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IDAHO PUBLIC
UTILITIES COMMISSION

8 BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

9
10 JOINT APPLICATION OF U S WEST)
COMMUNICATIONS, INC., and ROBERT F.)
11 RYDER DBA RADIO PAGING SERVICE FOR)
APPROVAL OF TYPE 1 PAGING)
12 CONNECTION AGREEMENT PURSUANT)
TO 47 U.S.C. §252)

CASE NO. USW-T-99-5

13
14 U S WEST Communications, Inc. ("U S WEST") and Robert F. Ryder dba Radio Paging
15 Service ("Radio Paging") hereby jointly file this Application for Approval of a Type 1 Paging
16 Connection Agreement between U S WEST and Radio Paging, dated February 19, 1999 (the
17 "Agreement"), for the purpose of connecting facilities and exchanging traffic between Radio
18 Paging and U S WEST in Idaho. A copy of the Agreement is submitted herewith.

19 The Agreement was reached through voluntary negotiations without resort to mediation or
20 arbitration and is submitted for approval pursuant to Section 252(e) of the Communications Act of
21 1934, as amended by the Telecommunications Act of 1996 (the "Act").

22 Section 252(e)(2) of the Act directs that a state Commission may reject an agreement
23 reached through voluntary negotiations only if the Commission finds that:

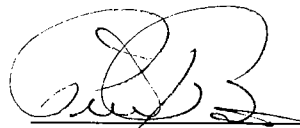
24 JOINT REQUEST OF ROBERT F. RYDER
25 DBA RADIO PAGING SERVICE AND
U S WEST FOR
26 APPROVAL OF AGREEMENT

- 1 (1) the agreement (or portion thereof) discriminates against a telecommunications carrier
not a party to this agreement; or
2 (2) the implementation of such an agreement or portion is not consistent with the public
interest, convenience and necessity.
3

4 Radio Paging and U S WEST respectfully submit that the Agreement provides no basis for
either of these findings, and, therefore jointly request that the Commission approve the Agreement
5 expeditiously. The Agreement is consistent with the public interest as identified in the pro-
6 competitive policies of the State of Idaho, the Commission, the United States Congress, and the
7 Federal Communications Commission. Expeditious approval of the Agreement will enable Radio
8 Paging to interconnect with U S WEST facilities and to provide customers with increased choices
9 among local telecommunications services.

10
11 Radio Paging and U S WEST further request that the Commission approve this Agreement
without a hearing. Because this Agreement was reached through voluntary negotiations, it does
12 not raise issues requiring a hearing and does not concern other parties not a party to the
13 negotiations. Expeditious approval would further the public interest.
14

15 Respectfully submitted this 2nd day of March, 1999.

16
17 

18 Peter Butler
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21 *and*

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23
24 JOINT REQUEST OF ROBERT F. RYDER
DBA RADIO PAGING SERVICE AND
25 U S WEST FOR
26 APPROVAL OF AGREEMENT

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/s/ Telephonic Approval

Robert F. Ryder
Owner
Robert F. Ryder dba Radio Paging Service
506 S. 5th Street
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JOINT REQUEST OF ROBERT F. RYDER
DBA RADIO PAGING SERVICE AND
U S WEST FOR
APPROVAL OF AGREEMENT

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**TYPE 1 PAGING CONNECTION
AGREEMENT**

BETWEEN

U S WEST Communications, Inc.

AND

**Robert F. Ryder
d.b.a. Radio Paging Service**

**AGREEMENT NUMBER
CDS-990108-0131**

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TYPE 1 PAGING CONNECTION AGREEMENT

This Type 1 Paging Connection Agreement ("Agreement"), is between Robert F. Ryder d.b.a. Radio Paging Service ("Paging Provider") and U S WEST Communications, Inc. ("USWC"), a Colorado corporation.

Paging Provider is licensed to provide paging services by the Federal Communications Commission ("FCC"). Both USWC and Paging Provider are engaged in providing telecommunications and other services and have agreed to connect their facilities to exchange land-to-pager traffic.

