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Federal Communications Commission
Office of Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

[redacted]

REPLY COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

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To: The Commission

REPLY COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.

AirTouch Communications, Inc. ("AirTouch"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules,[1/] hereby submits its Reply to the Comments and Oppositions filed with respect to the Petitions for Reconsideration of the Commission's First Report and Order (the "First Report") in the captioned proceeding. The following is respectfully shown:

I. Introduction and Summary

1. Comments on or oppositions to the petitions seeking reconsideration of the First Report have been filed by representatives of virtually all parties affected by the First Report -- commercial mobile radio service ("CMRS") providers,[2/] competitive local

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1/ 47 C.F.R. §1.429.

2/ See, e.g., comments filed by AirTouch Communications, Inc., Arch Communications Group, Inc., AT&T Corp., Cellular Telecommunications Industry Association, Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc., Cox Communications, Inc., Paging Network, Inc., Personal Communications Industry Association, Pronet Inc., Sprint Spectrum, L.P., Time Warner Communications, Vanguard Cellular Systems, Inc., and Winstar Communications, Inc.

exchange carriers ("LECs"),[3/] incumbent LECs ("ILECs"),[4/] interexchange companies,[5/] and utility companies.[6/] This Reply addresses only those comments and oppositions relating to CMRS issues raised by, or against, CMRS carriers. AirTouch's reply comments will address issues in the order in which they were addressed in the First Report.

2. In summary, the commenters views on the matters at issue often follow industry lines. For example, there is general consensus among CMRS commenters that all CMRS providers, including paging providers, are entitled to reciprocal compensation, that paging service is telephone exchange service, and that all CMRS providers should be afforded similar treatment for reciprocal compensation purposes. There also is agreement among CMRS commenters with the Commission's designation of MTAs as the local CMRS calling area and adoption of additional guidelines to ensure that LECs comply with the duty to negotiate interconnection arrangements in good faith. In addition, CMRS commenters assert that the Commission has jurisdiction under Sections 2(b), 201 and 332 of the Communications Act of 1934, as amended (the "Communications Act") over LEC-CMRS

3/ See, e.g., comments filed by the Association for Local Telecommunications Services, Competitive Telecommunications Association, General Communication, Inc., MFS Communications Co., Teleport Communications Group, Inc., and US One Communications Group.

4/ See, e.g., comments filed by Ameritech, Bell Atlantic, Bellsouth, GTE Service Corporation, Nynex Telephone Companies, Pacific Telesis Group, Puerto Rico Telephone Company, Southern New England Telephone Company, Southwestern Bell Telephone Company, United States Telephone Association, and U S West, Inc.

5/ See, e.g., comments filed by AT&T Corp., MCI Communications Corporation, Sprint Corporation, and Worldcom, Inc.

6/ See, e.g., comments filed by American Electric Power Service Corporation, et. al, American Public Power Association, Edison Electric Institute, and UTC.

interconnection, and independent jurisdiction over interconnection-related complaints under Section 208. CMRS carriers also agree that the right of access to facilities owned or controlled by utility companies extends to CMRS providers and equipment.

3. The LEC commenters, on the other hand, generally oppose the above-described positions taken by the CMRS industry. The utility companies generally support restrictions on access by telecommunications carriers to their facilities. Obviously, this position is generally opposed by CMRS providers and others as an unduly restrictive reading of the Communications Act. As is set forth in greater detail below, AirTouch respectfully submits that the consensus positions of the CMRS commenters on these issues is consistent with the Communications Act, Commission precedent, and public policy.

II. Additional Guidelines are Necessary to Ensure LEC Compliance with the Duty to Negotiate in Good Faith

4. Several commenters make the point that additional guidelines are necessary to ensure LEC compliance with the duty to negotiate on good faith. AirTouch supported the petitions filed by the Association for Local Telecommunications Services ("ALTS"), Comcast/Vanguard and Pilgrim Telephone, Inc. requesting that the Commission require access to existing interconnection agreements, advance the filing deadlines of those agreements, prohibit LECs from threatening carriers requesting interconnection and prohibit LECs from requiring the production of volumes of information prior to providing interconnection.[7/] Not surprisingly, several LECs assert that no additional measures are necessary.[8/] However, in light of the record developed in this proceeding of continuous and

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7/ Comments of AirTouch Communications, Inc. on Petitions for Reconsideration, pp. 2-5.

