

SBC Long Distance Application - Personal Communications Industry Association Comments

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C.

In the Matter of
Application by SBC Communications, Inc.,

Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc.
d/b/a
Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma
CC Docket No. 97-121

COMMENTS OF THE PAGING AND NARROWBAND PCS ALLIANCE OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Paging and Narrowband PCS Alliance of the Personal Communications Industry Association ("PCIA")(1) respectfully submits its comments on the application by SBC Communications and its affiliates to provide in-region, interLATA services in Oklahoma. PCIA urges the Commission to deny the application on the ground that it is not in the public interest to permit SBC into the long distance market until such time as it complies fully with all its interconnection obligations, including its obligations toward paging companies and other providers of commercial mobile radio services ("CMRS"). At this time, SBC and its affiliates continue to charge PCIA members who provide paging services(2) in Oklahoma for the privilege of carrying SBC-originated traffic. Indeed, SBC has threatened to "cease provision of facilities" to paging carriers if these unlawful charges are not paid. These practices violate the Commission's long-standing policy of mutual compensation between local exchange carriers ("LECs") and CMRS providers, as well as the specific provisions of the Telecommunications Act of 1996 and the regulations adopted by the Commission both before and after that Act.

SBC Is Not Complying with Its Interconnection Obligations

The Commission has long recognized that both wireline and mobile service providers are carriers, and that each should be obligated to interconnect for the purpose of terminating the other's traffic.(3) Ten years ago, the Commission expressly stated that wireline/cellular interconnection should be based on the principle of "mutual compensation" -- that is, that mobile service providers and LECs "are equally entitled to just and reasonable compensation for their provision of access."(4) The Commission adopted these policies pursuant to section 201 of the Communications Act of 1934.(5)

When Congress amended the Communications Act in 1993 to create a comprehensive federal framework for commercial mobile radio services,(6) the Commission reaffirmed its reciprocal compensation policies and extended them to all CMRS providers.(7) The Commission adopted a new regulation on LEC-CMRS interconnection that expressly requires "mutual compensation."(8) LECs must pay CMRS providers "reasonable compensation . . . in connection with terminating traffic that originates on facilities of the local exchange carrier," and CMRS providers must pay for CMRS-originated traffic.(9) By requiring LECs to compensate CMRS

providers for terminating LEC-originated traffic (and vice versa), the regulation logically prohibits any LEC from collecting from a CMRS provider for costs associated with the transport and termination of LEC-originated traffic. The Commission has confirmed that LEC attempts to charge CMRS providers for terminating LEC-originated traffic violate section 20.11 of the Commission's rules.(10)

These same obligations were independently imposed by the Telecommunications Act of 1996.(11) Section 251(b)(5) of the Act requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."(12) Paging providers, like all other CMRS providers, offer "telecommunications."(13) Thus, the reciprocal compensation obligation of section 251(b)(5) -- which forbids LEC charges for LEC-originated traffic -- applies to paging providers as well as other CMRS providers. The Commission made this explicit in its Local Interconnection Order,(14) where it stated, "All CMRS providers offer telecommunications. Accordingly, LECs are obligated pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation"(15) The Commission also noted once again that section 251(b)(5), by requiring the LEC to compensate the CMRS provider for terminating LEC-originated traffic, necessarily prohibits any arrangement by which the LEC charges the CMRS provider for terminating LEC-originated traffic.(16)

The FCC codified its interpretation in section 51.703(b) of its rules, which states as plainly as possible, "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."(17) This regulation was briefly stayed by the U.S. Court of Appeals for the Eighth Circuit, but that stay was lifted and the regulation is in force today.(18) Indeed, several incumbent LECs agree with PCIA that section 51.703(b) forbids all LEC charges for LEC-originated traffic, including the costs of facilities used for the transport and termination of that traffic.(19)

Despite the clear language of section 51.703(b), despite the Commission's interpretation of section 20.11, and despite the Commission's many previous efforts to facilitate fair interconnection between LECs and paging providers for at least ten years prior to the passage of the Telecom Act of 1996 -- despite all of this -- SBC continues to charge paging providers in Oklahoma for the facilities used to transport and terminate SBC-originated traffic.(20) In fact, SBC has recently threatened to "cease provision of facilities" to paging carriers unless they pay these unlawful charges. In an effort to resolve this dispute, PCIA members provided SBC with a copy of a letter from Common Carrier Bureau Chief Regina M. Keeney,(21) confirming that section 51.703 prohibits LEC charges for termination of LEC-originated traffic. So far, however, SBC has refused to conform its billing practices to the Commission's rules.(22)

SBC's Application Under Section 271 Cannot Be Granted

While SBC Is Violating Its Interconnection Obligations.