WHEREAS this Agreement is intended to comply with the FCC Common Carrier Bureau's December 30, 1997 letter interpreting certain Local Exchange Carrier (LEC) - paging interconnection rules (the "Metzger Letter") by setting forth the terms and conditions under which USWC shall provide Type 1 paging connection services to itself without charge to Paging Provider. 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)*; and

WHEREAS USWC strongly disagrees with the Metzger Letter's interpretation of interconnection rules and has asked the FCC to review the matter. (*In the Matter of Requests for Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Providers, CPD 97-24, January 29, 1998*); and

WHEREAS Paging Provider believes that USWC must not, and should not have been, charging Paging Provider for transport and termination of traffic, in accordance with: (a) Implementation of the Local Competition Provision in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15, 499 (1996); (b) Section 251 of the Telecommunications Act of 1996, 47 U.S.C. § 251; and (c) Section 20.11 of the FCC's rules, 47 C.F.R. § 20.11, as well as the Metzger Letter;

WHEREAS, Paging Provider takes issue with USWC's disagreement with the Metzger Letter with respect to the terms of this Agreement;

WHEREAS without limiting other applicable provisions of this Agreement, this Agreement shall be revised to comport with the decision, ruling or rules promulgated by the FCC or any court, agency or legislature of competent authority to the extent that such decision, ruling, or rules depart from the reasoning or conclusions of the Metzger Letter.

NOW THEREFORE each Party covenants and agrees as follows:

1. RECITALS

- 1.1. The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any judicial, legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements described in this Agreement.

- 1.2. The Parties have agreed to certain provisions in this Agreement, based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the "Existing Rules"). To the extent that certain of the Existing Rules are changed and modified, and it reasonably appears that the Parties would have negotiated and agreed to different term(s), conditions(s), or covenant(s) than as contained herein had such change or modification been in existence before execution hereof, then this Agreement shall be amended to reflect such different term(s), condition(s), or covenant(s). Where the Parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement.

2. SCOPE OF AGREEMENT

- 2.1 This Agreement covers Type 1 Paging Connection Service which consists only of one-way, intraLATA/intrastate, final route, land-to-pager trunks, which deliver calls to Paging Provider's POC. These trunks shall receive all incoming paging calls at USWC's Wire Center/End Office serving the geographic area in which Paging Provider's POC is located and shall deliver paging traffic to Paging Provider's POC(s). This Agreement includes all accompanying appendices and attachments.
 - 2.1.1 Facilities for Delivery of Third Party Traffic
 - 2.1.1.1 USWC will deliver calls it receives for Paging Provider from a third party carrier to Paging Provider's POC over the same facilities and trunks used to deliver USWC's End User originated calls.
 - 2.1.1.2. The Paging Provider will be charged a percent of standard tariffs set as of January 1, 1999, as provided in Section 20.1 of the Southern Idaho Exchange and Network Services Catalog, for Type 1 Service for that portion of the facilities used to deliver third party traffic, provided that any tariff revision initiated by USWC must be mutually agreed to by both Parties before becoming effective as to this Agreement.
- 2.2 In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limit, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.
- 2.3 Paging Provider is not authorized and shall not attempt to place orders to any telecommunications carrier for or on behalf of USWC. Paging Provider agrees to pay USWC for all telecommunications services it orders or requests on its own behalf from USWC pursuant to applicable federal and state tariffs or separate written agreements.