8/ See, e.g, BellSouth Opposition and Comments, p. 18.

pervasive discriminatory practices employed by LECs in interconnection negotiations, the LECs' argument is disingenuous.[9/] Indeed, abuses of LEC market power have continued to invade interconnection negotiations even in the wake of the First Report. Further protections are warranted.

III. All CMRS Providers Should be Treated Alike for Purposes of Reciprocal Compensation

5. Several CMRS commenters agree that all CMRS providers should be treated alike with respect to compensation terms.[10/] AirTouch, Paging Network and Arch Communications Group, Inc. all point out that providers of paging-only service have been placed at a competitive disadvantage by their exclusion from the interim compensation mechanisms, default proxies and symmetrical rates enjoyed by other CMRS providers who offer paging service ancillary to their other offerings.[11/] PageNet explained that several

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9/ In addition, additional safeguards are necessary to prevent extension of LEC monopoly power into other competitive businesses. Many LECs offer CMRS services and they have an incentive to discriminate in favor of their own affiliates by not negotiating in good faith with the other CMRS carriers competing with the LEC-affiliated CMRS carriers.

10/ LECs in contrast generally contend that paging providers should be treated differently from other CMRS providers. See Consolidated Opposition of the United States Telephone Association, pp. 37-38 (arguing that paging networks are different from other CMRS networks and that competitive hardship should not warrant recovery); Opposition of Ameritech to Petitions for Clarification and Reconsideration filed by Various Parties, pp. 39-40 (arguing that paging carriers should not be compensated because they have not supplied cost data in the record, and their networks differ from those of other CMRS providers); and NYNEX Comments, pp. 33-34 (suggesting, by employing an inapposite quote from AirTouch, that paging networks are different from those of other CMRS networks, and that therefore competition from other CMRS providers is irrelevant).

11/ Petition for Limited Reconsideration filed by Paging Network, Inc., p. 11; Petition for Limited Reconsideration filed by Arch Communications Group, Inc., pp. 3-6; Comments on Petitions for Reconsideration filed

(continued...)

CMRS providers are offering paging services ancillary to their other packages, in direct competition with paging-only providers.[12] Arch agreed and emphasized that both new entrants (entitled to the default proxies adopted in the First Report) and incumbent non-paging CMRS providers (entitled to symmetrical compensation) provide paging services and will be compensated for terminating pages as part of their comprehensive service packages.[13] In contrast, paging-only providers may not receive compensation for terminating the same type of traffic on the same terms as other CMRS carriers.[14] In light of the direct competition among CMRS providers, excluding paging-only providers from these interim compensation mechanism places paging-only providers at a competitive disadvantage.[15]

6. ProNet supported in its comments the arguments of AirTouch, PageNet and Arch advocating similar treatment for all CMRS providers.[16] As was demonstrated by

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11/ (...continued)
by ProNet Inc., pp. 2-3; and Comments of the Personal Communications Industry Association on Petitions for Reconsideration, pp. 19-20.

12/ Petition for Limited Reconsideration filed by Paging Network, Inc., p. 11.

13/ Petition for Limited Reconsideration filed by Arch Communications Group, Inc., p. 5.

14/ Id.

15/ As AirTouch mentioned in its Petition for Reconsideration, excluding paging providers will also lead to perverse arbitrage opportunities. Under the First Report, CLECs are incented to try and sign up paging carriers to receive the default proxy rates from the LECs who originate paging traffic while giving paging companies a very small amount of compensation -- but more than the LECs are willing to offer -- for terminating the call. This leads to CLECs being overcompensated or LECs trying to, by agreement, monopolize this source of money. This makes no sense in the new competitive environment.

