

1 Peter Butler
Senior Attorney
2 U S WEST Law Department
1600 7th Avenue, Room 3206
3 Seattle, Washington 98191
(206) 343-4046

RECEIVED
FILED
99 MAR 4 AM 9 48

4 Robert F. Ryder
5 Owner
Robert F. Ryder dba Radio Paging Service
6 506 S. 5th Street
Boise, Idaho 83702
7 (208) 343-8390

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:

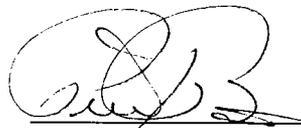
24 JOINT REQUEST OF ROBERT F. RYDER
25 DBA RADIO PAGING SERVICE AND
U S WEST FOR
26 APPROVAL OF AGREEMENT

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

16
17 

18 Peter Butler
Senior Attorney
U S WEST Law Department
1600 7th Avenue, Room 3206
Seattle, Washington 98191
(206) 343-4046

19
20
21 *and*

22
23
24 JOINT REQUEST OF ROBERT F. RYDER
25 DBA RADIO PAGING SERVICE AND
U S WEST FOR
26 APPROVAL OF AGREEMENT

- 2 -

U S WEST, Inc.
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 343-4000
Facsimile: (206) 343-4040

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/s/ Telephonic Approval

Robert F. Ryder
Owner
Robert F. Ryder dba Radio Paging Service
506 S. 5th Street
Boise, Idaho 83702
(208) 343-8390

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

U S WEST, Inc.
1600 7th Ave., Suite 3206
Seattle, WA 98191
Telephone: (206) 343-4000
Facsimile: (206) 343-4040

**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**

TABLE OF CONTENTS

1. RECITALS.....	1
2. SCOPE OF AGREEMENT	2
3. DEFINITIONS.....	5
4. RATE ELEMENTS FOR DELIVERY OF THIRD PARTY TRAFFIC.....	6
5. SERVICE IMPAIRMENT	8
6. COLLOCATION	9
7. U S WEST DEX ISSUES.....	9
8. MISCELLANEOUS TERMS	9
8.1. General Provisions	9
8.2. Term of Agreement.....	9
8.3. Taxes.....	10
8.4. Force Majeure.....	10
8.5. Limitation of Liability	10
8.6. Indemnity	11
8.7. Intellectual Property	12
8.8. Warranties	13
8.9. Assignment	13
8.10. Default.....	13
8.11. Disclaimer of Agency	14
8.12. Severability.....	14
8.13. Nondisclosure	14
8.14. Survival.....	15

TABLE OF CONTENTS

8.15. Dispute Resolution	16
8.16. Controlling Law	16
8.17. Joint Work Product	16
8.18. Responsibility for Environmental Contamination	16
8.19. Notices	17
8.20. Responsibility of Each Party	17
8.21. No Third Party Beneficiaries	17
8.22. Referenced Documents	18
8.23. Publicity and Advertising	18
8.24. Amendment	18
8.25. Executed in Counterparts	18
8.26. Headings of No Force or Effect	18
8.27. Regulatory Approval	18
8.28. Compliance	19
8.29. Compliance with the Communications Assistance Law Enforcement Act of 1994 ("CALEA")	19
8.30. Entire Agreement	19
APPENDIX A-TYPE 1 PAGING CONNECTION - INITIAL POC FORECAST FORM ..	20
APPENDIX A-TYPE 1 PAGING CONNECTION - QUARTERLY POC FORECAST FORM	22

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.

8.11. Disclaimer of Agency

Except for provisions herein, if any, expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

8.12. Severability

In accordance with Section 1 of this Agreement, if one or more of the provisions contained herein must be modified because of changes in Existing Rules or modifications to arbitration proceedings, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may seek regulatory intervention, including negotiations pursuant to Sections 251 and 252 of the Act. In all other respects, the provisions of this Agreement are not severable.

8.13. Nondisclosure

8.13.1. All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of publication for directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information.

