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Federal Communications Commission
Office of Secretary

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

95-185

In the Matter of

Requests for Clarification of the Commission' s Rules Regarding Interconnection Between LECs and Paging Carriers	))))	CCB/CPD Docket No. 97-24

SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL, AND NEVADA BELL'S PETITION FOR STAY PENDING COMMISSION REVIEW

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Requests for Clarification of	)	
the Commission' s Rules Regarding	)	CCB/CPD Docket No. 97-24
Interconnection Between LECs	)	
and Paging Carriers	)	

SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL, AND NEVADA BELL'S PETITION FOR STAY PENDING COMMISSION REVIEW

Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell ("SBC LECs") hereby request that the Commission grant a stay of the decision of the Common Carrier Bureau regarding the application of 47 C.F.R. § 51.703(b) to paging carriers, pending Commission review of that decision. See Letter from A. Richard Metzger, Jr., Chief, Common Carrier Bureau, to Mr. Keith Davis, et al., DA 97-2726 (rel. Dec. 30, 1997); 47 C.F.R. § 1.102(b)(3). The SBC LECs' filed their Application for Review of the Bureau's decision on January 29, 1998, showing that this decision is erroneous and must be reversed by the Commission. Because the Bureau's decision threatens the SBC LECs with irreparable harm, as described herein and in the affidavit of Elizabeth Rice (attached hereto as Exhibit A) ("Rice Affidavit"), if the Commission has not ruled on this Petition for Stay within 15 days, the SBC LECs will find it necessary to seek relief in court.

SUMMARY AND INTRODUCTION

The Bureau's recent announcement that the Commission has preempted existing tariffs and contracts between LECs and paging carriers threatens to create chaos in the industry:

without a stay, LECs, paging companies, and end-users alike will be irreparably harmed. As discussed in the SBC LECs' Application for Review, the Bureau has misapplied the Commission's rules and announced a regulatory regime that is entirely contrary to the basic tenets of the Telecommunications Act of 1996. The Bureau's decision -- which purports to prevent LECs from recovering the cost of dedicated facilities purchased by paging carriers to transport traffic to their networks -- is wrong and must be reversed.

The Bureau's decision is already causing the SBC LECs severe and irreparable harm. In the absence of a stay, the Bureau's decision will cause the SBC LECs to begin to reconfigure their networks to reduce the unrecoverable costs imposed by paging carrier interconnection. This harm is certain -- not speculative -- and irreparable, for the SBC LECs will never be able to recover these reconfiguration costs, costs which will prove to be utterly wasted if the Bureau's decision is overturned, as the SBC LECs believe it will be. Moreover, the Bureau's decision will require massive changes to the SBC LECs' tariffs and interconnection agreements to reflect 1) that facilities that should be subject to cost recovery are no longer being paid for; and 2) reconfiguration of network services. In turn, the SBC LECs' proposals to reconfigure their networks to reduce their losses will trigger protracted tariff battles in proceedings in all the States in which they provide local exchange service, as well as widespread contract renegotiations and dispute resolution. Again, this entire process will need to be undone if the Bureau's decision is overturned.

In addition, even before the Bureau issued its decision, several paging carriers were refusing to pay bills that were due and owing under valid state tariffs. In the wake of the Bureau's decision, the number of carriers engaging in this illegal "self help" is sure to grow. As

explained herein, the SBC LECs are unlikely ever to be able to fully recoup this money after the Bureau decision is reversed. This loss too qualifies as irreparable harm that a stay would forestall.

Moreover, this is the rare case where a stay need not cause any other party any harm at all. Reconfiguration of the LECs' networks threatens to disrupt paging carrier service; a stay will prevent this harm. The SBC LECs are prepared to apply appropriate accounting to any funds collected based on extant state tariffs for facilities. In the unlikely event that the Bureau's decision is sustained on review and upon appeal, the SBC LECs can refund those monies -- with interest.

