



# PUBLIC NOTICE

Federal Communications Commission  
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DA 04-92

Released: January 20, 2004

**PLEADING CYCLE ESTABLISHED FOR PETITION OF ASAP PAGING, INC. FOR  
PREEMPTION OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING  
RETAIL RATING OF LOCAL CALLS TO CMRS CARRIERS**

**WC Docket No. 04-6**

**COMMENTS DUE: March 23, 2004**

**REPLY COMMENTS DUE: April 23, 2004**

On December 22, 2003, ASAP Paging, Inc. (ASAP) filed a petition requesting that the Commission preempt an order of the Public Utility Commission of Texas (Texas Commission), certain provisions of the Texas Public Utility Regulatory Act (PURA), and certain Texas Commission substantive rules.<sup>1</sup> ASAP states that, on April 1, 2002, CenturyTel of San Marcos, Inc. (CenturyTel), an incumbent LEC, changed its switch translations so that end-users attempting to dial ASAP customers were required to dial 1+ and assessed intraLATA toll charges by CenturyTel.<sup>2</sup> ASAP filed a complaint with the Texas Commission asking it to order CenturyTel to stop requiring its users to dial 1+ and pay toll charges in order to reach ASAP NXXs in rate centers that are “local” to the San Marcos rate center.<sup>3</sup>

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<sup>1</sup> See Petition of ASAP Paging, Inc. for Preemption of Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers, at 9 (filed Dec. 22, 2003) (ASAP Paging Petition). ASAP provides one-way CMRS services throughout central and south Texas, and connects to wireline carriers through SBC-Texas’ Greenwood and Homestead tandems. *Id.* at 10.

<sup>2</sup> *Id.* at 13. ASAP explains that it interconnects indirectly with CenturyTel through the SBC tandem. *Id.* at 10 & n.5.

<sup>3</sup> ASAP holds NXXs associated with the Kyle, Fentress, and Lockhardt rate centers in the state of Texas. *Id.* at 11. The Kyle, Fentress, Lockhardt, and San Marcos rate centers are all part of an extended local calling area created by the Texas Commission. *Id.* at 11 n.8.

The Texas Commission issued an order dated October 9, 2003, denying the relief requested by ASAP Paging.<sup>4</sup> According to the petition, the Texas Commission ruled that CenturyTel can require its end-users to dial 1+ and pay retail rated toll charges when they call a number that ASAP obtained from the North American Numbering Plan Administrator and associated with rate centers that are “local” to the San Marcos rate center.<sup>5</sup> The Texas Commission found that the physical location of the CMRS customer at the time of the call is determinative for retail rating purposes.<sup>6</sup> Because CMRS customers are mobile and their physical location cannot be readily determined for retail rating purposes, the Texas Commission decided to use ASAP’s switch site as a proxy for the customer’s physical location.<sup>7</sup> Given that ASAP’s switch was located, outside the local calling area that includes San Marcos, the Texas Commission found that CenturyTel could require 1+ dialing and impose toll charges for calls to ASAP’s customers.<sup>8</sup>

ASAP requests that this Commission preempt the Texas Commission order dated October 9, 2003 in PUC Docket No. 25673<sup>9</sup> because the order: (1) deprives ASAP and consumers of several rights related to CMRS that are guaranteed by federal law; (2) confuses the essential distinctions between retail rating and wholesale carrier compensation; (3) misconstrues the character of expanded local calling service (ELCS) and the duties of incumbent LECs servicing an ELCS area; and (4) errs in its conclusions concerning state regulatory authority over the service that ASAP provides to its Internet service provider customers.

ASAP also seeks preemption of certain provisions of the Texas Public Utility Regulatory Act<sup>10</sup> and Texas Commission substantive rules<sup>11</sup> that address the creation of ELCS because their application in the order cannot be reconciled with prevailing federal law.<sup>12</sup> ASAP requests that the Commission require the Texas Commission and CenturyTel to “honor federal law as it pertains to **retail rated** local calling to CMRS users with numbers that are ‘local’ to the landline

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<sup>4</sup> See *id.*, Ex. 1 (Complaint, Request for Expedited Ruling, Request for Interim Ruling, and Request for Emergency Action of ASAP Paging, Inc. against CenturyTel of San Marcos, Inc., Public Commission of Texas, Order, PUC Docket No. 25673 (dated Oct. 9, 2003)).

<sup>5</sup> ASAP Paging Petition at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, Ex. 1.

<sup>10</sup> *Id.*, Ex. 2 (seeking preemption of PURA §§ 55.041-55.048).

<sup>11</sup> *Id.*, Ex. 3 (seeking preemption of PUC Substantive Rules 26.219 and 26.221).

<sup>12</sup> ASAP Paging Petition at 19.

user.”<sup>13</sup> ASAP also seeks an order preempting the Texas Commission’s attempt to require ASAP to submit to state regulation for an interstate service.<sup>14</sup>

Interested parties may file comments on or before **March 23, 2004**, and reply comments on or before **April 23, 2004**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>15</sup>

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed.<sup>16</sup> In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, “get form.” A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.<sup>17</sup>

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

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<sup>13</sup> *Id.* at 9 (emphasis in original).

<sup>14</sup> *Id.* In addition to its paging operations, ASAP provides connections to five Internet service providers (ISPs). *Id.* at 12. The Texas Commission found that the services ASAP provides to ISPs require ASAP to register with the state commission as a nondominant carrier because it meets the definition of a “telecommunications utility” under section 52.103 of PURA. *See id.*, Ex. 1 at 3-4. ASAP contends that the Texas Commission cannot require an entity that provides only interstate service to subject itself to state regulation. ASAP Paging Petition at 50.

<sup>15</sup> *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

<sup>16</sup> If multiple docket or rulemaking numbers appear in the caption of a proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption.

<sup>17</sup> If more than one docket or rulemaking number appear in the caption of a proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**Parties are strongly encouraged to file comments electronically using the Commission's Electronic Comment Filing System (ECFS). Parties are also requested to send a courtesy copy of their comments via email to [victoria.schlesinger@fcc.gov](mailto:victoria.schlesinger@fcc.gov).**

Two (2) copies of the comments and reply comments should also be sent to Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-A221, Washington, D.C. 20554. Parties shall also serve one copy with Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 863-2893, or via email to <[qualexint@aol.com](mailto:qualexint@aol.com)>.

Documents in WC Docket No. 04-6, including the ASAP Paging Petition, are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup> St. SW, Room CY-A257, Washington, DC 20554. The documents may also be purchased from Qualex International, telephone (202) 863-2893, facsimile (202) 863-2898.

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>18</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.<sup>19</sup> Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.<sup>20</sup>

For further information, contact Victoria Schlesinger of the Pricing Policy Division, Wireline Competition Bureau at (202) 418-7353.

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<sup>18</sup> See 47 C.F.R. §§ 1.1200, 1.1206.

<sup>19</sup> See 47 C.F.R. § 1.1206(b).

<sup>20</sup> 47 C.F.R. § 1.1206(b).