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VIA MESSENGER

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEB 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Contact — CC Docket No. 96-128

Dear Ms. Salas:

On February 20, 1998, the undersigned, on behalf of AirTouch Paging, met with Glenn Reynolds and Rose Crellin of the Commission's Common Carrier Bureau to discuss AirTouch Paging's pending request for waiver in CC Docket No. 96-128 and to urge that the requested waiver be granted promptly. Also attending the meeting were Mark A. Stachiw, AirTouch Paging's Vice President and Senior Counsel, and Kathleen Q. Abernathy, AirTouch Communications' Vice President, Federal Regulatory. A copy of materials provided at the meeting by AirTouch is included herewith.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, submitted herewith are an original and one copy of this notice for inclusion in CC Docket No. 96-128.

Very truly yours,



Carl W. Northrop

for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Mr. Glenn Reynolds
Ms. Rose Crellin

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**PETITION FOR WAIVER
OF AIRTOUCH PAGING
CC DOCKET NO. 96-128**

EX PARTE PRESENTATION OF AIRTOUCH PAGING

FEBRUARY 20, 1998

THE WAIVER REQUEST IS NARROWLY TAILORED FOR SPECIAL CIRCUMSTANCES

- The Commission's rules require that payphone service providers (PSPs) provide automatic number identification information (ANI ii) with each call placed from a payphone as a condition to receiving per-call compensation. Transmission of these coding digits is needed to bill, block, and track calls. However, the requirement has been waived for at least 40% of payphones until March 1998, and perhaps longer. AirTouch has requested a limited, temporary, and reciprocal waiver of its obligation to compensate these non-compliant PSPs on a per-call basis for toll-free calls placed from their payphones unless and until they provide payphone-specific coding digits necessary to selectively block calls from their payphones.
- The LECs did not inform the Commission and their customers of their inability to provide coding digits until the effective date of the per-call compensation obligation was imminent. As a result, alternative arrangements could not be implemented.
- AirTouch has offered its toll-free customers the choice of blocking calls placed from payphones for which they do not wish to pay. Approximately 75% of these customers have chosen not to accept calls from payphones to their 800 pager numbers. Without the required coding digits, however, AirTouch cannot implement its customers' decision by blocking calls that are not specifically identified as payphone calls.

AIRTOUCH AND THE PUBLIC INTEREST WILL BE HARMED WITHOUT A WAIVER

- AirTouch has approximately 120,000 customers who have toll-free pager numbers. Based on average calling patterns, these customers collectively receive an estimated 816,000 calls per month from those payphones that received a waiver. Thus, over the course of the period covered by the PSP waiver, AirTouch could be obligated to pay non-compliant PSPs more than \$1 million in compensation, a financial loss that cannot and will not be recovered from AirTouch's customers.
- If AirTouch blocks calls on a wholesale basis in order to avoid PSP compensation charges, all toll restricted lines (such as those used by a large number of paging subscribers), not just payphone lines, are affected. The result is an erosion of the public's ability to reach AirTouch's toll-free subscribers.
- Requiring AirTouch to pay for calls its customers have chosen to block would force AirTouch to pass through charges — and effectively force AirTouch to conform its service offerings to those of its competitors who have not offered their customers the option of blocking. This result would be contrary to the Commission's pro-competitive policies.

FUNDAMENTAL FAIRNESS COMPELS EQUAL TREATMENT FOR AIRTOUCH

- Waiving compensation under appropriate circumstances — such as when PSPs are not in compliance with their coding digits obligations — is fully consistent with the Act's requirement that compensation be "fair."
- The Bureau granted the PSPs a waiver based on technical limitations and financial considerations. The same factors apply to and justify AirTouch's waiver request, and it should be treated no differently.
- Without the ability to block calls, AirTouch would incur a liability which it cannot avoid and cannot pass on to its customers. This result is contrary to the Court of Appeals justification for upholding the per-call compensation scheme, which is that "the party incurring the cost could avoid it." Illinois Public Telecomms. Ass'n. v. FCC, 117 F.3d 555, 566 (1997).