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

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of 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

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COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.
ON PETITIONS FOR RECONSIDERATION

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To: The Commission

COMMENTS OF AIRTOUCH COMMUNICATIONS, INC.
ON PETITIONS FOR RECONSIDERATION

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

I. Introduction and Summary

1. AirTouch is a wireless company with interests in cellular, broadband personal communications services ("PCS"), narrowband PCS and paging services throughout the United States. As providers of commercial mobile radio services ("CMRS"), AirTouch and its subsidiaries are directly affected by the Second Report. AirTouch Paging, a wholly owned subsidiary of AirTouch, filed a Petition for Reconsideration of the Second Report.[2/] In

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1/ 47 C.F.R. § 1.429.

2/ Petition for Partial Reconsideration and/or Clarification of Second Report and Order and

(continued...)

its petition, AirTouch Paging requested that (1) the Commission clarify that the network disclosure obligations of Section 251(c)(5) benefit all telecommunications carriers, (2) the Commission expressly find that paging companies provide telephone exchange service, and (3) the Commission prohibit the use of mandatory wireless take-backs in association with geographic splits and permit CMRS carriers to decide which Type 2 telephone numbers will change in connection with a geographic split. These positions received support in other petitions filed.[3/] Although AirTouch will not reiterate all of those arguments here, AirTouch supports such petitions.

2. AirTouch supports those petitions seeking to preserve or expand wireless carriers' rights with respect to numbering administration.[4/] Specifically, AirTouch agrees that the Commission should prohibit wireless-only take-backs, implement proactive NXX overlay relief pending permanent relief measures, and provide that carriers should be assigned a

2/ (...continued)
Memorandum Opinion and Order filed by AirTouch Paging and PowerPage ("AirTouch Petition").

3/ Paging Network and the Personal Communications Industry Association agree that paging service should be deemed telephone exchange service. Petition for Limited Reconsideration filed by Paging Network, Inc., pp. 7-11; Comments of the Personal Communications Industry Association on Petitions for Reconsideration filed with respect to the First Report, pp. 16-17. PageNet also argues that wireless-only take-backs should be prohibited. PageNet Petition, pp. 6-7.

4/ See, petitions filed by Paging Network, Inc. ("PageNet"), AT&T Corp. ("AT&T"), and Teleport Communications Group, Inc. ("Teleport").

sufficient number of NXX codes in the 90 days preceding an area code overlay to enable them to serve customers throughout their service areas. AirTouch opposes those petitions supporting wireless-only take-backs and seeking to limit telecommunications carriers' rights to NXX codes preceding an area code overlay.[5/]

3. AirTouch also supports AT&T's petition requesting clarification of what charges should be deemed "reasonable" for code opening administration. AirTouch opposes the petitions which seek to expand the obligation to provide notification of network changes to CMRS carriers, and to limit disclosure requirements.[6/] Access to information concerning bottleneck network changes is critical to carriers' ability to compete in the local marketplace. ILECs, the owners and controllers of monopoly-based bottleneck facilities, are now obligated to provide pertinent information to interconnected carriers so as not to interfere with or otherwise interrupt service they provide to their subscribers. Certain ILECs have argued that all telecommunications carriers should be required to disclose network changes prior to implementation. This argument is not supported by the statutory language and is contrary to the public interest. AirTouch disagrees with SBC's argument that the Commission misinterpreted the scope of the disclosure

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5/ See, petitions filed by SBC Communications, Inc. ("SBC"), BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth"), NYNEX Telephone Companies ("NYNEX"), the United States Telephone Association ("USTA"), and the Pennsylvania Public Utilities Commission.

6/ See, petitions filed by NYNEX and SBC.

requirement. The Commission's definition is consistent with the statutory language and must be afforded deference.

