b)(5) calls, which are subject to the reciprocal compensation regime established by the Act, and other calls, which remain subject to the access regime.[8]

At the time of the *Local Competition Order,* it was anticipated that the access regime would be speedily reformed in a way that would reduce access charges to forward-looking costs. With access and termination compensation rates at the same levels, there would be no further need for an MTA rule.

The expected reform to the access regime has not come about. Until it does, the MTA Rule continues to be necessary. Indeed the rule should be clarified, so that smaller ILECs are no longer permitted (under the guise of state equal access rules) to collect access charges for intra-MTA calls.

There have been suggestions (NPRM paragraph 135) that the scope of Section 251(b)(5) traffic should actually be *reduced* to include only calls that originate and terminate within the landline local calling area. Such a backwards step should be categorically rejected since, among other things, it would actually *increase* the disguised subsidies being paid to the smaller LECs under the status quo, and would require dramatically expensive changes in current interconnection architecture.

4. <u>Bill and Keep</u>

Allied acknowledges that bill and keep is appropriate under particular circumstances set forth in the Act.[9] However, there is no authority for imposing a mandatory bill and keep rule on all carriers and in all situations and such a rule would most likely run counter to the explicit provisions of the Act. Among other things, the Act establishes an “originating carrier pays” rule and an elaborate procedure for negotiating, arbitrating and litigating the rates to be paid. Any

[8] See *Local Competition Order, 11 F.C.C.R. 15499, paragraphs 1035 et seq. (1996).*

[9] Section 252d(2)(B)(1)

attempt to substitute a different rule would most likely require a congressional rewrite of the existing Act or otherwise likely result in drawn out litigation and the unnecessary delay of badly needed reforms.

Notwithstanding its earlier comments on a mandatory bill and keep rule, Allied endorses a "bill and keep" proposal as a default to be applied in the many cases where traffic is in rough balance, or where total traffic is not sufficient to justify the expense of record keeping, billing and collection. The Commission should note that while paging carriers are for the most part terminating carriers with a right to compensation, most paging carriers collect such compensation from only the largest ILECs, and that in other cases, calls are currently being accepted on a *de facto* bill and keep basis, either because no formal agreement has been reached or because the paging carriers have agreed to exchange their right to termination compensation for other concessions on interconnection architecture.

5. <u>Universal Service</u>

The *Local Competition Order,* at paragraphs 6-10, acknowledged that interconnection reform and the move to a competitive market, require universal service and access charge reforms. For the most part the latter two reforms have yet to occur.

The basic principles should be obvious.

- First, no incumbent carrier has a right to be made whole from costs occasioned by competition. Congress knew when it passed the Act – and provided for competition – that the incumbents' world would change (perhaps for the better and perhaps for the worse), yet it provided no guarantee of "revenue neutrality."

- Second, support mechanisms must be separated from the rates charged between carriers for essential interconnect facilities and for terminating each other's traffic. The current system, where intra-MTA (or intra-exchange) rates are based on forward-looking costs while inter-MTA (or inter-exchange) rates include subsidy elements, invites uneconomic arbitrage both by the ILECs and by their competitors.

- Third, it is not at all clear that ending current supports would necessarily deprive significant parts of the population of essential services. The experiment has simply never been tried. Instead, direct and indirect subsidies are provided to incumbent landline LECs. These subsidies are increasingly funded by wireless carriers that are not eligible (at least in many states) for equal treatment.

- Fourth, if the Commission decides that some level of service support should continue, the contribution base should include all carriers which provide the functional equivalent of interconnected service. This would include VOIP providers and cable telephony.

- Fifth, any universal service support mechanism should be technologically and competitively neutral. Restricting eligibility to incumbent LECs is not, and would not, meet that standard. Indeed, such approaches would kill an industry like paging, which provides a very low-priced service and where per-number revenues are a tiny fraction of those in other industry segments.

Finally Allied must specifically address proposals that would measure universal service support obligations by the quantity of telephone numbers being used by a carrier, or the number of "connections" to the PSTN. Section 254(d) of the Act requires support mechanisms to be "equitable and non-discriminatory". It also requires that contributions be restricted to interstate services. In addition, Section 254(d) allows the Commission to define situations where a carrier's interstate operations are *de minimis* and where no contribution should be required. Many proposals to revamp the methodology for collecting universal service charges, contravene each of those requirements.[10] Indeed, as previously noted by Allied and other paging interests, some approaches would kill this industry, which provides a very low-priced service and where per-number revenues are a tiny fraction of those in other industry segments.[11]

III. CONCLUSION

Many commenters in this proceeding will urge the Commission to ignore the instructions of Congress. Some will ask the Commission to effectively amend the Act by requiring multiple POIs, or by mandating bill and keep. Others will argue for "revenue neutrality", by which they mean immunity from the pro-competitive provisions of the Act.

Allied, in contrast, believes that true reform is achievable within the framework of existing law. It urges the Commission to take on the job.

Respectfully submitted,

____

David M. Wilson
Wilson & Bloomfield LLP
1901 Harrison Street, Suite 1630
Oakland, CA 94612
Tel: 510.625.8250
Fax: 510.625.8253
Attorneys for Allied National Paging Association

[10] In its Comments in the *Regulatory Fee* proceeding Allied also pointed out that most paging carriers have no way of determining the percentage of interstate land to pager calls. This is because paging carriers do not receive ANI or other forms of caller identification from originating ILECs. The *de minimis* provision of Section 254(d) should be applied to relieve smaller paging carriers of this obligation where it can be seen with reasonable certainty that total interstate revenues are insignificant.

[11] As noted by the Commission itself some two years ago, "there has been a significant decline in CMRS messaging units….commenters have persuasively argued that this decline in subscribership may not be just a temporary phenomenon but a more lasting one, and because the message industry is spectrum limited, geographically localized and very cost sensitive, it is very difficult for this industry to pass on increases in cost to its customers." *In the matter of Assessment and Collection of regulatory Fees [etc.],* at paragraph 21 of the Report and Order dated July 25, 2003.