16/ Comments on Petitions for Reconsideration filed by ProNet Inc.

AirTouch and PageNet in their Petitions for Reconsideration and not rebutted in the Comments, Paging network equipment is substantially similar to that employed in other wireless networks.[17] Therefore interconnection and transport/termination costs are roughly equivalent between paging and other CMRS providers.[18] Since paging company costs are not dissimilar from those of other CMRS providers, it is an undue burden to require paging providers to expend the time and human resources required to prove-up TELRIC-based costs.[19] Other CMRS providers, having the benefit of the default proxies and symmetrical rates, will not be subject to such a burden.[20]

7. The Commission has also rejected the use of TELRIC when implementing other provisions of the Telecommunications Act of 1996 in industries similar to the paging industry. For example, the Commission refused to use a TELRIC- or TSLRIC-based costing methodology to set compensation rates for payphone providers.[21] In doing so, the Commission observed that

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17/ Comments on Petitions for Reconsideration filed by ProNet Inc., p. 3; see also Petition for Limited Reconsideration filed by Paging Network, Inc., Attachment A; and Petition for Partial Reconsideration and/or Clarification of First Report and Order filed by AirTouch Paging, Cal-Autofone, and Radio Electronic Products Corp., Exhibits 1-8.

18/ Comments on Petitions for Reconsideration filed by ProNet Inc., p. 3.

19/ Id. p. 5.

20/ Indeed, although the Commission made particular note that paging providers had not supplied cost data in the record of this proceeding, AirTouch was unable to find cost data supplied by any CMRS providers.

21/ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Reconsideration Order, ("Payphone Reconsideration Order"), CC Docket No. 96-128, FCC 96-439 (Released November 8, 1996), at ¶ 66.

> the cost-based TELRIC standard ... is inapplicable here, because the payphone industry is not a bottleneck facility that is subject to regulation at virtually all levels. We note that it would be particularly burdensome to impose a TELRIC-like costing standard on independent payphone providers, who have not had previous experience with any costing systems.[22/]

There are substantial similarities between the paging and payphone industries. Each industry is highly competitive.[23/] Furthermore, both industries do not have any previous experience with any costing system. Thus, there is no rational reason to find that one industry should be compensated on a TELRIC based system and the other not. This would stand reasoned rulemaking on its head.[24/]

8. Finally, by excluding paging providers from the default proxies, the Commission has not given LECs any incentive to negotiate interconnection agreements promptly.[25/] Indeed, the LECs may be incented to not only discriminate against paging carriers, but will also be incented to try and limit other telecommunications carrier's abilities to send, or receive, traffic for termination on a paging network.[26/] Since the comments of the LECs, viewed as a whole, fail to rebut the substantial showing that paging carriers should not have been singled out for disparate treatment with regard to their rights to

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22/ Id.

23/ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Notice of Proposed Rule Making, WT Docket No., 96-18, FCC 96-52, released February 9, 1996, ¶ 7 (paging industry has experienced increased competition, with more than 600 licensed paging operators competing for business).

24/ Motor Vehicle Manufacturers Association v. State Farm Mutual Insurance Co., 463 U.S. 29 (1983); Automotive Parts & Accessories Association v. Boyd, 407 F.2d 330 (D.C. Cir. 1968).

25/ Id.

26/ As mentioned above in footnote 15, LECs that can achieve this would of course receive a windfall in terms of being compensated for costs incurred by others.

reciprocal compensation, paging carriers are entitled to the same treatment -- both for default proxies and the use of LEC based costs -- for compensation for terminating traffic as other CMRS carriers.

IV. MTAs are the Appropriate Local Calling Area for CMRS Traffic

9. CMRS providers broadly endorse the Commission's designation of MTAs as the local calling area applicable to LEC-CMRS traffic.[27] The arguments to the contrary by the LECs are not well-founded.[28] As Comcast/Vanguard aptly pointed out, local calling areas should reflect the network and service offered.