4. Finally, AirTouch opposes Ameritech's request to limit the class of carriers eligible for dialing parity. The Commission has determined that carriers providing telephone exchange service, exchange access, and carriers providing both services are entitled to dialing parity. This conclusion is consistent with the intent of the statute and with the public interest. To require, as Ameritech suggests, that carriers provide both services in order to be entitled to dialing parity would exclude providers of telephone exchange service from dialing parity. This result is directly at odds with the intent of the statute -- to increase competition in the local marketplace.

II. AirTouch Supports Petitions Seeking to Expand Wireless Carriers' Rights with Respect to Numbering Administration

5. In its Petition, AirTouch Paging sought reconsideration of the Commission's decision to permit the Texas PUC to implement a wireless-only take-back in connection with its proposed geographic area code split. In its Petition, AirTouch Paging explained that a wireless-only take-back would require wireless carriers to bear a disproportionate portion of the burden associated with an area code split, since they would be required to give back telephone numbers and then still be subject to the area code split, which would require the changing of even more of its customers' telephone numbers.[7/] It also would be

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7/ AirTouch Petition, pp. 16-20

unreasonably discriminatory in violation of Sections 201 and 202 of the Communications Act, and would violate the Ameritech Order since it would not be technology-blind.[8/]

6. Several petitioners also requested that the Commission prohibit mandatory wireless-only take-backs.[9/] AirTouch supports those petitions. Paging Network agreed with the reasoning of AirTouch, indicting that wireless take-backs (of Type 2 numbers) are not technically required in connection with a geographic area code split, because these numbers are not tied to any fixed geographic location.[10/] PageNet also emphasized that wireless take-backs are not justified because they arbitrarily interfere with the subscriber's choice of telephone number, and the same result usually can be achieved with a voluntary number take-back.[11/] PageNet also acknowledges, as does AirTouch, that the burdens of a geographic split should be shared among all telecommunications carriers, but advocates that the choice should remain with the subscriber and not be mandated by the state.[12/] AT&T concurs with these sentiments, noting that take-backs are unduly burdensome on wireless carriers because they are not associated with a particular geographic area, and require that the subscriber take his or her equipment in for reprogramming of

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8/ Id.

9/ See Petitions of PageNet and AT&T.

10/ PageNet Petition, p. 6.

11/ Id.

12/ Id., pp. 6-7.

the new telephone number.[13] AT&T notes that the Public Utilities Commission of the State of California has recognized this undue burden, and has found that wireless carriers served by a tandem (i.e., Type 2 numbers) can keep their telephone numbers in geographic area code split.[14] Based upon the foregoing, AT&T urges the Commission to clarify its position on wireless-only take-backs or, at the very least, permit states to let wireless customers keep their telephone numbers in geographic area code splits.[15]

7. The arguments put forth by AirTouch Paging, PageNet and AT&T are uncontroverted. AirTouch respectfully submits that, in light of the record evidence demonstrating the unique and undue burden a wireless-only take-back places upon wireless carriers and customers, coupled with the ability to achieve similar numbering relief through other means, the Commission should prohibit states form implementing mandatory wireless-only take-backs in connection with geographic area code splits.

8. AirTouch supports the petition of PageNet requesting the proactive NXX relief be implemented prior to the exhaustion of numbers.[16] PageNet advocated trigger points prior to number exhaustion in its Comments filed in this

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13/ Petition for Limited Reconsideration and Clarification filed by AT&T Corp., pp. 12-13 ("AT&T Petition").

14/ Id. p. 14.

15/ Id.

16/ PageNet Petition, pp. 2-4.

proceeding,[17] and PageNet suggests that NXX overlays would slow the number exhaustion process, are an effective means by which to ensure that carriers can still secure new telephone numbers, and preserve the relief options available to the state.[18] AirTouch agrees with PageNet that additional measures must be implemented to ensure NXX relief is provided well in advance of number exhaustion.[19] As PageNet properly notes, since wireless carriers typically have fill factors exceeding 90 percent, as compared to those of wireline carriers (approximately 50 percent) NXX exhaustion has a more substantial impact on wireless carriers.[20] Interim NXX overlays, used during the

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17/ PageNet explained that the use of triggers would "assure that the process of planning and reviewing NPA relief plans begins and ends within time frames that will make number resources available without such discrimination." See PageNet's Separate Comments on Number Administration, filed on May 20, 1996, p. 6. By way of example, PageNet suggests that the Commission could require that relief planning begin before the supply of NXX codes is reduced to 200. The Commission also could require that state commission review be completed and plan implementation begun before the number of available NXXs is reduced to 100. Id., pp. 6-7. Where trigger levels have been reached, the code administrator must implement an all-service overlay, with the ability to transition that overlay back into a geographic split. Id., p. 7.

