DOCKET FILE COPY ORIGINAL

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554 **DA 97-2582**

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: http://www.fcc.gov ftp.fcc.gov

Released: December 10, 1997

EX PARTE PROCEDURES ESTABLISHED FOR FORMAL COMPLAINTS FILED BY AIRTOUCH PAGING AGAINST GTE (FILE NOS. E-98-08, E-98-10), AND FOR PETITIONS FOR RECONSIDERATION OF THE IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS IN THE TELECOMMUNICATIONS ACT OF 1996, (CC DOCKET NOS. 96-98, 95-185)

AirTouch Paging of California, a commercial mobile radio service ("CMRS") provider, filed a formal complaint, File No. E-98-08, against GTE California, Inc., a local exchange carrier ("LEC"), on November 13, 1997. AirTouch Paging of Texas, a CMRS provider, filed a formal complaint, File No. E-98-10, against GTE Southwest, Inc., a LEC, on November 21, 1997. AirTouch Paging of California and AirTouch Paging of Texas will be referenced collectively herein as "AirTouch." GTE California, Inc. and GTE Southwest, Inc., will be referenced collectively herein as "GTE." In both complaints, AirTouch alleges, *inter alia*, that GTE violated Sections 201, 202 and 251 of the Communications Act, 47 U.S.C. §§ 201, 202, 251, and the Commission's rules by refusing to provide additional interconnection facilities for AirTouch, and by billing AirTouch for charges associated with the delivery of GTE-originated traffic to AirTouch's facilities. The formal complaints are restricted proceedings for purposes of the Commission's *ex parte* rules. *See* 47 C.F.R.§ 1.1208.

On August 8, 1996, the Commission released a report and order in which the Commission discussed, among other things, interconnection rights and obligations between LECs and CMRS providers. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499 (1996)("*Local Competition Order*"), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), aff'd in part and vacated in part sub nom. Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petitions for cert. filed 66 U.S.L.W. 3387* (U.S. Nov. 19, 1997) (No. 97-831), *Order on Reconsideration*, 11 FCC Rcd 13042 (1966), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 1246 (1997), *further recon. pending*. Petitions for reconsideration in the *Local Competition Order* are still pending. The *Local Competition Order* proceeding is a "permit-but-disclose" proceeding for purposes of the Commission's *ex parte* rules. *See* 47 C.F.R. §1.1206.

Both of Air Touch's formal complaints raise the issue of applicability of reciprocal compensation to paging carriers, a matter that is also the subject of certain petitions for reconsideration in the *Local Competition Order*. (*See* Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53, 922 (1966); *see also, e.g.*, Petitions filed by Kalida Telephone Company, Inc., and Local Exchange Carrier

Coalition.). Because this particular issue is common to both the formal complaint proceedings and the rulemaking proceeding and to ensure that the staff's ability to discuss and obtain information needed to resolve the issues in the rulemaking proceeding remains unhampered during the pendency of the formal complaint proceedings, we are modifying the *ex parte* procedures applicable to these proceedings. Accordingly, we shall treat that particular issue common to both the formal complaint proceedings and the rulemaking proceeding as "permit-but-disclose" for *ex parte* purposes and, thus, like the rulemaking proceeding, subject the two formal complaints to the "permit-but-disclose" procedures set forth in Section 1.1206. The other issues in the formal complaint proceeding shall remain subject to the prohibition on *ex parte* presentations in restricted proceedings set forth in Section 1.1208 of the Rules.

Thus, under the modified procedures adopted today, *ex parte* presentations on the issue of reciprocal compensation to paging carriers will be permissible (except during the Sunshine Agenda prohibition, if applicable) in both the formal complaint proceedings (File Nos. E-98-08, E-98-10), as well as the *Local Competition Order* proceeding (CC Docket Nos. 96-98, 95-185), provided that the procedures of Section 1.1206 are followed. If such a presentation is made in the *Local Competition Order* proceeding, the required disclosure of such presentation under Section 1.1206 should be made in that rulemaking proceeding and both formal complaint proceedings. Two copies of any written *ex parte* presentation made or, if oral, an original and one copy of a memorandum that summarizes the oral *ex parte* presentation (as well as a copy to the person or persons to whom the oral communication was made) must be filed with the Secretary. These memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. All such filings should be clearly captioned as *ex parte* presentations and should reference the appropriate file number of each proceeding.

Parties to the complaint proceedings may incorporate *ex parte* presentations that occurred in the *Local Competition Order* proceeding after the filing of the complaints but prior to release of this public notice by filing an original and two copies of the written communication or summary of any oral communication in accordance with Section 1.735 of the Rules, 47 C.F.R. §1.735, pertaining to formal complaints.

For information regarding the formal complaint proceedings, please contact Deena Shetler of the Enforcement Division, Common Carrier Bureau, at (202) 418-0960. The formal complaint materials are available for inspection and copying in the Enforcement Division, Formal Complaints and Investigations Branch, Room 6120, 2025 M Street, N.W., Washington, DC 20554. For information regarding the petitions for reconsideration in the *Local Competition Order* proceeding, please contact Edward B. Krachmer, Competitive Pricing Division, Common Carrier Bureau, at (202) 418-0198. The reconsideration comments and reply comments are available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies can also be obtained from ITS at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, or by calling (202) 857-3800.

By the Acting Chief, Enforcement Division, Common Carrier Bureau.

-FCC-