> Incumbent LECs should not be permitted to restrict CMRS calling scopes to reflect historical landline customer toll and non-toll calling areas that have nothing whatsoever to do with CMRS licensed service areas ... . Failure by the incumbent LEC to treat as local the same traffic that the CMRS provider treats as local will result in burdening CMRS customers by the improper assessment of access charges that, it is universally agreed, do not reflect the incumbent LEC's additional costs of reciprocal termination.[29]

27/ AT&T Opposition to and Comments on Petitions for Reconsideration and Clarification of First Report and Order, pp. 41-42; Opposition and Response of Cox Communications, Inc. to Petitions for Reconsideration, p. 7; and Comments and Opposition to Petitions for Reconsideration and Clarification filed by Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc. ("Comcast/Vanguard"), pp. 3-6.

28/ LECs predictably seek reconsideration of this finding. See Opposition of Bell Atlantic to Petitions for Reconsideration, p. 10; Comments on Petitions for Reconsideration filed by U.S. WEST, Inc., p. 17; Consolidated Opposition of the United States Telephone Association, p. 39.

29/ Comments and Opposition to Petitions for Reconsideration and Clarification filed by Comcast/Vanguard, p. 4.

10. As a related point, CMRS providers generally support the proposal that neither the FCC nor ILECs should dictate the rating points associated with NXX codes.[30/] CMRS providers should be free to designate the rating center points corresponding to each NXX code -- and should not be limited to designating the rating center at the switch or point of interconnection.[31/] The record on reconsideration clearly supports this view.

V. All CMRS Providers are Entitled to Reciprocal Compensation at Symmetrical Rates

11. Several LECs argue that paging providers are not entitled to reciprocal compensation.[32/] This argument is patently inconsistent with the Communications Act and the Commission's Rules. Paging providers are "telecommunications carriers" as that term is defined by the Act.[33/] Section 251(b)(5) provides that all telecommunications carriers,

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30/ USTA opposes this suggestion. See Consolidated Opposition of the United States Telephone Association, p. 40 USTA argues that CMRS providers should not be permitted to "control" LEC rates. What USTA fails to see is that, by permitting LECs to determine the location of rating centers for CMRS calls, LECs would be able to subject calls within the local CMRS calling area to unreasonably high access charges, thus increasing the costs of service to CMRS subscribers.

31/ MFS Communications Company, Inc. Response to Petitions for Reconsideration, 9-10, supporting the petition filed by Cox Communications, Inc. This proposal would not upset the current wireline calling areas. LECs still will be able to set the local calling areas for their wireline customers. The only change requested is that the CMRS carriers would be able to connect at the tandem and be able to have numbers rated out (i.e., the local calling area) of a central office different than the tandem.

32/ NYNEX Comments, pp. 28-34; Comments of The Southern New England Telephone Company on Petitions for Reconsideration of the First Report and Order, p. 15; and Opposition and Comments of GTE, pp. 44-46.

33/ Section 3(44) defines telecommunications carrier as "any provider of telecommunications services." Section 3(46) defines telecommunications service as "the offering of telecommunications for a fee directly to the public ... ." Section 3(43) defines

(continued...)

which includes paging providers, are entitled to compensation for terminating telecommunications traffic.[34/] The Commission has long held that paging providers are co-carriers and should be compensated for call termination.[35/] In fact, the Commission's Rules have provided since 1993 that CMRS providers are entitled to compensation for terminating LEC-originated traffic.[36/] Thus, the inclusion of paging providers in the reciprocal compensation mechanism is mandated by the Communications Act and in accordance with the Commission's Rules. In addition, the position of the companies opposing paging carriers' entitlement to termination compensation makes no sense. The LECs will be receiving compensation from a calling party, or any carrier which sends traffic to the LEC for termination on the paging network, but the LEC will not be required to pay the paging carrier for the costs incurred by the paging carrier to earn such compensation.[37/]

33/ (...continued)
telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing ... ." See, also, First Report ¶¶ 992, 993.

34/ 47 U.S.C. § 251(b)(5); Comments of the Personal Communications Industry Association on Petitions for Reconsideration, p. 19.