18/ Id.

19/ AirTouch has been involved in several recent NXX exhaustion situations in which numbers literally ran out, e.g., in Chicago, Dallas, and Houston. This does not serve the public interest and must not be allowed to continue.

20/ Id., pp. 2-3. In addition, in almost all circumstances, the LEC, as code administrator, has codes reserved for itself for uses, e.g., "test," that can be discontinued.

implementation of a permanent relief program, would significantly reduce the impact on wireless carriers. NXX overlays would not preclude the state from choosing any particular method of permanent numbering relief, including a split.[21/] Based upon the foregoing, AirTouch supports PageNet's request and believes that the Commission should permit states to utilize NXX overlays as an interim relief measure pending adoption of a final relief mechanism.[22/]

9. AirTouch also supports the petitions of AT&T and Teleport urging the Commission to require assignment of a sufficient number of NXX codes to all telecommunication carriers within the 90 days preceding an area code overlay to serve the entire service area of the requesting carrier.[23/] AT&T and Teleport correctly point out that under the current rates, the assignment of a single NXX code limits the area served by the requesting carrier to the rate center associated with the NXX code. Since CMRS providers' service areas are not confined to areas served by a single rate center, the assignment of a single NXX code prior to an area code overlay unduly limits these carriers' ability to effectively utilize the existing familiar

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21/ Id., p. 3.

22/ Any interim plan, however, must not allow NXXs to be withdrawn once they have been assigned. Such a withdrawal would cause enormous customer confusion and dissatisfaction. AirTouch has in fact experienced an NXX take-back in Chicago which resulted in such customer confusion.

23/ AT&T Petition, p. 7; Petition for Reconsideration filed by Teleport Communications Group, Inc., p. 7 ("Teleport Petition").

NPA to serve additional customers. Since incumbent LECs can stockpile and reuse numbers previously retired, and also may assign to themselves additional NXX codes for each rate center, incumbent LECs will receive a disproportionate amount of numbers with the existing NPA prior to the overlay.[24/] The Commission should not provide such an advantage to incumbent LECs. Instead, the Commission should permit carriers to secure a sufficient number of NXX codes to serve their entire calling area.[25/]

10. AirTouch opposes those petitions which seek to limit requesting carriers' right to NXX codes in the 90 days preceding the implementation of an area code overlay. BellSouth and SBC argue that the right to these codes should extend only to those carriers who, at the time, do not have any NXX codes assigned to them in that area.[26/] AirTouch disagrees.

24/ The Commission's Rule prohibiting discrimination between ILECs and others goes a long way toward rectifying this problem. AirTouch is concerned, however, that an ILEC may be able to transmute previously assigned codes in a discriminatory fashion. The proper way to prevent this from happening is to require that if the ILEC wants to move codes into service, all requesting telecommunications carriers may seek, on a first come-first serve basis, that code.

25/ Of course, there may need to be some revision in the way the numbering guidelines are administered. AirTouch believes many of these problems may be resolved once the independent numbering administrator begins to administer central office codes.

26/ Petition for Reconsideration of SBC Communications, Inc., p. 27 ("SBC Petition"); Petition for Clarification or Reconsideration filed by BellSouth Corporation and BellSouth Telecommunications, Inc., pp. 8-9 ("BellSouth Petition").

Precluding carriers already providing service in the area from securing additional numbers in the existing NXX would place them at a competitive disadvantage to new carriers entering the area and offering service in the existing code.[27] AirTouch supports the Commission's finding that all telecommunications carriers in the area to be served by the new area code should be entitled to an NXX code.