- 2.4 USWC will not permit its own End Users to use Type 1 Paging Connection Service to deliver traffic to Paging Provider's Enhanced Services operations, if any, where such Enhanced Services operations constitute Paging Provider's primary business. Paging Provider shall not assign DID numbers associated with Type 1 Paging Connection Service to its Enhanced Services operation that constitute its primary business.
- 2.5 This Agreement does not cover delivery of traffic from Paging Provider's network to USWC's network. Should Paging Provider desire to deliver traffic to USWC, the Parties shall negotiate in good faith a separate agreement for two way traffic exchange. However, such an agreement shall not supersede, amend or terminate this Agreement without the Parties' express written instruction.
- 2.6. Delivery of Type 1 Paging Traffic
- 2.6.1. USWC's Type 1 Paging Connection Service delivers paging traffic to the Paging Provider's POC(s) as identified in Appendix A.
- 2.6.2. Pursuant to joint planning as specified in the Forecasting section of this Agreement, USWC alone shall determine all aspects and elements of the Type 1 Paging Connection Service facilities that it provides itself, including, but not limited to, design, location, quantities, distance, etc. USWC shall base this determination on the minimum requirements specified by the Act, the FCC rules, as well technical and economic efficiency considerations, e.g., network requirements. USWC shall monitor its usage on Type 1 Paging Connection Service and will reconfigure trunk groups as it deems necessary. USWC reserves the right to review, revise or modify its Type 1 Paging Connection Service at any time for any lawful business reason. All circuits and equipment provided by USWC will always be wholly owned and operated by USWC. USWC agrees to establish and maintain facilities based on appropriate industry standards.
- 2.6.3. Paging Provider's and USWC's equipment and systems will be compatible, and will be consistent with normally accepted industry standards as defined in Bellcore GR-145-CORE.
- 2.6.3.1. Paging Provider will provide a voice intercept announcement or distinctive signals to the calling party when a call is directed to a number that is not assigned.
- 2.6.3.2. When USWC is not able to complete calls because of malfunction, USWC will provide proper voice announcement or distinctive signals to the calling party advising that the call cannot be completed.

- 2.6.3.3. Paging Provider and USWC will provide supervisory tones or voice announcements to the calling party on all calls, consistent with standard industry practices.
- 2.6.3.4. Paging Provider shall provide a sufficient quantity of equipment ports to accommodate the number of trunks provided by USWC.
- 2.6.4. Type 1 Paging Connection Service shall be provided upon Commission approval of this Agreement. Type 1 Paging Connection Service will be built in accordance with the specifications set forth in Bellcore Technical Reference GR-145-CORE entitled "Compatibility Information for Interconnection of a Wireless Services Provider and a Local Exchange Carrier Network".
 - 2.6.4.1. Within a LATA, Paging Provider may designate multiple POCs at which it wishes to receive paging traffic from USWC. Each such POC shall receive traffic from the USWC Wire Center/End Office serving the geographic area in which the POC is located. Type 1 Paging Connection Service shall never extend beyond the boundaries of the geographic area of USWC's Wire Center/End Office serving Paging Provider's POC. USWC shall not be responsible for providing, maintaining or paying for facilities used to connect Paging Provider POC(s) to Paging Provider's equipment or network. For the purposes of this Agreement, subject to the provisions of Section 2.1.1 above, the Type 1 applicable elements provided free from charge are channel, channel facility (if digital), connectivity and dial outputting as defined in Section 4.2.
 - 2.6.4.2. Paging Provider may utilize DID numbers located in a USWC Wire Center/End Office other than the USWC Wire Center/End Office serving the geographic area of the Paging Provider's POC. In such cases, Paging Provider must pay USWC for Dedicated Transport pursuant to applicable USWC tariff from the USWC Wire Center/End Office where the DID numbers reside to the USWC Wire Center/End Office serving the Paging Provider's POC. If such service is digital, and multiplexing is required, then Paging Provider must pay for multiplexing charges pursuant to tariff. Such service is not included in the Type 1 Paging Connection Service which USWC provides itself and is beyond the scope of this Agreement.
- 2.6.5. Any changes to systems, operations or services which would materially affect the other Party's system, operation or services must be coordinated with the other Party by giving as much advance notice as is

reasonable, and in no event in less than ninety (90) days, of the nature of the changes and when they will occur.

- 2.6.6. If the authorized service areas of USWC or Paging Provider change, the Parties agree to negotiate any necessary modifications to this Agreement in good faith.

3. DEFINITIONS

- 3.1. "Act" means the Communications Act of 1934 (47 U.S.C. § 151 et.seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the courts, FCC, or competent state regulatory bodies.
- 3.2. "Commission" means all state regulatory bodies with lawful jurisdiction over the telecommunications services provided by Paging Provider and USWC under this Agreement.
- 3.3. "Direct Inward Dial (DID) Numbers" are single or blocks of numbers that reside in the USWC End Office switch and are translated by USWC to permit calls from the public switched telecommunications network to terminate to these numbers; calls are then routed to the Type 1 Paging Connection Service trunks.
- 3.4. "End Office" is a LEC switching system which is located within the local network area and is used to terminate customer station loops for purposes of interconnection to each other and to trunks.
- 3.5. "End User(s)" means a third-party (residence or business) that subscribes to telecommunications services provided by either of the Parties.
- 3.6. "Enhanced Services" are services offered over common carrier transmission facilities used in communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information.
- 3.7. "InterLATA" is a term used to describe telecommunications functions originating in one LATA and terminating in another.
- 3.8. "IntraLATA" is a term used to describe telecommunications functions originating and terminating in the same LATA.
- 3.9. "Local Access and Transport Area (LATA)" denotes a geographic area established for the provision and administration of a communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes.