35/ Comments of the Personal Communications Industry Association on Petitions for Reconsideration, p. 20.

36/ 47 C.F.R. §20.11. Unfortunately, AirTouch is unaware of any instance where the states have required or the LECs have agreed to pay or begun paying any compensation in accordance with this rule even though it has existed for almost three years.

37/ This creates a discontinuity in the otherwise orderly scheme adopted by the Commission for terminating compensation. It gives the LEC an opportunity to recover costs that it did not incur. If the LEC is compensated for the complete transport and termination of the call, which it does not perform, it will reap double recovery of costs -- from the calling party and again from the paging carrier (by virtue of not sharing the compensation). If the LEC is only being compensated for that portion of the call it handles, and the paging provider is not compensated, then the calling party or the originating carrier gets a free-ride at the expense of the paging carrier.

12. The FCC's compensation approach also is consistent with public policy. Paging providers are terminating calls originated by LEC customers or traversing the LEC network. They are providing a service to the LEC by terminating the calls placed by the LEC subscriber or transported for another carrier by the LEC for a fee. Paging carriers incur costs providing such service, and LECs are paid for these costs by the calling party or the carrier serving the calling party. The termination compensation provided for in the statute and the rules merely compensates paging providers for their costs out of compensation already paid to the LECs. There is no rational basis to require paging providers to subsidize LECs by assuming costs rather than recovering them.[38/]

13. Contrary to several LECs' assertions,[39/] the Act does not require that communications be originated by both carriers as a prerequisite to compensation.[40/] The

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38/ Indeed, the LECs' position is even more egregious. The LECs would like to both charge the calling party, or the carrier sending traffic through the LEC, for terminating the traffic and the paging company. This type of subsidy has no place in the new telecommunications environment. Further, AirTouch understands that some LECs are even attempting to deny competitive LECs the ability to interconnect with CMRS carriers by refusing to accept CMRS traffic originated through CLECs.

39/ E.g., Petition for Reconsideration and Clarification filed by Kalida Telephone Company, Inc., p. 6; Comments of the Southern New England Telephone Company on Petitions for Reconsideration of First Report and Order, p. 15; Comments on Petitions for Reconsideration filed by U.S. WEST, Inc., p. 19; and NYNEX Comments, pp. 30-31. These LECs argue that paging traffic is not "reciprocal" because it is not two-way voice communication. This argument misses the point -- the Act requires that each carrier recover the costs it incurs terminating telecommunications traffic. Further, the need for terminating compensation is highlighted in the example of paging service -- where virtually all of the traffic is terminated by the paging provider, refusing compensation to paging companies would work an undue hardship. See AT&T Opposition to and Comments on Petitions for Reconsideration and Clarification of First Report and Order, p. 42.

40/ Comments of the Personal Communications Industry Association on Petitions for Reconsideration, p. 20.

LECs' assertions mischaracterize the relationship between paging companies and LECs. Paging companies provide a service to LECs by terminating telecommunications traffic originated on or traversing the LEC network. When traffic is originated on, or delivered to the LEC network, which has a pager as the final destination, the LEC is unable to complete that call without paging company involvement. The facilities of the paging carrier are needed in order to terminate the page. Absent paging carrier termination services, LECs cannot offer complete communication capability. Paging providers incur costs terminating this traffic and should be compensated appropriately.[41/] In addition, termination by paging providers stimulates demand on the LEC network. Completed pages encourage a return call to the paging party. This call will travel over the LEC's network -- generating transport and/or termination revenue for the LEC.[42/]

14. USTA also argues that paging carriers should not be entitled to compensation because it might create incentives for paging carriers to generate traffic simply to receive compensation.[43/] This argument does not withstand scrutiny. In the context of other one-way services, such as compensation to payphone providers for originating 800 subscriber calls, the Commission refused to deny compensation because of the possibility of fraud.[44/] For example, in the Reconsideration Order on payphone compensation, the

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41/ See Id. p. 20.

