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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 1, 1996

File Number: 20600-28.5.1
15855-1

William F. Caton
Acting Secretary
Federal Communications Commission
1919 "M" Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 95-185
CC Docket No. 96-98
Ex Parte Presentation

Dear Mr. Caton:

This office represents the Allied Personal Communications Industry Association ("Allied"), which has filed Comments in the above matters. Allied has for many years represented the interests of California's paging and conventional two-way wireless service providers. Allied's current membership list, which is attached, includes not only the largest paging carriers in the State (such as AirTouch, Mobile Media, MetroCall, PageNet and AT&T Wireless), but also many smaller carriers that would otherwise have no significant voice at the regulatory or legislative level. While time constraints have not permitted an individual poll of every member, the views expressed herein are representative of both small and large carriers in California.

Allied has received copies of the ex parte letters from Arch Communications ("Arch") dated June 19 and June 27 regarding interconnection between paging carriers and local exchange carriers. Allied endorses the points raised by Arch, and wishes explicitly to confirm and add to Arch's factual allegations insofar as they relate to California. Thus:

1. Since the beginning of this year, the principal LECs have not imposed NXX code opening charges on competitive local carriers ("CLCs"). This practice was ratified by the California Public Utilities Commission ("CPUC") (Decision 96-03-020). Paging and cellular carriers have explicitly requested that the same moratorium on code opening charges be

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extended to them. This request has been ignored by GTE, to which paging carriers are required to pay $11,000 for each NXX code programmed by it. Until June 28, 1996, the same was true of Pacific Bell, which has charged up to $36,000 per code.

2. Both Pacific Bell and GTE have entered into mutual compensation agreements with various CLCs. These agreements provide for termination compensation that approximates .75 cents per minute, and is in some cases greater. Through this office Allied has repeatedly requested that paging carriers be given the benefits of the CLC agreements, provided only that they assume the various technical burdens described by those agreements. With one exception (relating to number changes by Pacific), neither carrier has acknowledged any duty to provide equal treatment. On the contrary, both LECs have kept in effect older agreements which result in substantial payments to them for interconnect facilities and services that are already being paid for by the LECs' own customers.

3. On June 28, 1996, Pacific finally responded to Allied's request for equal treatment as to NXX charges and call termination compensation. While conceding that paging carriers should be given the same treatment as CLCs with regard to NXX code opening charges, Pacific's representative informed me that "at least for now" Pacific would not extend equal treatment to paging carriers on the mutual compensation issue. To explain this position, she referred me to Pacific's Comments in these proceedings at pages 107 - 08. While Allied had originally interpreted the discussion at pages 107 - 08 as an argument that mutual compensation for paging carriers should be delayed until the expiration of existing contracts, it is now clear that Pacific denies any obligation to provide mutual compensation to the paging industry on the ground that "paging companies' traffic is 100% landline to wireless".

Pacific's argument is legally and technically groundless. Thus:

- Legally, the Telecommunications Act of 1996 ("Act") when taken together with Section 332(c) as amended by the Omnibus Budget Reconciliation Act ("OBRA"), makes it clear beyond question that all telecommunication service providers are entitled to reciprocal compensation, that CMRS providers are telecommunication service providers for interconnect purposes, and that paging carriers are CMRS providers. 47 U.S.C. 3(44); 47 U.S.C. 251(b)(5), 251(c)(2); 47 U.S.C. 252(d) 2A; 47 U.S.C. 332(c), (d). There is no statutory language which would allow a LEC to pick and choose among categories of service providers, and, for example, to collect termination compensation from two-way CMRS providers, where the balance of traffic favors the LECs, but to refuse it to paging carriers, where the balance of traffic is reversed.

- Technically, a land-originated call to a paging customer is indistinguishable from a call to a cellular customer or to a CLC customer, or to a fax machine, or to a credit card verification service. A CLC, for example, could use its telephone numbers for all of these purposes, and under the agreements recently reached with the LECs could collect termination compensation for all calls addressed to its switch. The LECs would have no way of distinguishing among such calls. At the same time, under Pacific Bell's interpretation, no compensation would be due to paging carriers, even though such carriers would interconnect with Pacific at the same tandem office as the other service providers, would utilize identical facilities to transport calls to their switches, and would route calls to their customers, thus defraying (in the same way as the others) substantial costs that would otherwise be incurred by the LECs.[1]

Pacific's attempt to exclude paging traffic from the reciprocal compensation requirements of the Act is accordingly not only unlawful, but technically unenforceable. Since calls to paging and other messaging services operated by two-way CMRS providers, CLCs, and the LECs themselves would be subject to mutual compensation, the paging-only carriers would have no choice but to avoid the resulting competitive disadvantage by acquiring CLC status for themselves and/or by routing their traffic through a CLC or a broadband PCS point of presence. The Commission must adopt interconnect rules which by being competitively neutral avoid this sort of arbitrage.

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[1] If anything, paging calls are more remunerative for LECs than the other traffic which is subject to mutual compensation under agreements already reached between the LECs and others. For example, virtually all paging calls are deemed complete, and are therefore chargeable by the LECs to their own customers. Paging calls are also much shorter in duration (about 20 seconds) than land-to-land calls, and in California may be billed to the LEC customer as if they consumed a full minute of conversation time. Finally, paging calls stimulate additional revenue-producing activity on the LEC networks. Paging customers must call voice mail boxes to retrieve their messages, and in most cases, will place additional calls in order to answer such messages.

The Commission should accordingly reconfirm the right of all telecommunications service providers, including paging service providers, to reciprocal and non-discriminating interconnect arrangements. Just as the LECs expect reimbursement for their costs in terminating mobile-originated and other calls, so should paging carriers be entitled to reimbursement for land originated calls that are terminated on their networks.

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Enclosure

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EXHIBIT A

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DESERT MOBILFONE
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