Finally, the public interest clearly favors a stay. Any unnecessary losses imposed in the absence of a stay will be borne by SBC's stockholders and exchange customers. In addition, paging carriers' customers and the individuals who call them may see the convenience of paging service drop off appreciably, as the LECs reconfigure their networks to take account of the Bureau's ruling.

ARGUMENT

Under the Commission's regulations, the decision whether to grant a stay pending review of actions taken pursuant to delegated authority is committed to the Commission's discretion. See 47 C.F.R. § 1.102(b)(3). The Commission has found it "helpful to rely on the guidelines set forth in Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958) to determine whether a stay is warranted." Memorandum Opinion and Order, Complaint of Dianne Feinstein, et al., 9 FCC Rcd 2698, 2698 [¶ 6] (1994). Under that familiar standard, the Commission will grant a stay if the petitioner can demonstrate 1) that it is likely to prevail on the merits; 2) that the

petitioner would be irreparably harmed in the absence of a stay; 3) that the issuance of a stay will not substantially harm other parties; and 4) that a stay is in the public interest. See also Wisconsin Gas Co. v. FERC, 758 F.2d 669 (D.C. Cir. 1985).

"The test is a flexible one." Population Inst. v. McPherson, 797 F.2d 1062, 1078 (D.C. Cir. 1986). Relief should be granted if the moving party demonstrates "either a high likelihood of success and some injury, or vice versa." Id. The waste of resources caused by reconfiguring networks, only to change them back again once the decision under review is reversed, is a classic example of irreparable harm. This harm will be particularly severe in those cases where both to make the wasteful changes and later to undo those changes require resolution of disputes in state regulatory proceedings. In addition, although recoverable monetary loss usually does not constitute "irreparable injury" for stay purposes, see Wisconsin Gas, 758 F.2d at 674, this is so only where "adequate compensatory or other corrective relief" is available "in the ordinary course of litigation," id. In other words, unrecoverable monetary loss does qualify as irreparable harm.

I. THE SBC LECS HAVE DEMONSTRATED A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS

As the SBC LECs set out in detail in their Application for Review, the Bureau's interpretation of the Commission's regulations and Local Competition Order cannot stand. The Bureau's decision rested on the proposition that there is "no basis" for distinguishing charges for facilities on the one hand from charges for traffic on the other. But as a factual matter, facilities-based charges permit the LEC to recover the costs of dedicated facilities requested by and provided to the paging carrier; in contrast, usage-sensitive charges for traffic depend on the volume of traffic carried over the LEC's network and recover the incremental cost of transporting

such traffic. The SBC LECs simply do not impose any such usage-sensitive charges on paging carriers. And as a legal matter, the Commission clearly distinguished in its regulations and its order between facilities charges on the one hand and "traffic" charges on the other. Indeed, this distinction has legal significance under the regime adopted pursuant to the Telecommunications Act of 1996. Compare 47 C.F.R. § 51.703(b) (discussing traffic charges) with id § 51.709(b) (discussing rates for facilities). See Application for Review at 3-7.

Moreover, under the clear terms of the Commission's regulations, paging carriers are not covered by the rules contained in Subpart H, governing reciprocal compensation, including section 51.703(b). This is true for two reasons: first, because the paging carriers admittedly do not originate any traffic that terminates on the LECs' networks, any compensation paid by the LECs to paging carriers for call transport or termination would necessarily be unilateral, not reciprocal. Second, under the FCC's own definitions, paging carriers neither terminate nor transport traffic. To the extent any commentary in the Local Competition Order appears to be in tension with the plain terms of the Commission's regulations, the regulations control. See Application for Review at 7-12.

Finally, were the Commission to affirm the Bureau's interpretation, the Commission would exceed its authority under the Act. Section 251(b)(5) provides no authority for the preemption of valid state tariffs: that section does not apply to paging carriers because by its terms it governs only mutual compensation arrangements. See 47 U.S.C. § 251(b)(5); see also id. § 252(d)(2)(A)(i). Moreover, interconnecting carriers must vindicate any rights granted under section 251 in the context of negotiating an interconnection agreement under section 252; to the extent the Bureau purported to impose requirements pursuant to section 251 in the absence of

such negotiations, its interpretation of the Commission's regulations was contrary to the statute. And the Act itself makes clear that preemption of state interconnection tariffs is permitted only under limited circumstances; those circumstances are not present here. The Bureau's interpretation thus raises important federalism concerns. See Application for Review at 12-19.