42/ Id. p. 20.

43/ Consolidated Opposition of the United States Telephone Association, pp. 37-38.

44/ See Comments of AirTouch Communications, Inc. on Petitions for Reconsideration filed on October 31, 1996 with respect to the First Report, at n. 29 ("Contrary to suggestions by some commenters, it is not necessary, nor would it be in the public interest, for the Commission to select a particular method of per-call compensation ... simply to avoid the possibility of fraud.")

Commission also declined to take further steps "without any specific factual circumstances."[45] If the public interest is not served by denying compensation because of the possibility of fraud in the payphone context, it is also not served here. Accordingly, AirTouch strongly recommends that the Commission reject USTA's request.

15. NYNEX asserts that paging carriers are not entitled to symmetrical rates afforded other CMRS providers based upon the application of the most favored nation provision of the Communications Act to paging services.[46] NYNEX is mistaken. Section 252(i) requires that LECs make available "any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to <u>any other requesting telecommunications carrier</u> upon the same terms and conditions as those provided in the agreement.[47] Agreements which are "approved under this Section" (<u>i.e.</u>, Section 252) include agreements arrived at through negotiations[48] and agreements arrived at through compulsory arbitration.[49] All of these "agreements" are ones entered into pursuant to Section 251 of the Communications Act. Section 251 governs interconnection arrangements between LECs and providers of telephone exchange or exchange access service,[50] and LECs and all telecommunications carriers.[51] Thus, Section 251 encompasses interconnection of LECs and paging companies. As AirTouch has

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45/ <u>Payphone Reconsideration Order</u> ¶ 63.

46/ <u>NYNEX Comments</u>, p. 32.

47/ 47 U.S.C. § 252(i) (emphasis added).

48/ 47 U.S.C. § 252 (a).

49/ **47 U.S.C. § 252 (b).**

50/ 47 U.S.C. § 251 (c)(2).

51/ **47 U.S.C. § 251 (a).**

demonstrated, paging providers should be found by the Commission to be providing telephone exchange service. Thus, LEC-paging interconnection would be the subject of Section 251(c)(2) of the Act. Even absent such a finding, the Commission has determined that all CMRS carriers, including paging providers, are telecommunications carriers under the Act. LEC interconnection with telecommunications carriers is governed by Section 251(a). Thus, NYNEX's round-about attempt to demonstrate limited applicability of Section 252(i) is fatally flawed. Both Sections 251 and 252, including Section 252(i), clearly encompass, and run to the benefit of, paging providers.

16. In light of the symbiotic relationship between the LEC and the paging carrier, including paging carriers within the class of carriers to be compensated for terminating traffic clearly was correct.

VI. Paging Service is Telephone Exchange Service

17. Paging companies and their representative industry association[52/] have urged the Commission to find that paging service is telephone exchange service.[53/] The

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52/ **Petition for Partial Reconsideration and/or Clarification of First Report and Order filed by AirTouch Paging, Cal-Autofone and Radio Electronic Products Corp., pp. 7-12; Petition for partial Reconsideration filed by Paging Network, Inc., pp. 13-17; Comments of the Personal Industry Association on Petitions for Reconsideration, pp. 16-17.**

53/ There is general agreement that CMRS providers should not be treated as LECs. See Opposition and Response of Cox Communications, Inc. to Petitions for Reconsideration, pp. 8-9 (the assignment of authority by Congress to the FCC to determine whether, at some future time, CMRS providers should be treated as LECs demonstrates Congress' belief that CMRS providers should not be treated as LECs at this time); AT&T Opposition to and Comments on Petitions for Reconsideration and Clarification of First Report and Order, p. 43 (Colorado PUC has not raised any arguments warranting the reconsideration of the FCC's decision not to treat CMRS providers as LECs -- until such time, states are prohibited from doing so); and Comments and Opposition to

(continued...)

