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Federal Communications Commission  
Washington, D.C. 20554

CC 96-98

DA 97-2726

December 30, 1997

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Dear Mr. Davis, Ms. Massey, Ms. Abernathy, Mr. Stachiw, and Ms. St. Ledger-Roty:

This letter responds to letters from Southwestern Bell Telephone (SWBT) dated April 25, 1997 and May 9, 1997, and from AirTouch Communications, Inc., AirTouch Paging, AT&T Wireless Services, Inc., and PageNet, Inc. dated May 16, 1997, requesting that the Common Carrier Bureau (Bureau) clarify whether the Commission's current rules permit a local exchange carrier (LEC) to charge a provider of paging services for the cost of LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network. The Bureau sought public comment on these letters on May 22, 1997.<sup>1</sup> Certain LECs, including SWBT, contend that Section 51.703(b) of the Commission's rules, 47 C.F.R. § 51.703(b),<sup>2</sup> governs only the charges for "traffic" between carriers and does not prevent LECs from charging for the

<sup>1</sup> See *Pleading Cycle Established for Comments on Requests for Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Carriers*, DA 97-1071 (rel. May 22, 1997).

<sup>2</sup> Section 51.703(b) of the Commission's rules was stayed by the United States Court of Appeals for the Eighth Circuit. *Iowa Utils. Bd. v. FCC*, 96 F.3d 1116 (8th Cir. 1996) (Temporary Stay Order of September 27, 1996); *Iowa Utils. Bd. v. FCC*, 109 F.3d 418 (8th Cir. 1996) (Order Granting Stay Pending Judicial Review of October 15, 1996). The Eighth Circuit lifted its stay of Section 51.703(b) on November 1, 1996. *Iowa Utils. Bd. v. FCC*, No. 96-3321, Order Lifting Stay in Part (8th Cir., November 1, 1996). In its July 18, 1997 order, the Eighth Circuit upheld Section 51.703 as a valid exercise of the Commission's jurisdiction. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21, 820 n.39 (8th Cir. 1997).

2  
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"facilities" used to transport that traffic.<sup>3</sup> For the reasons discussed below, we conclude that the Commission's rules prohibit a LEC from imposing such charges.

The Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996,<sup>4</sup> requires LECs to "establish reciprocal compensation agreements for the transport and termination of telecommunications."<sup>5</sup> In the *Local Competition Order*, the Commission concluded that commercial mobile radio service (CMRS) providers such as paging carriers offer "telecommunications" as defined in the Act, *see* 47 U.S.C. § 153(43), and that LECs accordingly "are obligated, pursuant to section 251(b)(5) [of the Act.] . . . to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks."<sup>6</sup>

With respect to such compensation arrangements, the Commission adopted Section 51.703(b) of its rules, which states that a "LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network."<sup>7</sup> In adopting this rule, the Commission stated, with specific reference to paging and other CMRS providers: "As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge."<sup>8</sup> Given the Commission's clear statement that LECs must provide traffic originating on their networks to CMRS carriers "without charge," the Bureau finds no basis for the argument advanced by SWBT that LECs are permitted to assess charges on CMRS carriers to recover the costs of facilities that are used by LECs to deliver traffic to CMRS carriers.

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<sup>3</sup> *See, e.g.*, Anchorage Telephone Utility Comments at 2; BellSouth Reply Comments at 2. In contrast, Bell Atlantic and Sprint, for example, have indicated that they believe that Section 51.703(b) precludes them from charging paging carriers for interconnection facilities. *See, e.g.*, Bell Atlantic Reply Comments at 3, Sprint Comments at 2.

<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

<sup>5</sup> 47 U.S.C. § 251(b)(5).

<sup>6</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order (*Local Competition Order*), 11 FCC Rcd 15499, 15997 (1996).

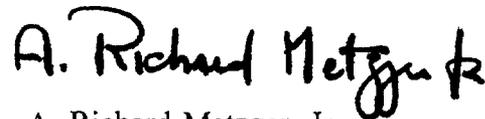
<sup>7</sup> 47 C.F.R. § 51.703(b).

<sup>8</sup> *Local Competition Order*, 11 FCC Rcd at 16016.

Mr. Keith Davis *et al.*  
December 30, 1997  
Page Three

Accordingly, we conclude that the Commission's current rules do not allow a LEC to charge a provider of paging services for the cost of LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network. Our conclusion is based on the text of Section 51.703(b), as explained by the Commission in the *Local Competition Order*. We note that this issue is subject to pending petitions for reconsideration of the *Local Competition Order* in CC Docket No. 96-98.<sup>9</sup> The Commission will consider this issue further based on the record developed in response to those petitions.

Sincerely,



A. Richard Metzger, Jr.  
Chief  
Common Carrier Bureau

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<sup>9</sup> See Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, 61 Fed. Reg. 53, 922 (1996); *see, e.g.*, Petitions filed by Kalida Telephone Company, Inc., and Local Exchange Carrier Coalition.