II. THE SBC LECS WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A STAY

The Bureau's decision causes irreparable harm to the SBC LECs in at least two ways. First, the decision will force the SBC LECs to begin reconfiguring paging interconnection arrangements to meet the new regulatory regime announced in the Bureau's decision. These arrangements may have to be reconfigured yet again if the Commission later reverses the Bureau's decision. And this network reconfiguration will require substantial tariff and contract changes and will trigger numerous and costly state regulatory proceedings. Second, even if the Commission later reverses the Bureau's decision, the SBC LECs will not be able to recover all of the facilities charges that paging carriers should have paid in the interim. Under these circumstances, a stay is not only warranted, it is essential.[1]

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[1]The Bureau's ruling is also causing substantial harm to the SBC LECs that cannot be fully addressed by a stay. The SBC LECs have received a number of orders from paging carriers for facilities and optional equipment that paging carriers do not intend to pay for, and, to the extent that the paging carriers believe that no charges will be assessed, the paging carriers have every incentive to order more facilities than they require. The SBC LECs thus will be required to respond to these requests, even when they are not justified by existing traffic loads and requirements, and to place immediate restrictions on paging carriers' abilities to order facilities. While a stay may discourage paging carriers from ordering facilities on the assumption that they will not be required to pay for them, the ordering restrictions will nonetheless be required whether or not the Commission grants a stay. See Rice Affidavit ¶ 14 n.2. This emphasizes the importance of prompt Commission action on the SBC LECs' Application for Review.

The Bureau's decision will require that the SBC LECs reconfigure all paging-LEC interconnection networks. The Bureau's decision represents a fundamental departure from the well-established rule under which all existing LEC-paging interconnection networks were designed and deployed. Until the Bureau's decision, paging carriers designed their own interconnection networks to accomplish their own objectives of market presence, penetration, and access to markets with high demand for vertical features offered by the paging carriers. In other words, the paging carriers designed their interconnection networks to suit their own marketing and economic purposes. Of course, they did so knowing that they would be required to pay for the services they received. However, under the Bureau's decision, the network is no longer the paging carrier's network; it is the LEC's network, for the LEC to design and deploy unilaterally. If the paging carriers are to receive such facilities without charge, the only way to ensure any control on sizing and deployment is for the network to be designed and built by the LECs. The LECs will consequently rearrange the existing network to minimize their costs, rather than deploying a network that services the paging carriers' interests. See Rice Affidavit ¶ 4.

The Rice affidavit explains that this change will make a profound difference in the way paging carriers interconnect with the SBC LECs' networks. For example, paging carriers usually scatter numbers in central offices throughout broad service areas. A paging company in Northern California, for example, could locate a paging terminal in Eureka and establish numbers throughout Northern California -- in San Jose/Silicon Valley (more than 324 miles from Eureka), Oakland/San Francisco (more than 280 miles away), and Napa Valley (more than 220 miles away) -- in addition to providing service in Eureka. Under state tariffs and agreements, paging

carriers have purchased dedicated facilities, known as foreign exchange or "FX" services, to serve such diverse local calling areas; they were, of course, required to pay for these "FX" arrangements to their Eureka terminal. Rice Affidavit ¶ 5.

In most instances, the LEC would receive revenue from the caller for only a local call, because the number would be located and rated from the local calling area. Thus, if a San Jose customer called the paging carrier's San Jose number, the LEC would be required to transport that call more than 300 miles to Eureka, while receiving compensation from the caller for a local call.[2] Rice Affidavit ¶ 6.

