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June 5, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

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

Rm-9273

Re: In the Matter of Petition for Rulemaking to Establish a
Dedicated 8XX Code for Toll-Free Calls Placed from
Pay Telephones, RM No. 98-9273

Dear Ms. Salas:

Please find enclosed for filing an original and four copies of the RBOC/GTE/SNET
Payphone Coalition's Opposition to Airtouch Paging's Petition for Rulemaking in the above-
captioned proceeding.

Please date-stamp and return the extra copy provided to the individual delivering this
package.

Sincerely,



Michael K. Kellogg

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

AirTouch Paging)	
)	
Petition for Rulemaking)	
to Establish a Dedicated 8XX Code)	RM No. 98-9273
for Toll-Free Calls Placed)	
from Pay Telephones)	

**THE RBOC/GTE/SNET PAYPHONE COALITION'S
OPPOSITION TO AIRTOUCH PAGING'S
PETITION FOR RULEMAKING**

INTRODUCTION AND SUMMARY

The RBOC/GTE/SNET Payphone Coalition hereby opposes AirTouch Paging's Petition for Rulemaking (filed April 17, 1998) (the "Petition"). The Petition should be denied for at least four reasons. First, the Commission is not the appropriate body to establish such a new toll-free calling code; rather, AirTouch should bring its suggestion to the appropriate industry bodies. Second, implementing this proposal would be extremely expensive: LECs would be required to spend at least tens of millions of dollars more to implement the new 8XX code. Third, such an expenditure would be particularly pointless when there is no evidence of demand for caller-pays "toll free" numbers, and when the type of calling that AirTouch advocates is largely already available through the use of local numbers and conventional NPA/NXX numbers. Finally, the Commission should not revisit a proposal that it has already properly rejected -- the Commission has already addressed an approach like the one suggested by AirTouch in the Payphones Docket, and that decision has been explicitly upheld by the D.C. Circuit.

BACKGROUND

The Commission, in the Payphones Docket,¹ devoted considerable attention to the question of which party should bear responsibility for payment of per-call compensation to payphone service providers (PSPs).² The Commission determined that “the primary economic beneficiary of payphone calls should compensate the PSPs.” First Report and Order, 11 FCC Rcd at 20584, ¶ 83. In the case of subscriber 800 and dial-around calls, the Commission determined that a carrier-pays system for per-call compensation “places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner.” Id. The Commission noted that “the carrier-pays system . . . gives IXC’s the most flexibility to recover their own costs, whether through increased rates to all or particular customers, through direct charges to access code call or subscriber 800 customers, or through contractual agreements with individual customers.” Id. The Commission further concluded that “the marketplace will determine, over time, the appropriate options for recovering these costs.” Id.

The Commission considered and rejected other options for payment of per-call compensation. Specifically, several commenters, including AirTouch, recommended that the

¹See Report and Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20541 (1996) (“First Report and Order”); Order on Reconsideration, 11 FCC Rcd 21233 (1996) (“Order on Recon.”; Second Report and Order, 13 FCC Rcd 1778 (1997) (“Second Report and Order”).

²The Commission determined that per-call compensation on dial-around and subscriber 800 calls was necessary to fulfill the congressional mandate that PSPs be “fairly compensated” for “each and every” completed call. Because TOCSIA prevents PSPs from blocking access-code calls, it effectively prevents PSPs from blocking subscriber 800 calls as well. Without regulatory intervention, no party would have any incentive to pay for such calls. See First Report and Order, 11 FCC Rcd at 20567, ¶ 49.

Commission adopt a “caller-pays” compensation system. Id. at 20582, ¶ 80 & n.278. The Commission determined that caller-pays would be a poor system for several reasons. First, requiring the deposit of coins would unduly burden many transient payphone callers. Id. at 20585, ¶ 85. Second, the Commission noted that TOCSIA would bar this approach for 800-access code numbers. Id. In its Order on Reconsideration, the Commission observed that rejection of caller-pays was consistent with the Commission's long-held view that “callers should not be required to deposit coins when making a call that i[s] otherwise billed to an account.” 11 FCC Rcd at 21275, ¶ 88. And the Commission also found that its carrier-pays system was consistent with the provision of the Act that prohibits carriers from assessing the calling party a charge for completing any 800 number call. Id. at 21276, ¶ 88.

Moreover, the Commission specifically rejected “a caller-pays, coin-deposit approach for a particular type of subscriber 800 calls, such as calls to a paging service, while relying upon a carrier-pays approach for other compensable calls” because such a system “would be unduly burdensome and costly to mandate.” Id. at 21276, ¶ 89.