LECs oppose such a finding, but fail to rebut the legal analysis that supports the requested classification.[54] Instead, the LECs complain that recognizing paging companies as providers of telephone exchange service would entitle them, inter alia, to interconnection pursuant to Section 251(c)(2) of the Communications Act and dialing parity under Section 251(b)(3).[55]

18. AirTouch submits, in light of past discrimination that has been suffered by paging carriers at the hands of the LECs, that expanding the protection of Sections 251(c)(2) and 251(b)(3) to paging companies would serve the public interest. Viewed as a whole, the record supports the position taken by AirTouch and PageNet that classifying

53/ (...continued)

Petitions for Reconsideration and Clarification filed by Comcast/Vanguard, p. 7 (CMRS providers do not have the same market power as do LECs; CMRS services are inherently interstate in nature and should be regulated by the FCC; Congress distinguishes between CMRS providers and LECs in the Act).

54/ Opposition of Bell Atlantic to Petitions for Reconsideration, p. 11 (The opposition merely sets forth the definition of telephone exchange service and a conclusory statement that paging does not fit within the definition. Bell Atlantic's citation to a prior PageNet statement is inapposite -- paging service need not fully supplant plain old telephone service in order to be deemed telephone exchange service. Indeed, other CMRS services such as cellular and broadband PCS certainly have not supplanted the LEC network to date.); Consolidated Opposition of the United States Telephone Association, pp. 35-37 (USTA's suggestion that the cases cited by AirTouch and PageNet are not persuasive because they do not interpret the 1996 amendments to the Communications Act is wrong. As both companies pointed out, the definition of telephone exchange service contained in the 1996 amendments to the Communications Act are consistent with the pre-amendment definition, and in fact broaden the prior definition. Thus, cases interpreting the statutory language prior to the 1996 amendments to the Act are relevant and provide useful guidance.); and NYNEX Comments, pp. 28-30.

55/ 47 U.S.C. §§ 251(c)(c) and (b)(3).

paging as telephone exchange service is consistent with the Act, Commission and court precedent.[56]

VII. The Commission Has Jurisdiction Over LEC-CMRS Interconnection

19. Several CMRS providers have urged the Commission to delineate the scope of its jurisdiction over LEC-CMRS interconnection under Sections 208, 201 and 332 of the Communications Act. AirTouch, AT&T and the Competitive Telecommunications Association ("CTA") urge the Commission not to forego its authority to hear complaints alleging violations of Section 251 of the Act pursuant to Section 208.[57] As CTA notes, Section 601 of the Act expressly provides that the 1996 amendments to the Act do not modify, impair or supersede existing federal law, unless explicitly provided. Since nothing in the 1996 amendments modified, impaired or superseded the Commission's authority to hear complaints of violations, the Commission retains that authority.

20. PCIA urges the Commission to define the scope of its jurisdiction over LEC-CMRS interconnection issues pursuant to Section 201 and 332 of the Communications Act.[58] Noting that Sections 201 and 332 of the Act give the Commission broad jurisdiction

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56/ Petition for Partial Reconsideration and/or Clarification of First Report and Order filed by AirTouch Paging, Cal-Autofone and Radio Electronic Products Corp., pp. 7-12; Petition for partial Reconsideration filed by Paging Network, Inc., pp. 13-17; Comments of the Personal Industry Association on Petitions for Reconsideration, pp. 16-17.

57/ Comments of AirTouch Communications, Inc. on Petitions for Reconsideration, pp. 17-18; AT&T Opposition to and Comments on Petitions for Reconsideration and Clarification of First Report and Order, p. 46; and Comments of the Competitive Telecommunications Association, pp. 11-12.

58/ Bell Atlantic argues that the Commission does not have jurisdiction over LEC-CMRS interconnection because Section 332 only preempts state regulation of CMRS rates charged. Opposition of Bell Atlantic to

(continued...)

over LEC-CMRS interconnection, PCIA also points out that Congress has legislated comprehensively to fully cover the field of CMRS reciprocal compensation.[59] PCIA explains further that the inseverability doctrine also lends support for FCC jurisdiction over LEC-CMRS interconnection. For example, PCIA explains that it is virtually impossible for paging providers to determine where a paged party is located and, therefore, the intra- versus inter-state nature of the page.[60]

21. In light of the statutory support for FCC jurisdiction over LEC-CMRS interconnection, and the broad record support for preemption of state jurisdiction in this field, AirTouch respectfully requests that the Commission on reconsideration exercise the full scope of its jurisdiction as requested by the CMRS commenters.