If the Bureau's decision is not stayed, however, the SBC LECs have no choice but to reconfigure all of their existing interconnection arrangements with paging carriers. It would be uneconomical and unfair to its exchange customers for the LEC to bear the cost of these facilities. The LEC will therefore require a paging carrier to establish a single point of interconnection ("POI") to bring traffic from the LEC's network to the paging carrier's network in each local calling area. Moreover, to the extent that the paging carrier wants any facilities within each local calling area, it will have to establish a POI within a reasonable distance from the serving wire center. The SBC LECs will be unable to offer "FX" arrangements to paging carriers, and such existing "FX" arrangements will have to be dismantled. The SBC LECs will

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[2]Moreover, in many instances, paging carriers use Type 1 interconnection at terminating end offices to pick up such traffic, which requires the LEC to perform all of the same switching that it would have had to perform to deliver the call to an end-user on its premises. See Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2915-16 (1987).

carry calls as far as they are paid to carry them. If they are not paid for facilities, the SBC LECs will not carry calls out of their local calling areas.

This reconfiguration will cause the SBC LECs irreparable harm, because the expense of reconfiguration cannot be recovered. Moreover, if the Commission were to reverse the Bureau's decision, or adopt different rules, governing paging carrier-LEC interconnection, the SBC LECs likely would have to reconfigure their networks again. All of this loss is irreparable and unavoidable in the absence of a stay; all can be avoided if a stay is granted.

Moreover, because of the changes that reconfiguration will entail, the SBC LECs will be required to enter into regulatory proceedings to change tariffs. These proceedings are certain to be both long and contentious. Furthermore, the SBC LECs will be required to renegotiate private contractual arrangements with paging carriers to reflect the Bureau's decision; these negotiations too are likely to require expensive dispute resolution. All of this will consume human resources, and money, that the SBC LECs will be unable to recover.

Finally, the SBC LECs will be irreparably harmed without a stay because they will not be able to fully recoup all of the unpaid charges from paging carriers in the likely event that the Commission reverses the Bureau's decision. Paging carriers had begun to withhold payment of facilities charges that were due and owing under state tariffs long before the Bureau had issued its ruling. See Letter from Paul E. Dorin to Regina M. Keeney (May 9, 1997) (listing paging carriers refusing to pay compensation to SWBT). SWBT alone has already lost millions of dollars due to paging carriers' unpaid bills. These lost billings will only accelerate as more paging carriers choose to withhold payment of bills under the Bureau's decision. See Rice Affidavit ¶¶ 11-12

While recoverable monetary loss is an insufficient basis for a stay under established precedent, unrecoverable monetary loss can indeed constitute irreparable harm. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 & n.2 (D.C. Cir. 1977). The Bureau's decision means that the SBC LECs are no longer permitted to charge for dedicated facilities, and for technical billing reasons, the SBC LECs will find it expensive -- perhaps even prohibitively expensive -- to recover these charges. Without a stay, in other words, the SBC LECs will never fully recoup lost revenues to which they will be entitled when the Bureau's decision is reversed. See Rice Affidavit ¶ 13.

The Commission can forestall this harm by leaving in place paging carriers' responsibilities under state tariffs and private agreements. If a stay is granted, the SBC LECs would agree to apply appropriate accounting to allow future repayment to the paging carriers, if necessary. However, the Commission's order should make clear that the paging carriers are required to honor all existing and past-due obligations; these monies would also be subject to appropriate accounting protection.

III. A STAY NOT ONLY WOULD NOT HARM PAGING CARRIERS; IT WOULD POSITIVELY HELP THEM

This is the rare case where a stay not only would cause paging carriers no harm, but also would be positively beneficial to them. The paging carriers seem to have won a pyrrhic victory: they have secured a ruling that LECs may not charge even for dedicated facilities used to deliver traffic to the paging carriers' networks, but with unfortunate consequences. As explained above, without a stay, each SBC LEC will be required to begin reconfiguring its network as soon as possible. This would impose significant and unrecoverable costs on the LEC. But it would also

impose costs on the paging carriers. They will be required to establish facilities in each local calling area where they wish to offer local service. This will require the paging carriers to incur significant expenses to connect their terminals with the various points of interconnection. Moreover, these facilities will have to be within a reasonable distance of the serving wire center; to achieve this may require the paging carriers to make further expenditures. To the extent this requires paging carriers to rearrange their numbering resources, this will disrupt paging carriers' service and threatens to render their services less convenient and valuable for their customers.

