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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 29, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Mail Stop Code 1170
Washington, D.C. 20544

RE: Ex Parte Presentation
CPD Docket 97-24; CC Docket No. 96-98; CC Docket No. 95-185

Dear Mr. Caton:

Pursuant to the requirements of Sections 1.1200 et seq. of the Commission's Rules, you are hereby notified that Kathleen Abernathy of Airtouch Communications, Inc., Howard Symons of Mintz, Levin, Glovsky, Ferris & Popeo and I met today with Rosalind Allen and Karen Gulick of the Wireless Telecommunications Bureau. The purpose of the meeting was to discuss the above-referenced Southwestern Bell Telephone Company request for a ruling by the Common Carrier Bureau regarding the treatment of LEC-originated traffic terminated on paging carrier systems. The issues discussed in the meeting are summarized in the attached handouts.

Should there be any questions regarding this matter, please contact the undersigned.

Sincerely,

Cathy Massey

Cathleen A. Massey

cc: Rosalind Allen
Karen Gulick
Kathleen Abernathy
Howard Symons

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July 23, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: **Ex Parte** – CCB/CPD 97-24
Interconnection Between LECs and Paging Providers

Dear Mr. Caton:

On April 25, 1997 and May 9, 1997, Southwestern Bell Telephone Company ("SWBT") filed letters with the Common Carrier Bureau asking for endorsement of its position that LECs may charge paging carriers for LEC-originated traffic.[1] In particular, SWBT argued that, even if Section 51.703(b) of the Commission's rules explicitly precludes a LEC from assessing "charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network,"[2] LECs may charge for the one-way trunks they use to transport traffic to the paging networks. SWBT reasoned that because the United States Court of Appeals for the Eighth Circuit had stayed the effectiveness of Section 51.709(b) of the FCC's rules, which specifies the applicable rate structure for facilities between interconnectors' networks, LECs may continue to impose on paging providers flat-rate charges for facilities in accordance with effective state tariffs.[3]

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1 On May 22, 1997, the Commission asked for comment on SWBT's letters, as well as a response to SWBT's initial letter filed by AirTouch Communications, Inc., AirTouch Paging, AT&T Wireless Services, Inc., and PageNet, Inc. on May 16, 1997. See Public Notice, Pleading Cycle Established for Comments on Requests for Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Carriers, CCB/CPD 97-24, DA 97-1071 (released May 22, 1997).

2 47 C.F.R. § 51.703(b).

3 See, e.g., Letter to Regina M. Keeney, Chief, Common Carrier Bureau, from Paul E. Dorin, SWBT, at 2-4, April 25, 1997.

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Although AT&T Wireless Services, Inc. disagrees with SWBT's interpretation of the relevance of Section 51.709(b) to *one-way* facilities, SWBT's argument has become moot as a result of the Eighth Circuit's decision on July 18, 1997.[4] In that order, the Court ruled that the Commission has "the authority to issue the rules of special concern to the CMRS providers," and, therefore, Section 51.709(b) "remain[s] in full force and effect with respect to the CMRS providers."[5]

Because the sole basis for SWBT's asserted authority to charge for facilities no longer exists, the Commission should expeditiously issue a declaratory ruling that LECs may not impose any charges on paging carriers for traffic originated on the LECs' networks, including charges for facilities used to transport such traffic to the paging network.

Should any questions arise concerning this matter, please contact me.

Sincerely,

Cathleen A. Massey/ab

Cathleen A. Massey

cc: Regina M. Keeney
Richard Metzger
Mary Beth Richards
James Schlichting
Ed Krachmer
Dan Phythyon
William E. Kennard
Kathleen Q. Abernathy
Judith St. Ledger-Roty
Aliza Katz
Paul E. Dorin
M. Robert Sutherland

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[4] Iowa Utilities Board v. Federal Communications Commission, et al., Nos. [type in numbers], Slip Op., filed July 18, 1997.

[5] Id. at n.21.

# LEC-PAGING CARRIER INTERCONNECTION

AirTouch Paging Response to
Southwestern Bell
April 25, 1997 Letter

AirTouch Paging
May 22, 1997

# LEC-PAGING CARRIER INTERCONNECTION

- PAGING CARRIERS ARE TELECOMMUNICATIONS CARRIERS UNDER THE TELECOMMUNICATIONS ACT OF 1996
- AS TELECOMMUNICATIONS CARRIERS, PAGING CARRIERS HAVE RIGHTS AND OBLIGATIONS UNDER THE ACT
  - AMONG OTHER OBLIGATIONS, PAGING CARRIERS MUST:
    - INTERCONNECT WITH OTHER TELECOMMUNICATIONS CARRIERS UPON REQUEST (SECTION 251(A))
    - CONTRIBUTE TO FUNDING OF UNIVERSAL SERVICE (SECTION 254)
    - PROTECT CUSTOMER PROPRIETARY NETWORK INFORMATION (SECTION 222)
    - MAKE THEIR FACILITIES ACCESSIBLE TO PERSONS WITH DISABILITIES (SECTION 255)
  - IN EXCHANGE, AMONG OTHER RIGHTS, PAGING CARRIERS ARE ENTITLED TO BE COMPENSATED FOR THE TRAFFIC THEY TERMINATE
    - THIS MAKES SENSE — PAGING CARRIERS SHOULD BE COMPENSATED FOR THE SERVICES THEY PERFORM FOR THE LECS