The Telecommunications Act of 1996 amended the Communications Act of 1934 to add a new

section 271 governing Bell Operating Company entry into interLATA services. Section 271 permitted the BOCs to provide out-of-region, interLATA services immediately, but required them to apply to the FCC for authority to provide in-region, interLATA services. Section 271 forbids the Commission from granting such an application unless it finds (1) that the applicant has satisfied section 271(c)(1) through either "Track A" or "Track B"; (2) that the applicant will comply with the structural safeguards of section 272 in the conduct of its in-region, interLATA business; and (3) that "the requested authorization is consistent with the public interest, convenience, and necessity." (23) Because SBC continues to violate its reciprocal compensation obligations toward paging providers by charging for the transport and termination of traffic originated on SBC's network, SBC's entry into in-region, interLATA services would not be consistent with the public interest, convenience, and necessity. (24)

Approval of the SBC application would be inconsistent with the public interest, necessity, and convenience for four reasons. First, the Commission has previously announced that swift implementation of reciprocal compensation for LEC-CMRS interconnection is essential to the public interest. Indeed, in a Notice of Proposed Rulemaking released less than a month before the Telecom Act was signed into law, the Commission stated, "Any significant delays in the resolution of issues related to LEC-CMRS interconnection compensation arrangements, combined with the possibility that LECs could use their market power to stymie the ability of CMRS providers to interconnect (and may have incentives to do so), could adversely affect the public interest." (25)

1. 1 PCIA is the international trade association that represents the interests of both commercial and private mobile radio service providers. PCIA's Federation of Councils includes the Paging and Narrowband PCS Alliance; the Broadband PCS Alliance; the Specialized Mobile Radio Alliance; the Site Owners and Managers Association; the Association of Wireless System Integrators; the Association of Communications Technicians; and the Private System Users Alliance.

2. 2 PCIA represents both traditional paging service providers and narrowband PCS licensees. As used in these comments, the term "paging" is intended to embrace narrowband PCS as well.

3. 3 Cellular Communications Systems, 86 F.C.C.2d 469, 496 (1981), recon., 89 F.C.C.2d 58 (1982).

4. 4 The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 F.C.C. Rcd. 2910, 2915 (1987), recon., 4 F.C.C. Rcd. 2369 (1989).

5. 5 47 U.S.C. § 201.

6. 6 47 U.S.C. § 332. Section 332 expanded the Commission's authority under section 201 of the Act to order interconnection requested by CMRS providers. 47 U.S.C. § 332(c)(1)(B).

7. 7 Implementation of Sections 3(n) and 332 of the Communications Act, 9 F.C.C. Rcd. 1411, 1497-1501 (1994).

8. 8 47 C.F.R. § 20.11(b), reprinted as originally adopted at 9 F.C.C. Rcd. 1411, 1520-21.

9. 9 Id.

10. 10 Local Interconnection Order, 11 F.C.C. Rcd. at 16044 ("we conclude that, in many cases, incumbent LECs . . . imposed charges for traffic originated on CMRS providers' networks, . . . in violation of section 20.11 of our rules"). While the Commission has invoked sections 251 and 252 of the Telecommunications Act of 1996 to promulgate new interconnection requirements in Part 51 of the Commission's rules (discussed below), the Commission retains its section 332 jurisdiction, Local Interconnection Order, 11 F.C.C. Rcd. at 16005, as exercised in section 20.11 of the Commission's rules.

11. 11 Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq.

12. 12 47 U.S.C. § 251(b)(5). Significantly, this is an obligation so fundamental that it is imposed on all LECs, not just incumbents. SBC, as an incumbent LEC, has the additional obligation "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill" its reciprocal compensation obligation. 47 U.S.C. § 251(c)(1).

13. 13 47 U.S.C. § 3(43) ("telecommunications" defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received").

14. 14 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 F.C.C. Rcd. 15499 (1996) ("Local Interconnection Order").

15. 15 Local Interconnection Order, 11 F.C.C. Rcd. at 15997 (emphasis added). See also *id.* at 16016.

16. 16 Local Interconnection Order, 11 F.C.C. Rcd. at 16016.

17. 17 47 C.F.R. § 51.703 (1996) (emphasis added).

18. 18 Iowa Utilities Bd. v. FCC, No. 96-3321 (8th Cir. Nov. 1, 1996). In addition, section 20.11 of the Commission's rules, which independently prohibits the LEC charges for LEC-originated traffic, was never stayed and continues in effect without regard to any stay of any Part 51 rule.

19. 19 Letters to this effect from other LECs have been shared with SBC. SBC's recent letter to the Chief of the Common Carrier Bureau argues that section 51.703 only covers "traffic-sensitive origination charges," while 51.709 (not yet in effect) covers the cost of facilities used for transport and termination. Letter from Paul E. Dorin to Regina Keeney (April 25, 1997). However, since all paging traffic is LEC-originated traffic at this time, the distinction between "traffic" costs and "facilities" costs is illusory insofar as paging services are concerned.

20. 20 SBC has imposed these charges on PageNet in Oklahoma.

21. 21 Letter from Regina M. Keeney to Cathleen Massey, Kathleen Abernathy, Mark Stachiw, and Judith St. Ledger-Roty (March 3, 1997).

22. 22 SBC's unlawful demands are documented in letters from SBC to PCIA members. True and correct copies of some letters illustrating SBC's demands are attached as Exhibit A. [These letters were not available electronically but are on file with the FCC.]

23. 23 47 U.S.C. § 271(d)(3).

24. 24 These Comments are confined to the public interest standard, but PCIA also notes that SBC attempts to satisfy section 271(c)(1) by way of both "Track A" and "Track B." See 47 U.S.C. § 271(c)(1)(A) & (B). The legal theory that would permit SBC to follow these two tracks simultaneously has been widely questioned, and the Commission will no doubt receive many comments on this aspect of the SBC application. To the dubious extent that Track B is available to SBC, PCIA notes that SBC's refusal to extend reciprocal compensation to paging providers violates item 13 of the "competitive checklist," which requires "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)." 47 U.S.C. § 271(c)(2)(B)(xiii).

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