- 3.10. "Party" means either USWC or Paging Provider and "Parties" means USWC and Paging Provider.
- 3.11. "Point of Connection" or "POC" is the connection point(s) between Paging Provider and USWC; the technical interface(s), test point(s) and point(s) for operational division of responsibility.
- 3.12. "Serving Wire Center" or "SWC" denotes the USWC office from which dial tone for local exchange service should, absent special arrangements, be provided to USWC End Users.
- 3.13. "Tariff" as used throughout this Agreement refers to USWC interstate and state tariffs, price lists, price schedules, catalogs, and service agreements.
- 3.14. "Transit Traffic" is traffic that originates from one provider's network, "transits" USWC's network and is delivered to the Paging Provider's POC. The sending and receiving party are not End Users of USWC, the tandem telecommunications carrier.
- 3.15. "Type 1 Paging Connection Service" means service which consists only of those one-way intraLATA/intrastate final route land-to-pager trunks, which deliver calls from USWC's Public Switched Telecommunications Network (PSTN) to Paging Provider's POC.
- 3.16. "Wire Center" denotes a building or space within a building, that serves as an aggregation point on a given Paging Provider's network, where transmission facilities are connected or switched. Wire Center can also denote a building where one or more central offices, used for the provision of Basic Exchange Telecommunications Services and access services, are located. A serving Wire Center typically serves a specific geographic area.

Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined there.

4. RATE ELEMENTS FOR DELIVERY OF THIRD PARTY TRAFFIC

- 4.1 The Paging Provider will be billed standard Tariff rates for the portion of the USWC facilities used to deliver third party traffic. The rates will be calculated as follows: Multiply the Tariffed rate by 24.0 percent.
- 4.2 Applicable rate elements are listed following:
 - 4.2.1 Channel (Network Access Channel - NAC). Connection from Paging Provider's POC to the Serving Wire Center.
 - 4.2.2 Channel Facility (for digital service) - DS1 level. Twenty-four digital voice grade channels can be transmitted over one DS1 facility. A full DS1 is

necessary for the addition of voice grade channels even if ordered in increments of less than 24. The transmission rate is 1.544 Mbps.

- 4.2.3 Channel Facility (for digital service) - DS3 level. Twenty-eight DS1s, including their associated digital voice grade channels, can be transmitted over one DS3 facility. When using a DS3 multiplexing level, a full DS3 is necessary for the addition of DS1s even if ordered in increments of less than 28. The facility transmission rate is 44.736 Mbps.
- 4.2.4 Connectivity. The equipment at the USWC Wire Center which connects the channel to USWC's switch.
- 4.2.5 Multiplexing. Multiplexing performed at the Serving Wire Center enables a DS1 NAC to be connected to a DS0 Dedicated Transport System. A DS3 system will be multiplexed down to a DS1 level in order to connect with the digital switch.
- 4.2.6 Dial Outpulsing. The equipment at the End Office which transmits the digits of the dialed number to the Paging Provider on land-to-pager traffic.

4.3. Technical Requirements

Equipment Interface. It is the Paging Provider's responsibility to advise USWC of the equipment interface to be used at Paging Provider's POC. The technical requirements for the equipment interface must be selected from those specified in Appendix A. Available equipment interfaces specified in Appendix A are defined in Bellcore Reference Documents GR-145 - CORE & BR-795-403-100. To the extent Paging Provider has pre-existing arrangements, Paging Provider may continue to use the same interface at its POC upon approval of this Agreement as Paging Provider used on November 1, 1998. Paging Provider will notify USWC of any changes to its interface subsequent to the approval of this Agreement.