11. NYNEX, the United States Telephone Association, and the Pennsylvania Public Utilities Commission each express concern that the requirement that each telecommunications carrier receive a single NXX out of the existing NPA may preclude the use of overlays in areas in which an insufficient number of NXX codes remains available for assignment.[28] AirTouch respectfully submits that, with competent planning, these concerns are unfounded. The exhaustion of NXX codes is an event which can be predicted and effectively planned for.[29] Using the ability to determine when available NXX codes are likely to be depleted, and

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27/ BellSouth and SBC do not explain whether a carrier with a single code should be treated differently than a carrier with multiple codes. This lack of distinction further demonstrates the abnormality of their position.

28/ Petition for Reconsideration and/or Clarification filed by NYNEX Telephone Companies, pp. 11-12 ("NYNEX Petition"); Petition of the United States Telephone Association for Reconsideration and Clarification, pp. 9-11 ("USTA Petition"); Petition for Reconsideration of the Pennsylvania Public Utilities Commission, p. 6 ("Pennsylvania Public Utilities Commission Petition").

29/ The Commission must recognize that these complaints come from the very parties currently responsible for numbering administration and the current discriminatory practices.

being aware of the approximate number of carriers in the area to be served by the new code,[30] state commissions can reserve the requisite number of NXX codes to ensure that all carriers having a right to such codes can secure them as needed prior to the relief implementation. Thus, the concerns expressed by these petitioners are unfounded and the Commission should reject these requests.

12. AT&T, Cox, Teleport and MFS request that the Commission prohibit the implementation of area code overlays until such time as permanent number portability has been introduced.[31] AirTouch disagrees because this could permit LECs to delay number portability.[32] However, AirTouch also believes that area code overlays are the most efficient and least burdensome method of number exhaustion relief. In light of the rapid depletion of

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30/ The petitioners assert that there is no way to know the number of carriers in the area to be served by the code. This is not the case. There are fixed numbers of cellular carriers, PCS carriers and incumbent LECs in a particular area. Since competitive LECs must satisfy some reporting obligation in virtually each state in which they operate, their existence is known as well. Utilities are similarly regulated and their identities known. Even paging carriers, not traditionally subject to extensive state regulation, also will become known to the states, since each interconnection agreement between paging carriers' and LECs must be approved by the state commission.

31/ AT&T Petition; Petition for Reconsideration of Cox Communications, Inc. ("Cox"); and MFS Communications Company, Inc. Petition for Partial Reconsideration of Second Report and Order.

32/ Telephone Number Portability, CC Docket No. 95-116, Joint Comments of AirTouch Paging and Arch Communications Group on the Notice of Proposed Rule Making filed on September 12, 1995.

existing numbers, the growing need for numbers, and the measures the Commission has adopted to reduce the advantages to incumbent LECs in connection with overlays, AirTouch does not believe that area code overlay relief should be postponed until permanent number portability has been implemented. The Commission has adopted three safeguards which should reduce the advantages incumbent LECs may enjoy from an overlay: (a) each carrier in the area to be served by the overlay area code must be assigned an NXX code in the 90 days preceding the overlay; (b) 10 digit dialing, including for local calls, must be implemented in the areas served by the overlay code; and (c) interim number portability measures should be used to permit customers to change carriers without being relegated to a new, unfamiliar area code.[33/] In addition, as noted above, AirTouch supports a modification to the NXX assignment obligation such that carriers would be able to secure a sufficient numbers of NXX codes to enable them to serve their entire service areas. Although there are some concerns that interim number portability results in lower quality service to subscribers (e.g., longer call holding times), AirTouch believes that, on balance, the benefits of the overlay relief will outweigh the potential concerns.