The paging industry appealed the Commission's adoption of a carrier-pays compensation system. The United States Court of Appeals for the District of Columbia Circuit rejected each of its arguments. The court held that “the Commission's conclusion that a 'carrier pays' compensation system will result in competitive market pricing of 800 service payphone per-call compensation charges was not arbitrary or capricious”; that “[t]he Commission's balancing of the competing concerns of administrative efficiency and consumer convenience was not arbitrary”; and that the Commission's determination that IXCs are the primary economic beneficiary of 800

service calls was adequately supported. Illinois Pub. Telecomm. Ass'n v. FCC, 17 F.3d 555, 567 (D.C. Cir. 1997).

After remand on the issue of the per-call compensation amount, the Commission properly declined to revisit the question of carrier-pays. See Second Report and Order, 13 FCC Rcd 1778, 1834, ¶ 132 (1997).³

ARGUMENT

Petitions “which plainly do not warrant consideration by the Commission may be denied or dismissed.” 47 C.F.R. § 1.401(e). Under this standard, AirTouch's proposal for rulemaking must be denied. As an initial matter, the establishment of a new 8XX code, with unique characteristics, is a matter for the Industry Numbering Committee of the Alliance for Telecommunications Industry Solutions (the “INC”), not for the Commission. Just as important, the implementation of such a proposal would be extremely expensive, and AirTouch has not begun to quantify the expected costs. Such expense would, moreover, be thoroughly unjustified. AirTouch presents no evidence of demand for such service; nor does it explain why it is unable to meet its marketing needs through creative use of existing numbering resources. Finally, the Commission has already rejected AirTouch's proposal, and for good reasons: consumers expect

³AirTouch's claim that “[s]ubstantial uncertainty about the rules continues to exist” is hard to understand. While there are numerous petitions for reconsideration pending, and while the D.C. Circuit recently ordered the Commission to provide a more complete explanation for its market-based methodology, the only area on which there is any uncertainty is whether the eventual default compensation rate will be adjusted up or down by a couple of pennies. The Coalition believes that the basic structure of the per-call compensation regime is quite clear to all parties.

the convenience of coinless toll-free dialing, and the carrier-pays compensation mechanism will result in competitive market pricing of 800 service payphone per-call compensation.

I. THE ESTABLISHMENT OF A NEW 8XX CODE IS A TASK FOR THE INDUSTRY, NOT FOR THE COMMISSION

AirTouch's Petition calls for unprecedented Commission intervention in the industry's oversight of numbering resources. To our knowledge, the Commission has never required the industry to create a new toll free code. Rather, it was the industry that determined that numbering resources in the 800 code were inadequate, and it was likewise the industry that designated 888, 877, and 866 as the subsequent toll free codes. See Fourth Report and Order and Memorandum Opinion and Order, Toll Free Service Access Codes, CC Docket No. 95-155, FCC 98-48, ¶ 2 (rel. Mar. 31, 1998).

The Commission has recently noted that it "has historically left most 800 numbering issues to the industry for resolution," and indicated its commitment "to continue this general policy." Notice of Proposed Rulemaking, Toll Free Service Access Codes, 10 FCC Rcd 13692, 13695, ¶ 10 (1995). Indeed, the Commission has intervened in the administration of 800 service access codes in the past primarily to resolve disputes over number allocation. See generally id.

The industry has a forum dedicated to the resolution of issues associated with the planning, administration, allocation, assignment and use of resources and related dialing consideration for telecommunications within the North American Numbering Plan ("NANP") area: the INC. The INC has experience with proposals much like AirTouch's. See, e.g., Additional PCS Area Code, Issue #126 (proposing selection of PCS NPA codes for called party

pays services).⁴ The Commission, moreover, has recognized the INC's success at resolving numbering issues. See Report and Order, Administration of the North American Numbering Plan, 11 FCC Rcd 2588, 2608, ¶ 43 (1995).

To be sure, the Commission has a role to play in resolving intractable disputes within the industry.⁵ But, so far as AirTouch's Petition reveals, AirTouch has never attempted to work with other industry participants to develop a numbering resource that would have the characteristics that AirTouch has described. Until it does so, the industry will have no opportunity to reach a consensus on the need for and feasibility of the 8XX code that AirTouch advocates. Any Commission rulemaking in this area would be, therefore, premature at best. For this reason alone, the Commission should deny AirTouch's Petition.

II. THE IMPLEMENTATION OF AIRTOUCH'S PROPOSAL WOULD WASTE AT LEAST TENS OF MILLIONS OF DOLLARS

AirTouch proclaims cavalierly that "PSP[s] can readily program [their] phones to implement the plan." Petition at 5. Of course, AirTouch has made no attempt to quantify the costs of reprogramming the approximately one million smart phones now in use. More important, AirTouch's suggestion that such reprogramming would be the principal cost of implementation of its plan ignores the true costs of implementation.