8.13.2. Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

8.13.3. Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in

connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

- 8.13.4. Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:
- 8.13.4.1. was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or
 - 8.13.4.2. is or becomes publicly known through no wrongful act of the receiving Party; or
 - 8.13.4.3. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
 - 8.13.4.4. is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
 - 8.13.4.5. is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
 - 8.13.4.6. is approved for release by written authorization of the disclosing Party; or
 - 8.13.4.7. is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.
- 8.13.5. Effective Date of this Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

8.14. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

8.15. Dispute Resolution

If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law with knowledge of federal and applicable state telecommunications law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. The arbitrator shall determine whether the parties will each be responsible for their own costs and attorneys' fees and half of the fees and expenses of the arbitrator, or how such payment responsibilities will be distributed between the parties. The arbitration shall occur in Boise, Idaho. Nothing in this Section shall be construed to waive or limit either Party's right to seek relief from the Commission or the Federal Communications Commission as provided by state or federal law.

No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than three (3) after the cause of action accrues.

8.16. Controlling Law

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of the state where service is provided hereunder. It shall be interpreted solely in accordance with the terms of the Act and the applicable state law in the state where the service is provided. Where this Agreement and an applicable Tariff are in conflict, this Agreement shall Control.

8.17. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

8.18. Responsibility for Environmental Contamination

Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that such Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

8.19. Notices

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

U S WEST Communications, Inc.
Director - Compliance
1801 California Street, Room 2410
Denver, CO 80202

Jim Jones & Associates
Jim Jones
1275 Shoreline
Boise, ID 83702
Phone: (208) 385-9200
Fax: (208) 385-9599

With a copy to:

U S WEST Law Department
Attention General Counsel
1801 California, Suite 5100
Denver, CO 80202
Phone: (303) 672-2700
Fax: (303) 295-6997

With a copy to:

Blooston, Mordkofsky, Jackson & Dickens
Benjamin H. Dickens, Jr.
2120 L Street, NW - Suite 300
Washington, DC 20037
Phone: (202) 659-0830
Fax: (202) 828-5568

Each Party shall inform the other of any changes in the above addresses.

8.20. Responsibility of Each Party

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

8.21. No Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

8.22. Referenced Documents

All references to Appendixes, Sections, Exhibits, and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Paging Provider practice, USWC practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Paging Provider practice, USWC practice, or publication of industry standards (unless Paging Provider elects otherwise). Should there be any inconsistency between or among publications or standards, the Parties will jointly agree which requirement shall apply.

8.23. Publicity and Advertising

Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or service marks without the prior written approval of the other Party.

8.24. Amendment

Paging Provider and USWC may mutually agree to amend this Agreement in writing. Since it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives of this Agreement, the Parties agree to work cooperatively, promptly and in good faith to negotiate and implement any such additions, changes and corrections to this Agreement.

8.25. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

8.26. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

8.27. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC and shall, at all times, be subject to review by the Commission or the FCC. In the event any such review rejects any portion of this Agreement, renders it inoperable or creates any ambiguity of requirement for further amendment, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

8.28. Compliance

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

8.29. Compliance with the Communications Assistance for Law Enforcement Act of 1994 ("CALEA")

Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

8.30. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Robert F. Ryder

d.b.a. Radio Paging Service *



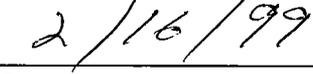
Signature



Name (printed or typed)



Title



Date

U S, WEST Communications, Inc. *



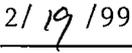
Signature

Kathy Fleming

Name (printed or typed)

Executive Director - Interconnection

Title



Date

* Signature does not waive any rights of either Party to seek administrative/judicial review of all or part of the Agreement, or to reform the agreement as the result of successful administrative/judicial review and/or future settlement agreements between the Parties to this Agreement.

APPENDIX A - TYPE 1 PAGING CONNECTION - INITIAL POC FORECAST FORM

-- THIS IS NOT AN ORDER FORM --

THIS IS A THREE YEAR FORECAST PER THE PAGING TRAFFIC SECTION OF THIS AGREEMENT

DATE PREPARED: _____ (update required quarterly)

Paging Provider's Point of Connection (POC) (one form required per POC)

_____ **New POC**
_____ **Existing POC**

For Internal Use Only

Paging Provider: _____ ACNA: _____

POC Address: _____

City, State, Zip: _____

Switch CLLI Code (associated with NXX): _____

POC CLLI Code (if assigned) : _____

Technical Contact Name: _____

Technical Contact Phone Number: _____

Billing Contact Name: _____

Billing Contact Phone Number: _____

List ALL PAGING DID Numbers associated with this POC:

Paging Provider's Equipment Requirements (check appropriate line(s))

_____ Digital _____ Analog _____ 2-wire _____ 4-wire
Trunk Pulsing
_____ Multifrequency (MF) _____ Dial Pulse (DP) _____ Dual Tone Multifrequency (DTMF)
Start Signaling
_____ Wink _____ Immediate (IMM) _____ Delayed Start
Outpulsing (4-10 digits) _____

Network Channel Interface - Analog

_____ Reverse Battery - 600 ohms
_____ Reverse Battery - 900 ohms
_____ Loop Start
_____ E & M Signaling - Type I
_____ E & M Signaling - Type II

Network Channel Interface - Digital:

_____ DS3
_____ DS1 AMI + SF
_____ DS1 AMI + ANSI ESF
_____ DS1 AMI + non-ANSI ESF
_____ DS1 B8ZS + SF
_____ DS1 B8ZS + ANSI ESF
_____ DS1 B8ZS + non-ANSI ESF

APPENDIX A - TYPE 1 PAGING CONNECTION - INITIAL POC FORECAST FORM

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Busy Season: _____			
Average Busy Hour Minutes of Use	_____	_____	_____
Average Busy Hour Number of Messages	_____	_____	_____

For Internal Use Only:

Prepared by: _____ Date: _____
Title: _____ Telephone Number: _____

Please attach additional major network project information to this forecast, per the Paging Traffic Section of the Agreement

Mail completed form to: USWC
Type 1 Provisioning Manger
250 Bell Plaza, Room 501
Salt Lake City, UT 84111

APPENDIX A - TYPE 1 PAGING CONNECTION - QUARTERLY POC FORECAST FORM

-- THIS IS NOT AN ORDER FORM --

THIS IS A THREE YEAR FORECAST PER THE PAGING TRAFFIC SECTION OF THIS AGREEMENT

DATE PREPARED: _____(update required quarterly)

Paging Provider's Point of Connection (POC) (one form required per POC)

_____ **New POC**
_____ **Existing POC**

For Internal Use Only

Paging Provider: _____ ACNA: _____

POC Address: _____

City, State, Zip: _____

Switch CLLI Code (associated with NXX): _____

POC CLLI Code (if assigned) : _____

Technical Contact Name: _____

Technical Contact Phone Number: _____

Billing Contact Name: _____

Billing Contact Phone Number: _____

List ALL PAGING DID Numbers associated with this POC:

Paging Provider's Equipment Requirements (check appropriate line(s))

_____ Digital _____ Analog
_____ 2-wire _____ 4-wire

Trunk Pulsing
_____ Multifrequency (MF) _____ Dial Pulse (DP) _____ Dual Tone Multifrequency (DTMF)

Start Signaling
_____ Wink _____ Immediate (IMM) _____ Delayed Start

Outpulsing (4-10 digits) _____

Network Channel Interface - Analog

_____ Reverse Battery - 600 ohms
_____ Reverse Battery - 900 ohms
_____ Loop Start
_____ E & M Signaling - Type I
_____ E & M Signaling - Type II

Network Channel Interface - Digital:

_____ DS3
_____ DS1 AMI + SF
_____ DS1 AMI + ANSI ESF
_____ DS1 AMI + non-ANSI ESF
_____ DS1 B8ZS + SF
_____ DS1 B8ZS + ANSI ESF
_____ DS1 B8ZS + non-ANSI ESF

APPENDIX A - TYPE 1 PAGING CONNECTION - QUARTERLY POC FORECAST FORM

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Busy Season: _____			
Average Busy Hour Minutes of Use	_____	_____	_____
Average Busy Hour Number of Messages	_____	_____	_____

For Internal Use Only:

Prepared by: _____ Date: _____
Title: _____ Telephone Number: _____

Please attach additional major network project information to this forecast, per the Paging Traffic Section of the Agreement

Mail completed form to: USWC
Type 1 Provisioning Manger
250 Bell Plaza, Room 501
Salt Lake City, UT 84111