III. AirTouch Supports the Petition Seeking Clarification of "Reasonable" Charges for Code Administration

13. AT&T requests that the Commission provide additional guidance with respect to determining "reasonable"

33/ Second Report ¶¶ 286-290.

charges associated with code administration.[34] AirTouch supports this request. As AT&T pointed out, "administrative" charges assessed by ILECs for NXX code openings vary widely, as do the types of expenses ILECs allocate to "administrative" functions associated with code openings.[35] AirTouch has encountered this same phenomenon. Currently, although some ILECs have eliminated charges for NXX code openings in accordance with the Second Report, some ILECs still attempt to charge as much as $30,600 to open a single NXX code.[36] AT&T requests that the Commission clarify that only charges that would be incurred by a neutral third party number administrator may be assessed for code openings, and that when an ILEC charges a fee to competitors for code openings, it must impute that same charge to itself for all code openings.[37] The clarification that AT&T requests is consistent with the Second Report. The Second Report provides that charges for central office code openings are governed by Section 201(b)'s prohibition of unreasonable discrimination, Section 202(a)'s prohibition of unjust practices or charges, and Section 251(b)(3)'s requirement of non-discrimination.[38] Per

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34/ AT&T Petition, pp. 10-12.

35/ AT&T Petition, p. 10.

36/ Pacific Bell is one of the ILECs which has not, of yet, agreed to eliminate code activation fees. PacBell's rates alone vary from $9,400 (for 909 NPA) to $30,600 (for 818 NPA). This charge almost seems to be based upon market demand for NXXs in these NPAs, and completely unrelated to costs.

37/ AT&T Petition, pp. 11-12.

38/ Second Report ¶ 332.

Section 201, charges for central office code openings must be reasonable. In addition, the Second Report indicates that any other charges being assessed, which in effect are interconnection charges, are governed by the principles adopted in the First Report,[39] i.e., they cannot be recovered as numbering administration costs.[40] The Second report also provides:

> ... any incumbent LEC charging competing carriers fees for assignment of CO codes may do so only if it charges the same fee to all carriers, including itself and its affiliates.[41]

AT&T's request also is consistent with the public interest. As the Commission noted, numbers are a crucial element to a carrier's ability to compete.[42] ILECs' ability to delay the assignment of CO codes or significantly increase the costs associated with securing those codes provides them with an unfair competitive advantage.

39/ Second Report ¶ 333.

40/ The ILEC may not charge wireless carriers for recurring number charges pursuant to Section 51.703(b) of the Commission's Rules.

41/ Second Report ¶ 328.

42/ Second Report ¶ 332.

IV. AirTouch Opposes Petitions Seeking to Expand the Class of Carriers Required to Provide Notification of Network Changes, and to Limit Disclosure Requirements

14. In its Petition, AirTouch requested reaffirmation that the network disclosure obligations imposed upon ILECs run to the benefit of all telecommunications carriers.[43/] AirTouch explained that such confirmation is critical to carriers interconnecting with the ILEC's network for the transmission and routing of telecommunications services. Changes in the ILEC's bottleneck network can have a significant impact on an interconnecting carrier's ability to continue to provide service in the same fashion and at the same level of quality because these facilities are bottleneck facilities.[44/] Moreover, as new services develop as a result of unbundling of ILEC network elements and services mandated by the First Report, it will become even more essential that carriers are notified of changes to the ILEC network so that they may offer those services to their own subscribers directly.[45/] Some petitioners have turned this logic on its head and requested that the Commission require that all telecommunications carriers provide notice of modifications to their networks. AirTouch does not support these requests.

15. For example, NYNEX requests that all telecommunications carriers be required to give notice of network

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43/ AirTouch Petition, pp. 4-7.

44/ AirTouch Petition, p. 5.