4.4. Cooperative Testing

During installation, integrity testing, and ongoing maintenance activities, the Parties will cooperate to ensure the integrity of the connection. USWC and Paging Provider will each do such maintenance testing and inspection of their own equipment as may be necessary.

4.5. Forecasting

4.5.1. Either Party shall, at the request of the other Party, participate in joint planning sessions at quarterly intervals. The Paging Provider shall complete a POC Forecast Form - Type 1 Paging Connection (POC Forecast form(s)) attached as Appendix A, for each POC and for each different equipment interface within each POC. Although Paging Provider is required to complete a POC Forecast form(s), USWC will work with Paging Provider to develop the forecasts to be provided on that form(s).

In addition, such forecasts are not deemed to be orders for or reservation of USWC telecommunications services. USWC may use Paging Provider's forecasts and any other sources of data which USWC independently selects and obtains to help determine the design and configuration of Type 1 Paging Connection Service. Information included in the POC forecast form is for USWC's planning purposes only. Paging Provider shall complete the first POC Forecast form(s) upon execution of this Agreement. Thereafter, Paging Provider will complete and send USWC updated POC Forecast form(s) quarterly. If USWC does not receive an updated form with a new forecast each quarter, then USWC will rely on the last form received.

- 4.5.2. Each Party shall submit to the other Party a description of anticipated major network projects that could affect USWC; at a minimum, each Party will provide at least ninety (90) days advance written notice of the nature of the changes and when the change(s) will occur. Major network projects include: shifts in anticipated traffic patterns or other activities that would result in a significant increase or decrease in traffic. These projects shall also include, but are not limited to, issues of equipment types and network capacity, usage, and location. Paging Provider shall attach the above information to the updated POC Forecast form(s) as appropriate.

5. SERVICE IMPAIRMENT

- 5.1. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party shall not: 1) interfere with or impair service over any facilities of the other Party; its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to their plant; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service".
- 5.2. If either Party causes an impairment of service, as set forth in this Section, the Party (the "Impaired Party") shall promptly notify the Party causing the impairment of service (the "Impairing Party") of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.
- 5.3. When a Party reports trouble to the other Party, and no trouble is found in the other Party's equipment, the reporting Party will be responsible for payment of service maintenance charges as specified in USWC's Intrastate Switched

Access Tariff or state-specific pricing catalogue, as appropriate, for the period of time from when the other Party's personnel are dispatched to the time when the work is completed. Failure of the Other Party's personnel to find trouble in its service will not result in a charge if the trouble is actually in that service, but not discovered at that time.

- 5.4. To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a Trouble Reporting Control Office (TRCO) and a toll free telephone number for such service.

USWC's TRCO number is (800) 784-3414
Paging Provider's TRCO number is (800) 421-7200

This number shall give access to the location where facility records are normally located and where current status reports on any trouble reports are readily available.

- 5.5. Each Party shall use its best efforts to isolate a trouble condition(s) to the other's facilities before reporting trouble to the other Party.

6. COLLOCATION

Should the Parties desire to collocate transmission equipment, through either physical or virtual collocation, the Parties will enter into a separate collocation agreement.

7. U S WEST DEX ISSUES

USWC and Paging Provider agree that certain issues, such as yellow page advertising, directory distribution, access to call guide pages, yellow page listings, will be the subject of negotiations between Paging Provider and directory publishers, including U S WEST Dex. USWC acknowledges that Paging Provider may request USWC to facilitate discussions between Paging Provider and U S WEST Dex.

8. MISCELLANEOUS TERMS

8.1. General Provisions

8.1.1. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and Emergency Preparedness Plan.

8.1.2. Each Party is solely responsible for the services it provides to its End Users and to other telecommunications carriers.

8.2. Term of Agreement

8.2.1. This Agreement shall become effective upon Commission approval, pursuant to Sections 251 and 252 of the Act, shall terminate on April 1, 2001, and shall be binding upon the Parties during that term, notwithstanding Section 252(i) of the Act. The Parties agree to commence negotiations on a new agreement no later than 160 calendar

days prior to the termination date specified above; provided that the Paging Provider, consistent with Section 252(i) of the Act, may opt into a then-existing, valid Type 1 paging connection agreement, in its entirety, at the conclusion of the term of this Agreement. In the event that negotiations are not concluded as of the termination date specified above, the window of opportunity to file for arbitration to resolve outstanding contractual issues in accordance with the Act, will open upon the termination date specified above and this Agreement shall remain in full force and effect until it is replaced by an approved arbitrated or negotiated agreement.

