

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

In the Matter of)
ASAP Paging, Inc.)
Petition for Preemption of)
Public Utility Commission of Texas)
Concerning Retail Rating of Local Calls)
to CMRS Carriers)

WC Docket 04-6

**WRITTEN EX PARTE REPLY TO CENTURYTEL
NOTICE OF STATE COURT DECISION**

NOW COMES ASAP PAGING, INC. (“ASAP” or “Petitioner”) and submits this Written *Ex Parte* Reply to the Notice of State Court Decision submitted by Century Telephone of San Marcos, Inc. CenturyTel’s notice was filed on May 9, 2006.

The Petition for Preemption was filed on December 22, 2003. The comment cycle completed over two years ago. This case involves an interpretation of the current rules, so there is no reason to await the Commission’s resolution of all the pending interconnection and compensation rulemaking proceedings that are supposed to yield a prospective Grand Unifying Theory For All Things Communicative. Delay only serves to encourage the ILECs, and in particular the rural ILECs, to deny reasonable interconnection and to act anticompetitively by imposing toll charges on their own customers unless and until a competitive carrier yields to the RLEC’s unreasonable demand for direct interconnection in their areas AND payment of access charges for any traffic they arbitrarily deem to not be “local” based on inconsistent and impossible criteria.

The RLECs have been successful in convincing some states to go along with their scheme. Texas is one of those states, and the Texas PUC’s ruling that local numbers assigned to CMRS carriers are not in fact local numbers is what precipitated this proceeding. ASAP also appealed the Texas PUC ruling through the state courts, and as indicated by CenturyTel, the

intermediate state court recently affirmed. ASAP has, consistent with state practice, filed a motion for rehearing to the state court. A copy of the motion for rehearing is attached. The case will go on, as will others all over the country, until the day comes that this Commission provides the clarification and application of its current rules that is so overdue and so desperately needed.

ASAP respectfully requests that the Commission read the state court opinion and ask itself if the conclusions are consistent with the FCC's reading of the Communications Act and the FCC's rules and the Commission's prior interpretations of the Act and rules. The state court opinion upholds the Texas PUC's findings that:

1. Texas Extended Local Calling Service is a "special arrangement" under state law with special and different rules than those that apply to interconnection and call rating for "traditional local service." The Texas PUC and the intermediate court have now contradicted the FCC's consistently stated understanding – based on representations by the Texas PUC and Texas ILECs – that Texas ELCS is "traditional local service." See Memorandum Opinion and Order, *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, FCC 97-244, CC Docket No. 96-159, File Nos. NDS-LM-97-2 through NDS-LM-97-25, note 4 and ¶¶ 14, 18, 12 FCC Rcd 10646, 1997 FCC LEXIS 3725, 8 Comm. Reg. (P & F) 1150 (rel. Jul. 1997); Memorandum Opinion and Order, *In the Matter of Request by Southwestern Bell Telephone, L.P. d/b/a SBC Texas for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service Between Certain Exchanges in the State of Texas*, ¶¶ 3, 5, WC Docket No. 05-2, DA 05-1012, 20 FCC Rcd 7797, 2005 FCC LEXIS 2414 (rel. Apr. 2005). Just last week the FCC – again in reliance on the representation of the state and the telecommunications industry that Texas ELCS is "traditional local service" instead of a "special arrangement" – granted yet another ELCS petition. Memorandum Opinion and Order, *Request by AT&T Texas for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) Between the Talco and Paris Exchanges in the State of Texas*, Docket No. 06-69, DA 06-1030 (rel. May 05, 2006). The Commission must make it clear that – at least for federal purposes – Texas ELCS must be treated the same as traditional local service when it comes to interconnection and call rating.

2. In Texas, an LEC can refuse to honor a competitive carrier's rate center associations and thereby impose toll charges – notwithstanding the clear terms of 47 C.F.R. § 51.207 – unless and until the competitive carrier establishes direct, rather than indirect, interconnection and pays the ILEC for ILEC originated calls the ILEC deems to not be local based on the ILEC's unilateral determination of where the call "terminates."

3. In Texas, ILECs can ignore rate center associations and retail rate calls based on the ILEC's unilateral decision as to where they wish to say the call "terminates." One such location can be the competing carrier's switch even though competing carriers typically use a switch to serve very large geographic areas.

4. In Texas, the retail rating and routing for ported numbers can be different than retail rating and routing applicable to when the competitive carrier assigns one of its own numbers, notwithstanding what was said at ¶ 28 of the 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*, ¶ 28, CC Docket No. 95-116, FCC 03-284 18 FCC Rcd 23697 (rel. November 10, 2003).

5. In Texas, PSTN connectivity to Internet Service Providers is an *intrastate* service and providers are subject to state regulation, including cease and desist orders, notwithstanding the Commission's rulings in a host of proceedings that service to ISPs is jurisdictionally *interstate*. Memorandum Opinion and Order, *MTS and WATS Market Structure*, CC Docket No. 78-72, , 97 FCC 2d 682, 711 (1983); Order, *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, 2 FCC Rcd 4305, 4306 (1987); *Access Charge Reform Order*, 12 FCC Rcd at 16131-32; Order, *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, 3 FCC Rcd 2631, 2635 n.8, 2637 n.53 (1988); *Filing and Review of Open Network Architecture Plans*, 4 FCC Rcd 1, 141 (1988), *aff'd sub nom. People of State of Cal. v. FCC*, 3 F.3d 1505 (9th Cir. 1993). *MTS/WATS Market Structure Order*, 97 FCC 2d at 715, Memorandum Opinion and Order, *In the Matter of Vonage Holdings Corporation for Declaratory Ruling on Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267 (rel. Nov. 2004); *see also* 47 C.F.R. § 64.702(a). Service to ISPs is an interstate service, and state commissions cannot exercise regulatory jurisdiction over jurisdictionally interstate services and those that provide them. The FCC should act to protect its jurisdiction over jurisdictionally interstate communications. It has promptly acted when the ILECs have complained about state rulings. Small companies even more desperately need and deserve similar action.

ASAP respectfully requests that the Commission resolve this matter. Justice delayed is justice denied. The long time that has passed since this case was started has emboldened the ILECs, and their refusals to follow the rules are increasingly harming competition in rural areas. Most of the competitive carriers in rural areas, especially those in the paging business, are small companies that cannot withstand the cost of never-ending litigation and the RLEC's withering assault on long-standing basic rules. ASAP's petition must be granted, and soon.

Respectfully Submitted,

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