22. In addition, PCIA requested that the Commission bifurcate the CMRS issues from the other LEC interconnection issues.[61] AirTouch supports PCIA's request. In light of the discrimination CMRS carriers have consistently suffered at the hands of the LECs in interconnection negotiations, and the independent authority the Commission has over LEC-CMRS interconnection issues under Section 332 of the Communications Act, bifurcation of the issues serves the public interest and is consistent with statutory authority.

58/ (...continued)

Petitions for Reconsideration, p. 12. Bell Atlantic misses two fundamental points. Part of interconnection consists of rates charged by CMRS providers (e.g., for termination). Moreover, it does not make sense administratively for the states to have jurisdiction over what LECs charge to CMRS providers for interconnection while the FCC has jurisdiction over what CMRS providers may charge LECs.

59/ Comments of the Personal Communications Industry Association on Petitions for Reconsideration, p. 8.

60/ Id. p. 9.

61/ Comments of the Personal Communications Industry Association on Petitions for Reconsideration.

VIII. Access to Utility Facilities Extends CMRS Providers and Equipment

23. Several utility companies have urged the Commission to find that the duty to provide access to utility facilities does not extend to CMRS providers and equipment.[62/] These companies argue that prior to the 1996 amendments to the Communications Act, the Pole Attachments Act only applied to cable equipment. Several CMRS carriers have demonstrated, however, that the 1996 amendments to the Communications Act were intended to expand the scope of the duty to provide access to facilities to encompass all telecommunications carriers.[63/] Thus, denial of access to CMRS providers is contrary to the language of the Communications Act. Moreover, as demonstrated by AirTouch in its own comments, denial of access also is contrary to public policy.[64/] Presence in the local marketplace is a critical element in a carrier's ability to

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62/ See, e.g., Request for Reconsideration and Rehearing of First Report and Order by Consolidated Edison Company of New York, Inc., pp. 11-12; and Florida Power and Light Company's Petition for Reconsideration and/or Clarification of the First Report and Order, pp. 24-026. These arguments were raised in the petitions for reconsideration, but not subsequently in the oppositions to petitions filed.

63/ Comments in Response to Petitions for Reconsideration filed by Paging Network, Inc., p. 23-24; Opposition and Response of Cox Communications, Inc. to Petitions for Reconsideration, pp. 9-10; Winstar Communications, Inc. Opposition to Petitions for Reconsideration, pp. 10-12; and Comments and Opposition to Petitions for Reconsideration and Clarification filed by Comcast/Vanguard, pp. 8-10.

64/ Comments of AirTouch Communications, Inc. on Petitions for Reconsideration, pp. 24-25.

compete in that market. Wireless providers must not be precluded from establishing a local presence by an outdated interpretation of the pole attachment obligations.[65/]

24. On balance, the restrictive reading of the access provisions sought by the utilities should not be adopted.

65/ The Commission should also reject suggestions, such as those made by the American Public Power Association and National Railroad Passenger Corporation (Amtrak) that utilities can sell excess capacity on a contract basis and be considered private carriers and thereby avoid the obligation to permit CMRS carriers access to their facilities.

Conclusion

WHEREFORE, the foregoing premises having been duly considered, AirTouch respectfully requests that the Commission reconsider or clarify its rules consistent with the petition, comments and reply comments submitted by AirTouch in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Myra Burke, a secretary in the law firm of PAUL, HASTINGS, JANOFSKY & WALKER LLP, hereby certify that on the 14th day of November, 1996, copies of the foregoing **Reply Comments of AirTouch Communications, Inc.** were sent, by first-class postage-prepaid U.S. mail, to the foregoing:

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