8.2.2. This Agreement will terminate upon a revocation or other termination of either Party's governmental authority to provide the services contemplated by this Agreement. If the authority is temporarily suspended, delivery of traffic will cease only during the suspension if the suspended Party otherwise is and remains in full compliance under this Agreement.

8.3. Taxes

Each Party shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such Party, except for any tax on either Party's corporate existence, status or net income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party.

8.4. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, labor disputes, strike, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). Network service failures associated with year 2000 ("Y2K") computer programming errors or omissions, shall be treated as force majeure if they are not reasonably within the control of USWC.

8.5. Limitation of Liability

8.5.1. Each Party shall be liable to the other for direct damages for any loss, defect or equipment failure resulting from the causing Party's conduct or

the conduct of its agents or contractors in performing the obligations contained in this Agreement.

- 8.5.2 Except for indemnity obligations, each Party's liability to the other Party for any loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.
- 8.5.3. Neither Party shall be liable to the other under this Agreement for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence and regardless of whether the Parties know the possibility that such damages could result.
- 8.5.4. Nothing contained in this Section shall limit either Party's liability to the other for willful or intentional misconduct.
- 8.5.5. Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.

8.6. Indemnity

- 8.6.1. With respect to third party claims, each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for loss, damage to, or destruction of property, whether or not owned by others, resulting from the indemnifying Party's performance, breach of Applicable Law, or status of its employees, agents and subcontractors; or for failure to perform under this Agreement, regardless of the form of action.
- 8.6.2. The indemnification provided herein shall be conditioned upon:
 - 8.6.2.1. The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification. Failure to so notify the indemnifying Party shall not relieve the indemnifying Party of any liability that the indemnifying Party might have, except to the extent that such failure prejudices the indemnifying Party's ability to defend such claim.

- 8.6.2.2. The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.
- 8.6.2.3. In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party.

8.7. Intellectual Property

- 8.7.1. Paging Provider and USWC shall not, without the express written permission of the other, state or imply that: 1) they are connected or in any way affiliated with each other or the other's affiliates 2) they are part of a joint business association or any similar arrangement with each other or the other's affiliates, 3) they or their affiliates are in any way sponsoring, endorsing or certifying each other or their goods and services, or 4) with respect to the other's advertising or promotional activities or materials, that they are in any way associated with or originated from the other or any of the other's affiliates. Nothing in this paragraph shall prevent Paging Provider and USWC from truthfully describing the network elements they use to provide service to their customers.
- 8.7.2. Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, tradename, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Paging Provider may not use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property right of USWC or its affiliates without execution of a separate agreement between the Parties. USWC may not use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property right of Paging Provider or its affiliates without execution of a separate agreement between the Parties.
- 8.7.3. Paging Provider and USWC acknowledge the value of the marks "U S WEST", "U S WEST Communications", "Radio Paging Service" and "RPS" (the "Marks") and the goodwill associated therewith and acknowledge that such goodwill is a property right belonging to U S WEST, Inc., USWC and Radio Paging Service respectively (the "Owners"). The Parties recognize that nothing contained in this Agreement is intended as an assignment or grant to either Party of any right, title or interest in or to the Marks and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks and is not assignable. The Parties will do nothing inconsistent with the Owner's ownership of the Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the

benefit of the Owners. The Parties will not adopt, use (other than as authorized herein), register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Marks or which is so similar thereto as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owners. The Owners make no warranties regarding ownership of any rights in or the validity of the Marks.

8.7.4. As a condition to the access or use of patents, copyrights, trade secrets and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to interconnection and access to telecommunications facilities and services, the Party providing access may require the other upon written notice, from time to time, to obtain a license or permission for such access or use, make all payments in connection with obtaining such permission, and providing evidence of such permission.

8.8. Warranties

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.9. Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party provided that each Party may assign this Agreement to a corporate affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

8.10. Default

If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may seek legal and/or regulatory relief. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