⁴Available on the Internet at <http://www.atls.org/atls/clc/inc/incissue.htm>.

⁵The Commission created the North American Numbering Council ("NANC") as a Federal Advisory Committee precisely for the purpose of addressing and advising the Commission on the policy matters relating to administration of the NANP. See Report and Order, Administration of the North American Numbering Plan, 11 FCC Rcd at 2608, ¶ 42.

In fact, the costs on LECs of the implementation would be enormous. For starters, every switch generic would have to be upgraded to deal with the new 8XX code; translations would have to be done in every switch. More significantly, for every line serving a dumb payphone, the corresponding switch would have to be reprogrammed to perform coin control functions unique to the 8XX code. The costs of such line-side translations work would easily reach tens of millions of dollars, and could well go higher. Those costs will inevitably be passed on to PSPs. Moreover, as discussed below, it is unlikely that there would be any significant demand for 8XX numbers with the characteristics AirTouch describes. It would therefore be an egregious waste of numbering resources to reserve 8 million numbers to such marginal use. Yet to modify smart lines and switches to permit them to require coin deposit for only a few 8XX-NXX codes would be even more technically difficult.

AirTouch's Petition does not even begin to take such costs -- or other costs, such as consumer education programs -- into account. In the absence of any such information, AirTouch's Petition fails to meet the basic standard set forth in section 1.401(c) of the Commission's rules, that each petition for rulemaking "set forth . . . all facts . . . and data deemed to support the action requested."

III. AIRTOUCH'S PROPOSED NEW CODE WOULD SERVE NO PURPOSE

The high costs of AirTouch's proposal should lead the Commission to deny its Petition because AirTouch does not and cannot show that its proposal would entail any commensurate benefit: demand for such service seems limited indeed, and the service itself can be offered using existing numbering resources.

AirTouch claims that "a large and significant number of toll-free subscribers . . . would welcome an alternative compensation system." Petition at 7. This seems far-fetched, to say the least. Subscribers to toll free service presumably make use of such service so that the calling party can reach the subscriber without paying a fee. Some toll free subscribers may have little interest in receiving calls from transient callers, and may therefore choose to block calls from payphones. (According to AirTouch, many paging subscribers fall into this category -- see Petition at 7 n.15.) But for many -- perhaps most⁶ -- 800 subscribers, calls from payphones are an important source of business. Rental car companies, hotels, airlines, travel agencies, nationwide florists' networks, and others would find a caller-pays toll free number undesirable: their potential customers would likely turn to other businesses that offered genuine toll-free calling, either for want of adequate change or out of a reluctance to pay for what the customer has come to expect for free. Other 800 subscribers -- auto clubs, hotlines, trucking companies, credit card companies, and even subscribers to personal 800 numbers -- purchase 800 service for the convenience of their customers, employees, and friends and family. For these subscribers, caller-pays numbers would be useless (because employees would incur higher expenses than the subscriber) or undesirable (because the company would not wish to block a call because the caller lacked appropriate change).

Perhaps for that reason, AirTouch can suggest no example of a business that would genuinely benefit from its proposal, other than paging carriers. Even for paging carriers, the benefits of such a proposal are obscure. AirTouch may believe that some of its customers would

⁶AirTouch provides no information at all on the extent of call blocking.

prefer a caller-pays option for payphone calls. But it introduces no marketing studies to support its claim. Indeed, it might be more reasonable to assume that for paging customers who are 1) willing to pay a premium for nation-wide toll free service and 2) unwilling to forego the miniscule number of paging calls made from payphones, a caller-pays option would be undesirable. Perhaps for those paging customers who have blocked payphone calls, the AirTouch proposal -- if actually costless for them -- would be marginally attractive. But the minimal value that such subscribers place on calls from payphones -- apparently less than \$.284 per call -- makes one wonder why the industry should go to great expense to ensure that these subscribers can receive such calls. Again, aside from AirTouch's unadorned speculation, there is no evidence to support the unlikely claim that paging customers genuinely desire such service.

And AirTouch does not even address the question of demand for such a product from the point of view of the caller. In fact, there is every reason to believe that the volume of caller-pays toll free calls would be quite low, both because it is hard to imagine a genuine need for it and because consumer reaction is likely to be adverse. If that is the case, AirTouch's proposal would require the dedication of scarce numbering resources and expensive network modifications for the sake of a small volume of calls. AirTouch provides no precedent for such an action.⁷

Finally, AirTouch makes no effort to explain why it cannot achieve its goal using existing numbering resources. Any 800 subscriber can institute calling-party pays simply by blocking 800 calling from payphones and providing a conventional NPA/NXX number. Alternatively, a company may establish a local number for toll-free dialing in the exchange area the company

⁷In contrast, the industry dedicated new 8XX codes only when existing 800 resources were exhausted and the demand for new toll free access codes was too strong to ignore.

wishes to serve, which would accomplish precisely the result that AirTouch advocates.