45/ AirTouch Petition, p. 6.

changes which may affect the exchange of telephone calls and call control signals.[46] SBC also proposes broadening the obligation to encompass all telecommunications carriers.[47] These requests are inconsistent with the Communications Act and with public policy. The 1996 amendments to the Communications Act were intended to foster competition in the local marketplace -- to put an end to ILECs using their bottleneck facilities to erect barriers to entry against would-be competitors. In addition this argument is not supported by a plain reading of Section 251 which places this requirement solely on ILECs. [48]

16. SBC argues that Section 256 provides the Commission with the authority to impose the obligations of Section 251(c)(5) upon all telecommunications carriers.[49] AirTouch disagrees. SBC assumes that the obligations which will be imposed on all telecommunications carriers in the Commission's separate proceeding on Section 256 will be more stringent than

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46/ NYNEX Petition, pp. 8-9.

47/ SBC Petition, p. 17.

48/ Section 251(c)(5) was intended to address and eliminate this practice. Significantly, Congress chose to place this provision in Section 251, subsection (c), pertaining to ILECs, as opposed to subsection (a) relating to all telecommunications carriers, or subsection (b) setting forth the obligations of non-incumbent LECs. By placing the disclosure provision in subsection (c), Congress made an explicit decision not to impose this obligation upon all telecommunications carriers, or even upon all LECs. The Commission may not contradict the express mandate of Congress by extending that obligation at this time. Chevron U.S.A., Inc. v. Natural Resources Defense Council, 104 S.Ct. 2778 (1984).

49/ SBC Petition, pp. 15-16.

those imposed pursuant to Section 251(c)(5).[50] This assumption is based upon the Commission's refusal in the Second Report to decide whether compliance with Section 251(c)(5) would satisfy Section 256. SBC's reliance upon this statement for its conclusion is misplaced. The Commission stated that it would determine the obligations of Section 256 in a separate, future proceeding.[51] Thus, it was impossible for the Commission to decide in the Second Report whether compliance with Section 251 satisfies Section 256 without prejudicing the outcome of the Section 256 proceeding. Moreover, nowhere in the Second Report does the Commission indicate that extensive notice obligations will be imposed pursuant to Section 256. To the contrary, the statutory section itself references industry standards and FCC oversight, but does not make reference to notice requirements.[52] AirTouch agrees with the Commission that the obligations to be imposed on all telecommunications carriers pursuant to Section 256 should be determined by a separate proceeding after development of a complete record.

17. The limitation of the disclosure obligation to ILECs also serves the public interest. Since ILECs own and control the traditional monopoly bottleneck facilities, (i.e., their networks) placing the obligation to disclose network changes only makes sense with respect to ILECs. By requiring ILECs to provide notice of network changes, it reduces their

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50/ SBC Petition, pp. 15-16.

51/ Second Report ¶ 244.

52/ 47 U.S.C. § 256.

opportunity to interfere with, advertently or inadvertently, the services provided by interconnecting carriers to their own subscribers. In contrast, however, requiring other telecommunications carriers engaged in competition to disclose their network configurations would stifle competition. As the Commission itself has observed, notice requirements (such as tariffing requirements) in a competitive market actually limit competition by allowing competitors to design competitive responses to system changes in advance of implementation.[53/]

18. SBC also seeks reconsideration of the definition of the scope of the network disclosure obligation. SBC asserts that the Commission's definition of the scope of information which must be disclosed must mirror the language of the statute.[54/] AirTouch disagrees. The Commission's interpretation of the statutory language is proper and consistent with the principles of administrative rule-making and with the public interest.

19. The FCC is vested with the authority to interpret the Communications Act. Fundamental principles of administrative rule-making procedure provide that administrative agencies may interpret statutes and promulgate rules based upon that interpretation.[55/] Such agency interpretations are given

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53/ Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order, FCC 94-31, GN Docket No. 93-252, released March 7, 1994, ¶¶ 175, 177.

54/ SBC Petition, pp. 14-15.

55/ Chevron v. NRDC, supra.

deference by the courts.[56] Unless the agency's interpretation is inconsistent with the plain language or the intent of the statute, the agency's interpretation must not be disturbed.[57] The Commission's interpretation of the scope of the obligation imposed by Section 251(c)(5) is consistent with the statutory language. The statute requires notice of changes in "information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks."[58] In interpreting this obligation, the Commission provided guidance regarding the type of information which must be disclosed. The Commission concluded that information about network changes must be disclosed if it affects competing service providers' performance or ability to provide service.[59] This type of effect falls within the scope of the disclosure provided for in the Act. Information which affects a carrier's ability to perform or provide service clearly is information which is "necessary to the transmission and routing of telecommunications services." Absent a valid demonstration that the Commission's interpretation in inconsistent with the Act, SBC cannot argue that the Commission's decision should be reconsidered.