A stay will permit paging carriers and LECs alike to forestall any expensive adjustments to a paradoxical and evidently temporary legal regime created by the Bureau's decision. Moreover, as paging carriers continue to object that they should not be required to pay for services that the Bureau has stated must be provided for free, the SBC LECs are prepared to apply appropriate accounting to any amounts collected for facilities charges after the date of the Bureau's decision; in turn, however, the Commission's stay order should make clear that the paging carriers must honor their own outstanding obligations. If the paging carriers' arguments and the Bureau's views are ultimately vindicated, the paging carriers will get their money back -- with interest. Under these circumstances, paging carriers can point to no conceivable harm that a stay would cause.

IV. A STAY IS STRONGLY IN THE PUBLIC INTEREST

As the foregoing discussion demonstrates, a stay would be strongly in the public interest. If no stay is issued, the SBC LECs will be forced to begin reconfiguration, at great waste and expense. Not only the SBC LECs, but shareholders and local exchange customers lose. If no stay issues, the paging carriers' services are likely to be disrupted and made less convenient for

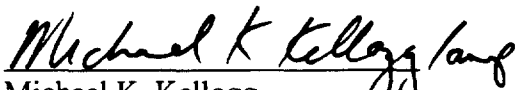
paging customers and callers alike. Not only the paging carriers, but their customers and the public at large are the losers.

In contrast, a stay will simply preserve the status quo until the Commission is able to review the Bureau's ruling on the merits. That ruling is clearly incorrect and will surely be reversed. A stay permits the Commission to consider the matter expeditiously but fairly; the interests of every party will be protected. A stay is the only sensible course.

CONCLUSION

For the foregoing reason, the Commission should grant the SBC LECs' request for stay pending review of the Common Carrier Bureau's decision.

Respectfully submitted,



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AFFIDAVIT OF ELIZABETH RICE

I, Elizabeth Rice, being duly sworn, depose and state the following:

1. I am the Director, Wireless Product & Channel Management for SBC Telecommunications, Inc. I have 17 years of experience as a manager in the telecommunications industry. My responsibilities include management and oversight on behalf of Southwestern Bell Telephone Company, Nevada Bell and Pacific Bell (collectively, the "SBC LECs") of market planning and analysis, service development and interconnection contract negotiations and implementation with wireless carriers. As part of my responsibilities, I am familiar with the Commission's regulation of our services, including the effects of that regulation on prices, revenues, and market conditions for our products and services, including effects on the network architecture used by the SBC LECs.

2. In this capacity I am familiar with, as they relate to my job responsibilities, the effects on the SBC LECs of the First Report and Order in CC Docket No. 96-98, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (released Aug. 8, 1996) ("Local Competition Order"), as well as two letters by the Common Carrier Bureau. The first letter is from Regina M. Keeney to Cathleen A. Massey, et al., dated March 3, 1997. The second letter is in this CCB/CPD Docket No. 97-24, Requests for Clarification of the

Commission's Rules Regarding Interconnection Between LECs and Paging Carriers, and is from A. Richard Metzger to Keith E. Davis, et al., dated December 30, 1997.

3. Since well prior to the effective date of the Local Competition Order, the SBC LECs have not included any usage-sensitive charges for traffic originating on the SBC LECs' networks in their tariffs or private contractual agreements governing interconnection with CMRS carriers, including paging carriers. For that reason, the SBC LECs made no changes to the way their networks were configured for interconnection with paging carriers as a result of the March 3 letter. The SBC LECs continued to allow paging carriers to order whatever facilities they desired to accomplish their marketing objectives, with the understanding that the paging carriers had the legal obligation to pay for those facilities. The Bureau's letter appears to change all this by indicating that LECs must provide these facilities for free. The Bureau's decision causes irreparable harm to the SBC LECs in two separate ways that I detail below.

