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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-128
Petition for Waiver of AirTouch Paging of Sections 64.1300(c) and (d) of the Commission's Rules	)	

To: The Chief, Common Carrier Bureau

OPPOSITION OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL TO THE PETITION FOR WAIVER OF AIRTOUCH PAGING

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The American Public Communications Council ("APCC") hereby opposes the petition of Airtouch Paging requesting a waiver of per-call compensation obligations for the duration of the coding digits waiver[1] recently granted by the Common Carrier Bureau. Order, DA 97-2162, released October 7, 1997 ("Waiver Order").

Airtouch contends that the per-call compensation obligations prescribed in the Second Report and Order were conditioned on the availability of call blocking. Airtouch argues that, because the coding digits waiver allegedly prevents Airtouch from blocking

[1] In the Waiver Order, the Bureau waived for a five-month period the requirement for local exchange carriers ("LECs") to transmit to interexchange carriers ("IXCs") specific ANI coding digits identifying each call originating from a payphone.

payphone calls, Airtouch should be relieved from compensation obligations as to payphones that do not transmit coding digits.

Airtouch's argument essentially duplicates the position taken by the Personal Communications Industry Association ("PCIA") in its request for a stay of the Second Report and Order, FCC 97-371, released October 9, 1997, and should be rejected for the same reasons stated by the Bureau in its denial of PCIA's request. Memorandum Opinion and Order, DA 97-2622, released December 17, 1997 ("Stay Denial Order").

In the Second Report and Order, the Commission prescribed two rates of compensation. For the first two years, beginning October 7, 1997 and ending October 6, 1999, the Commission prescribed a uniform rate of 28.4 cents per call (the "1997-99 rate"). For the period after October 6, 1999, the Commission prescribed a variable rate (the "post-1999 rate") that is based on the local coin calling rate charged at the particular payphone in question (minus an adjustment to account for the difference between the costs of a local coin call and a dial-around call).

Whatever relevance the availability of blocking may have to the post-1999 compensation rate, which is determined by the local rate-setting decisions of each individual payphone provider, the availability of blocking is not in any manner a condition for the application of the uniform 1997-99 rate. The 1997-99 compensation rate is prescribed at the uniform level of 28.4 cents per call, and is *not* subject to the local rate-setting decisions of each individual payphone service provider ("PSP"). Therefore,

there is no necessity for carriers or their customers to block calls in order to protect themselves against possibly exorbitant rates.

The Commission set the 1997 - 1999 rate at a uniform 28.4 cent level in part because "certain call blocking capabilities are not yet available to participants in the provision of access code and subscriber 800 calls from a payphone, and thus the market is not yet free of impediments that interfere with the competitive negotiated process." Second Report and Order, ¶ 122, n. 325. Thus, as the Common Carrier Bureau explained in its order denying PCIA's request for stay, the uniform 1997-1999 rate "was itself intended to address the possibility of unequal bargaining power between PSPs and carriers." Stay Denial Order, ¶ 8. By setting a uniform rate, the Commission protected carriers (and indirectly their subscribers), during the 1997-99 period, against any possibility that a particular payphone provider would set the local calling rate -- and thus the per-call compensation rate -- at an exorbitant level.[2] Since the initial 28.4 cents rate *does not* assume the availability of call blocking -- and in fact assumes that call blocking is not universally available -- any imperfections in call blocking capabilities cannot justify a waiver of the 28.4 cents per call rate.

Furthermore, even if the availability of call blocking were a significant issue with respect to the 1997-1999 rate, Airtouch provides no evidence that it is incurring any

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[2] Whatever bargaining power PSPs arguably may have under the post-1999 rate, they have no significant ability to use bargaining power to increase the 28.4-cent 1997 - 1999 rate. While blocking may provide IXCs with some leverage to reduce a rate that is set too high, PSPs have no comparable ability to block calls from payphones where IXCs are insisting on paying a rate that is too low.

compensation charges, during the waiver period, on calls that cannot be blocked. As explained in the Waiver Order, payphone-specific digits are already transmitted from at least 60% of payphones. Waiver Order, ¶ 10, n. 22; Stay Denial Order, ¶ 10. The coding digits waiver has no effect on IXCs' ability to block calls from these payphones.[3] From the other 40% of payphones, from which coding digits apparently cannot *currently* be transmitted, the major IXCs have claimed they cannot even *track* subscriber 800 calls. See, e.g., Letter to John B. Muleta from E.E. Estey, Government Affairs Vice President, AT&T, October 14, 1997.[4] If the IXCs cannot track these calls, then they cannot bill Airtouch any payphone surcharges for these calls.[5] Thus, even if Airtouch were entitled to block calls, during the waiver period, from payphones where it is subject to a payphone surcharge, Airtouch has provided no reason to believe that it will in fact be charged on calls from payphones where payphone-specific coding digits are unavailable, because the major IXCs have stated they cannot track and bill for those calls.

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[3] As noted above, the Commission set the initial 28.4 cents rate as a uniform rate *because* of the unavailability of blocking on certain calls. Thus, the absence of blocking cannot justify a waiver of the 28.4 cents rate.

[4] Therefore, AT&T has alleged that IXCs are unable to pay per-call compensation for these calls, and has requested that IXCs be permitted to pay compensation on a flat-rate basis until March 9, 1998.

[5] Airtouch does not contend that it is subject to direct per-call compensation obligations. Rather, Airtouch characterizes itself as a *subscriber* to 800 services of carriers who are, themselves subject to per-call compensation obligations. Thus, it appears that Airtouch's obligation to pay payphone compensation is only indirect -- the result of carriers' decisions to pass along their compensation obligations in the form of surcharges on calls derived from payphones.

In summary, Airtouch demonstrates no special circumstances that would justify a waiver of the compensation obligations continuing to deprive payphone providers of fair compensation for calls routed to Airtouch. For thirteen years, carriers have been receiving access code and subscriber 800 calls from independent payphone service providers. It is now long past time that all carriers and their subscribers -- including Airtouch -- begin paying for the service they receive from payphone providers. Airtouch presents no public interest justification for postponing any carrier's payment obligation by a single day.

Dated: January 15, 1998

Respectfully submitted,

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Certificate of Service

I hereby certify that on January 15, 1998, a copy of the foregoing Opposition Of The American Public Communications Council To The Petition For Waiver Of AirTouch Paging was sent by first class United States mail or hand-delivery (*) to the following:

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