56/ Id.

57/ Id.

58/ 47 U.S.C. § 251(c)(5) (emphasis added).

59/ Second Report ¶ 171. AirTouch Paging has petitioned the Commission to expand the carriers to which notice must be given.

V. AirTouch Opposes the Petitions Seeking to Limit the Scope of the Dialing Parity Obligation

20. Ameritech suggests that the only carriers who should be entitled to dialing parity are other LECs and carriers who provide both telephone exchange service and exchange access service.[60] The Commission concluded, in both the First Report and Second Report that the references in Section 251(c) to "telephone exchange and exchange access service" are intended to encompass providers of telephone exchange service,[61] providers of exchange access, and providers of both telephone exchange service and exchange access.[62] AirTouch opposes Ameritech's request because the Commission's finding is consistent with the statute and the public interest.

21. As the Commission explained, Section 251(b)(3) does not limit the types of services or traffic for which dialing parity must be provided.[63] Thus, a requirement that carriers provide both telephone exchange and exchange access service prior to being entitled to dialing parity would impermissibly exclude many telecommunications carriers from the class of carriers enjoying dialing parity. For example, according to Ameritech, a

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60/ Ameritech Petition, pp. 3-6.

61/ AirTouch Paging has Petitioned the Commission to clarify that paging carriers provide telephone exchange services. See AirTouch Petition, pp. 7-14.

62/ Second Report ¶ 29; First Report ¶ 184 [the Commission concluded that this interpretation "is consistent with both the language and Congress's intent to foster entry by competitive providers into the local exchange market."]

63/ Second Report ¶ 29.

carrier providing only telephone exchange service (but not classified as a LEC) could be precluded from dialing parity because it is not also providing exchange access.[64/] This is inconsistent with the goals of the 1996 amendments to the Communications Act -- to foster competition in the local marketplace.[65/] The conclusion reached here is precisely what the Commission sought to avoid in its First Report when it determined that the interconnection obligation of Section 251(c)(2) pertained to three classes of carriers -- those that provide telephone exchange service, those that provide exchange access service, and those that provide both of these services. The Commission explained: "we believe that Congress intended to facilitate entry by carriers offering either service. In imposing an interconnection requirement under Section 251(c)(2) to facilitate such entry, however, we believe that Congress did not want to deter entry by entities that seek to offer either service, or both, and, as a result, Section 251(c)(2) requires incumbent LECs to interconnect with carriers providing 'telephone exchange service and exchange access.'"[66/] Having satisfactorily explained its interpretation and based such interpretation on rational grounds, the Commission's decision must stand.

64/ Many CMRS carriers would find themselves in this situation.

65/ Ameritech acknowledges that this is the goal of the Act, yet fails to acknowledge that its suggestion, taken to its logical conclusion, defeats this purpose.

66/ First Report ¶ 184.

22. The explanation of the Commission's finding set forth above also demonstrates that the result is consistent with the public interest. If ILECs could refuse dialing parity simply by requiring competitors to provide both local and toll services, competition in the local marketplace will continue to be delayed.

Conclusion

WHEREFORE, the foregoing premises having been duly considered, AirTouch respectfully requests that the Commission clarify its rules consistent with these comments.

Respectfully submitted,

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November 20, 1996

CERTIFICATE OF SERVICE

I, Myra Burke, a secretary in the law firm of Paul, Hastings, Janofsky & Walker, LLP, hereby certifies that a copy of the foregoing Comments of AirTouch Communications, Inc. on Petitions For Reconsideration was served via first class mail on this 20th day of November, 1996 to the following persons:

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