4. The first way in which the SBC LECs will be harmed is that the Bureau's letter will make it necessary for the SBC LECs to reconfigure their networks. Prior to the Bureau's decision, paging companies designed their own interconnection networks by purchasing facilities from the SBC LECs pursuant to state tariffs or private agreement. The paging companies designed their interconnection networks to accomplish their own objectives of market presence, penetration, and access to markets with high demand for the services offered by paging companies. If the Bureau's letter is allowed to stand, however, these facilities will no longer be ordered and designed by the paging carriers. Instead, because the Bureau's ruling makes clear that interconnection facilities are part of a LEC's network, the LEC will design and deploy that network unilaterally. If the paging carriers are to receive such facilities without charge, the only

way to ensure control on sizing and deployment is for the network to be designed and built by the LEC. The SBC LECs will consequently rearrange the existing network to comply with the Commission's rulings and to control their costs, rather than deploying a network according to the paging carriers' specifications.

5. An example illustrates this change. Paging carriers often scatter numbers in central offices throughout broad service areas (either their own service areas, or, through interconnection arrangements with other paging carriers, into service areas served by other paging carriers). A paging company in Northern California, for example, could locate a paging terminal in Eureka and establish services and numbers throughout Northern California, including such widespread areas such as San Jose/Silicon Valley (more than 324 miles from Eureka), Oakland/San Francisco (more than 280 miles away), and Napa Valley (more than 220 miles away), in addition to providing service in Eureka. All of these areas are in the same LATA. Therefore, under state tariffs, that paging carrier could purchase dedicated foreign exchange ("FX") facilities into such diverse local calling areas, paying for these "FX" arrangements according to rates established by state tariff.[1]

6. In most instances, the LEC would receive revenue from the caller only for a local call, because the number would be located and rated from the local calling area. In the hypothetical example above, if a San Jose customer called a San Jose number of the paging carrier, the LEC would be required to transport that call to Eureka -- more than 300 miles -- but the caller would pay for only a local call. Moreover, in many instances paging carriers use Type

[1]As a result of the Bureau's letter, paging carriers have begun to demand that the SBC LECs provide such "FX" facilities -- which may span hundreds of miles -- without charge.

1 interconnection at terminating end offices to pick up such traffic; causing additional end office termination switching costs.

7. If the Bureau's letter is not stayed or reversed, however, the SBC LECs will have no choice but to reconfigure their existing interconnection arrangements with paging carriers. For example, the SBC LECs will no longer provide "FX" facilities if the cost of such facilities must be born by the LECs' exchange customers. The SBC LECs will thus require that a paging carrier establish a point of interconnection ("POI") in each local calling area in which the paging carrier wishes to offer local numbers; the paging carrier will thus need to build into each such local calling area to receive calls to those local numbers. Moreover, to the extent that the paging carrier wants any facilities within a calling area, the paging carrier will have to establish that they are within a reasonable distance from the wire center location where it wants facilities. The SBC LECs will no longer offer "FX" arrangements to paging carriers, and all existing "FX" arrangements will be dismantled.

8. This reconfiguration will cause the SBC LECs irreparable harm, because the expense of this reconfiguration cannot be recovered. Based on the arguments that they have made to date, I believe that paging carriers will argue that they should bear no responsibility for these reconfiguration costs. As a result, these costs will be unrecoverable by the SBC LECs. Moreover, if the Commission were to reverse the Bureau's decision, or to adopt different rules governing paging carrier-LEC interconnection, the SBC LECs likely would have to reconfigure their networks yet again.