Interexchange companies may be able to negotiate reduced sent-paid rates for certain high-volume numbers. There may well be other possibilities. AirTouch gives no indication that it has taken even the first step toward exploring them.

In short, AirTouch has not begun to justify its proposal either in terms of consumer demand, logistical need, or the public interest.

IV. THE CARRIER-PAYS SYSTEM OF PER-CALL COMPENSATION SERVES IMPORTANT POLICY INTERESTS AND HAS BEEN APPROVED BY THE D.C. CIRCUIT

The AirTouch petition calls on the Commission to except a certain class of subscriber 800 calls -- designated by a particular 8XX code or a block of number within such a code -- from its carrier-pays requirement. The Commission has already considered and rejected this proposal in its Order on Recon. There, the Commission concluded that "it would be unduly burdensome and costly to mandate . . . a caller-pays, coin-deposit approach for a particular type of subscriber 800 calls . . . while relying upon a carrier-pays approach for other compensable calls." Order on Recon., 11 FCC Rcd at 21276, ¶ 89.

The Commission properly determined that a carrier-pays compensation mechanism for subscriber 800 calls serves important policy interests.⁸ Consumers have come to expect that toll-

⁸AirTouch claims that none of its new 8XX numbers need be given to IXCs as access code numbers, and therefore its proposal would be consistent with TOCSIA. Petition at 5. But AirTouch does not explain how this restriction could be enforced -- it certainly provides no precedent for it. Nor does it explain why, if an IXC chose to make use of one of AirTouch's proposed 8XX numbers, the PSPs blocking of such calls would be any more consistent with the requirements of TOCSIA than the basic caller-pays proposal the Commission has already rejected.

free numbers are genuinely toll free. To institute a calling party pays plan for some toll free calls would bring about a strong negative reaction from consumers, who would likely blame the payphone operator, as well as -- if not instead of -- the toll free subscriber, for the inconvenience of paying for a "free" call. Moreover, with the institution of 888 numbers, and the forthcoming introduction of 877 numbers, consumers have learned that all 8XX numbers can be dialed without charge. There is every reason to believe that consumers would be confused by the obscure new code, and would be uncertain about whether any toll free call could still be made for free on payphones, or indeed anywhere else. Such uncertainty would be certain to depress demand for all toll-free calls, to the detriment of toll-free subscribers, IXCs, and PSPs. The Commission need not inflict such damage on the industry: the D.C. Circuit explicitly approved of the Commission's decision "to maintain the convenience of coinless calling upon which the public has come to rely." Illinois Pub. Telecomm., 117 F.3d at 567.

Nor does AirTouch adequately address the Commission's other policy rationales. The Commission has maintained a commitment to avoiding the necessity of coin deposits for calls otherwise billed to an account. See Order on Recon., 11 FCC Rcd at 21275, ¶ 88. AirTouch provides no reason for the Commission to abandon that commitment. And the Commission also found that a carrier-pays system was consistent with the intent of Congress, which has adopted provisions of the Communications Act to prohibit carriers from assessing the calling party a charge for completing any 800 number call. Id. at 21275-6, ¶ 88. Again, AirTouch ignores this concern.

As the D.C. Circuit found, the Commission was well justified in concluding that a carrier-pays compensation system "will result in competitive market pricing of 800 service payphone

per-call compensation." Illinois Pub. Telecomm., 117 F.3d at 567. AirTouch has not even attempted to reach market solutions to its alleged business problems, but turns instead to the Commission for renewed regulatory intervention. The Commission should not rise to the bait. The current system of per-call compensation is finally grinding into motion. The Commission, and the industry, should give that system a chance to work.

CONCLUSION

For the foregoing reasons, the Commission should deny AirTouch's Petition for Rulemaking.

Respectfully submitted,



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June 5, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 1998, I caused copies of the foregoing RBOC/GTE/SNET PAYPHONE COALITION'S OPPOSITION TO AIRTOUCH PAGING'S PETITION FOR RULEMAKING to be served upon the parties on the attached service list by first-class mail.



Aaron M. Panner

FEDERAL COMMUNICATIONS COMMISSION
Petition for Rulemaking to Establish a Dedicated 8XX Code for
Toll-Free Calls Placed from Pay Telephones, RM No. 98-9273

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