- THE COMMISSION HAS ALREADY DECIDED THE ISSUE WHETHER LECS ARE ALLOWED TO CHARGE PAGING CARRIERS FOR LEC ORIGINATED TRAFFIC, INCLUDING THE DELIVERY OF SUCH TRAFFIC TO THE PAGING SWITCH AT NO CHARGE TO THE PAGING CARRIER
  - "[P]AGING PROVIDERS, AS TELECOMMUNICATIONS CARRIERS, ARE ENTITLED TO MUTUAL COMPENSATIONS FOR THE TRANSPORT AND TERMINATION OF LOCAL TRAFFIC, AND SHOULD NOT BE REQUIRED TO PAY CHARGES FOR TRAFFIC THAT ORIGINATES ON OTHER CARRIER'S NETWORKS..." INTERCONNECTION ORDER, PARA. 1092
    - THIS CONCLUSION WAS BASED UPON RECORD EVIDENCE THAT LECS WERE CHARGING PAGING CARRIERS FOR DELIVERY OF LEC ORIGINATED TRAFFIC
  - THE COMMON CARRIER BUREAU PREVIOUSLY ISSUED A LETTER ON MARCH 3, 1997 IN RESPONSE TO A LETTER BY SEVERAL PAGING CARRIERS THAT SECTION 251(B)(5) PROHIBITED LECS FROM CHARGING FOR DELIVERY OF TRAFFIC TO THE PAGING SWITCH
  - THIS IS ALSO CONSISTENT WITH THE WAY ILECS HAVE TRADITIONALLY HANDLED TERMINATING TRAFFIC BETWEEN THEIR RESPECTIVE NETWORKS

- THE INTERCONNECTION ORDER AS INTERPRETED BY THE COMMON CARRIER BUREAU AND THE PAGING CARRIERS SERVES THE PUBLIC INTEREST
  - IF PAGING CARRIERS ARE REQUIRED TO PAY FOR THESE FACILITIES AND OTHER CMRS CARRIERS ARE NOT, PAGING CARRIERS WILL BE UNDULY DISCRIMINATED AGAINST
  - SINCE PAGING CARRIERS ARE REQUIRED TO TERMINATION LEC TRAFFIC, THEY ARE ENTITLED TO BE PAID FOR THE SERVICES THEY RENDER
  - THE FACT THAT PAGING CARRIERS PREDOMINATELY TERMINATE TRAFFIC DOES NOT CHANGE THE RESULT — PAGING CARRIERS ARE WILLING TO PAY TO DELIVER ANY TRAFFIC THEY ORIGINATE AT THE SAME RATES, INCLUDING PAYING FOR THE DELIVERY OF TRAFFIC TO THE LEC SWITCH
  - SOUTHWESTERN BELL'S POSITION WOULD ALLOW IT TO USE ITS INTERCONNECTION SERVICE, IN WHICH IT HAS A DOMINANT POSITION, TO SUBSIDIZE COMPETITIVE SERVICES, SUCH AS ITS OWN CMRS SERVICES
    - THIS WOULD VIOLATE SECTION 254(K) OF THE ACT

- THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC) ADOPTED A DECISION ON MAY 21 CONSISTENT WITH THE AIRTOUCH POSITION:

  - THE CPUC ISSUED THE FIRST PAGING -LEC ARBITRATION DECISION YESTERDAY AND IT AGREED WITH THE PAGING CARRIER VIEWS OF THE ACT THAT:

    - PAGING CARRIERS ARE ENTITLED TO THE BENEFITS OF THE ACT
    - PAGING CARRIERS ARE NOT REQUIRED TO PAY FOR FACILITIES USED BY THE LEC TO DELIVER LEC ORIGINATED TRAFFIC
    - PAGING CARRIERS ARE ENTITLED TO TERMINATION COMPENSATION

- THE COMMISSION SHOULD PROMPTLY ISSUE A LETTER REITERATING ITS POSITION THAT PAGING CARRIERS ARE NOT REQUIRED TO PAY FOR THE FACILITIES USED BY THE LEC TO DELIVER LEC ORIGINATED TRAFFIC