9. The reconfiguration of the networks would be extremely costly to the SBC LECs. While the total cost cannot be predicted with certainty at this time, I estimate that the costs to the

SBC LECs would be at least several millions of dollars. Moreover, in the event that the Bureau's letter is later reversed or altered in any significant way, the SBC LECs will incur additional expense -- the exact amount will depend on how far the first reconfiguration had proceeded -- to modify the changes that the Bureau's letter makes necessary.

10. This reconfiguration will make it necessary for the SBC LECs to make substantial changes to state and federal tariffs. Furthermore, numbers tariffs will have to be amended to reflect the new method of interconnection as required by the Bureau's letter. The proceedings to effect these changes will be costly, particularly because they may well be protracted and contentious. Similarly, in some States, the SBC LECs will be required to bring their existing interconnection agreements into conformance with the Bureau's letter; such contract renegotiation may require expensive dispute resolution. All of this will involve a substantial expenditure of SBC LEC time and resources that cannot be recovered.

11. The second way in which the SBC LECs will be irreparably harmed if a stay is not granted is that they will not be able to collect all of these unpaid charges from paging companies in the likely event that the Commission reverses the Bureau's decision. The Local Competition Order and the March 3 letter encouraged paging providers to stop honoring their obligations for the facilities provided by the SBC LECs for interconnection of the paging carriers' terminals with the SBC LECs' networks. For example, McCaw Communications, AirSignal, Mobilefone Services, Inc., Airtouch Paging, PageNet Pager, Map Mobile Communications, Inc., Media Co-Paging, Inc., and many other paging carriers have withheld payment for some or all of their facilities since various times after November 1, 1996. The total

amount of unpaid charges due Southwestern Bell Telephone Company, as of January 1, 1998, fluctuates around $1.75 million. The other SBC LECs are losing revenue in a similar manner.

12. If the Bureau's letter is not stayed, the SBC LECs will face yet more serious losses in revenue. The SBC LECs currently bill an estimated $1.5 million each month to paging carriers who have ordered facilities for interconnection and other services. Several paging companies have already informed the SBC LECs that they take the view that the Bureau's letter entitles them to receive these facilities without charge. Other carriers have informed us that they will not only not pay for any of the facilities provided by the SBC LECs, including administrative and special access facilities, but they also will not pay for reverse billing and other services.

13. If the Commission compels the SBC LECs to cease billing for these charges, as many paging carriers are demanding, and later corrects the Bureau's interpretation, the SBC LECs will not be able to go back later and bill those carriers for these facilities without massive and extremely onerous changes to the SBC LECs' billing systems. Even manual accounting would present serious logistical problems and might well prove uneconomical. And, in all events, the costs for these billing changes would not be recoverable. Additionally, any subsequent change will entail further unrecoverable expense.

14. Thus, without a stay, the SBC LECs will be unable to recoup the lost revenues described above in the event the Bureau's letter is reversed after review by the Commission.[2] As a result, the SBC LECs would be irreparably harmed.

15. The information contained in this affidavit is true and correct to the best of my knowledge and belief.

Elizabeth Rice

Subscribed and sworn to before me this 30th day of January 1998.

Mary C White

My commission expires:

6/2/00

MARY C. WHITE
Notary Public, State of Texas
My Commission Expires 6-02-00

[2]The Bureau's letter is causing substantial harm to the SBC LECs that cannot be fully cured by a stay. For example, the SBC LECs have received a number of orders from paging carriers for facilities and optional equipment that paging carriers do not intend to pay for, and, to the extent that they believe that no charges will be assessed, the paging carriers have every incentive to order more facilities than they require. The SBC LECs have to respond to these requests, even when they are not justified by existing traffic loads and requirements, and to place immediate restrictions on paging carriers' abilities to order facilities. While a stay may discourage paging carriers from ordering unnecessary facilities, the ordering restrictions will be required whether or not the Commission grants a stay.

Certificate of Service

I hereby certify that I caused copies of the Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell's Petition for Stay Pending Commission Review to be served on the parties on the attached service list by hand delivery or overnight delivery on this 30th day of January, 1998.

Aaron M. Panner

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