

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**AMENDMENT OF THE COMMISSION'S
RULES TO PROVIDE CHANNEL EXCLUSIVITY
TO QUALIFIED PRIVATE PAGING SYSTEMS
AT 929-930 MHZ**

PR Docket No. 93-35

RM-7986

To: The Commission

**REPLY COMMENTS OF AIRTOUCH PAGING
(FORMERLY PACTEL PAGING)**

AirTouch Paging ("AirTouch")^{1/}, by its attorneys and pursuant to the Commission's Public Notice, Report No 1999 (Erratum), released March 11, 1994^{2/}, hereby submits its Reply Comments in reference to the Petitions for Reconsideration and/or Clarification filed December 27, 1993 (the "Reconsideration Requests") with respect to the Commission's First Report and Order in PR Docket No. 93-35 (the "Exclusivity Order").^{3/}

^{1/} In connection with the spin-off of the wireless businesses of Pacific Telesis Group, Pactel Corporation has become AirTouch Corporation and Pactel Paging has become AirTouch Paging, effective April 1, 1994.

^{2/} 59 Fed. Reg. 12327 (March 16, 1994).

^{3/} Amendment of the Commission's Rules to Provide Exclusivity to Qualified Private Paging Systems at 929-930 MHz, FCC 93-479, released November 17, 1993.

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**I. The Record Supports Some
Modifications of the Exclusivity Rules**

1. Six parties filed comments in response to the various petitions for reconsideration and/or clarification submitted in this proceeding.^{4/} Many commenters addressed and supported the four main issues raised in the Reconsideration Requests:^{5/} (a) adoption of a transition period for converting to dedicated transmitters;^{6/} (b) extension of the slow-growth option to grandfathered systems;^{7/} (c) changing the basis of regional exclusivity to state boundaries;^{8/} and (d) increasing the

^{4/} The commenting companies were American Paging, Inc. ("API"); Arch Communications Group, Inc. ("Arch"); CelPage, Inc. ("CelPage"); American Mobilephone, Inc. ("AMI"); American Digital Corp. ("ADC"); and PacTel Paging, now AirTouch Paging ("AirTouch").

^{5/} There was no support for the changes sought by Afro-American Paging. Indeed, as AirTouch pointed out, Afro-American Paging's request can be more properly treated as a waiver than as a wholesale rule change. The other requested rule changes are more appropriate to be done on a wholesale basis rather than by individual waiver which would consume valuable Commission resources.

^{6/} See Comments of API at 2-3, Arch at 5-8, CelPage at 10-12, and AirTouch at 4-9. As AirTouch pointed out in its Comments, allowing grandfathered licensees an extended time to transition to dedicated transmitters would not require a performance bond because most of these licensees have already spent significant sums of money to construct these systems. For example, AirTouch has already expended in excess of \$9 million to construct and operate its system with over 195,000 subscribers.

^{7/} See Comments of API at 2-3; Arch at 9-11; CelPage at 4-8; and AirTouch at 4-9.

^{8/} See Comments of API at 3-4; Arch at 11-13; and AirTouch at 10-13.

regional power limits to 3500 watts E.R.P.^{9/}. The commenters supporting these changes found that adoption of the changes requested by the Reconsideration Requests would serve the public interest.^{10/} Given the overwhelming support and the substantial public interest arguments advanced in favor of the adoption of these changes, the Commission should revise its PCP exclusivity rules on reconsideration in these regards.^{11/}

**II. The Concerns Expressed by
AMI and ADC Should Not Be Allowed to
Derail Statewide Licensing for Regional Systems**

2. Two commenters, AMI and ADC, are concerned that redefining regional exclusivity based upon state boundaries rather than transmitter contours may adversely affect their

^{9/} See Comments of API at 3-4; Arch at 13-14; CelPage at 12-13; and AirTouch at 13-15. 3500 watt authority is especially important for multifrequency systems with regional and nationwide frequencies because without this authority the licensee may not use 3500 watts. AirTouch urges the Commission to act expeditiously on this request and not wait for the rule combination mandated by the Omnibus Budget Reconciliation Act of 1993 because the public interest would be served by increasing power for regional licensees to make them competitive with common carrier licensees.

^{10/} API opposes the MAP Mobile Communications, Inc. ("MAP") request that the Commission expand the types of modifications that grandfathered licensees can do which have an overlaying co-channel licensee. AirTouch concurs with API that the Commission did not intend and should not allow grandfathered licensees to expand their systems via the modification process as proposed by MAP. Of course, if the grandfathered licensee files a new application, it should be treated just like any other application for a new facility.

^{11/} It is especially noteworthy that these changes were proposed in a Petition filed by the Association for Private Carrier Paging ("APCP") of the National Association of Business and Educational Radio ("NABER"). Although there were only six commenters, the changes represent a consensus of the industry because they were suggested by NABER.

exclusivity protection.^{12/} In each case, they seek to graft provisos and special exceptions onto the regional exclusivity rules to meet their particular circumstances.^{13/} AirTouch submits that the Commission should not take the path offered by AMI and ADC.

3. The comments in this proceeding establish overwhelming public interest justifications for using state boundaries rather than contours to define regional exclusivity boundaries.^{14/} APCP proposed a simple rule in which carrier-defined regions of up to 12 states would enjoy exclusivity protection not unlike that granted to nationwide exclusive carriers.^{15/} This straightforward approach should not be

^{12/} For example, AMI has included Florida in a six state region it serves, but has no transmitters in Tampa or Miami (two top-30 markets). It is concerned that its exclusivity protection in the panhandle of Florida will be compromised if another carrier can get "statewide" exclusivity in Florida on the same frequency by building out Tampa and Miami. ADC is concerned that granting exclusivity throughout a state could inhibit its plans to add the transmitters to an existing system necessary to qualify the system for local exclusivity. ADC Comments, p. 2.

^{13/} AMI wants the Commission to recognize two types of regions: those that enjoy protection statewide, and those that enjoy protection around transmitters. AirTouch believes this is too complicated. ADC wants a transition period extending from October 19, 1993 to March 31, 1994 to flesh out its local system before a statewide grant would pertain. AirTouch believes this creates a "slippery slope" and would likely give rise to challenges by others who needed slightly more (or perhaps less) time.

^{14/} See e.g., AirTouch Comments, Section III; Arch Comments, Section IV. The overriding justification is that state boundaries will accord wide-area system operators the flexibility they need to expand and revise their systems to meet changing service needs.

^{15/} A grandfathered nationwide licensee would have sharing rights with grandfathered regional or local systems on the
(continued...)

compromised by the special rules and exceptions proposed by ADC and AMI.

4. This does not mean that ADC and AMI are without avenues of relief. Rather than complicating the rule change proposed by APCP, the Commission should invite AMI and ADC to submit waiver requests dealing with their special circumstances which can be resolved on an *ad hoc* basis.^{16/}

III. The AirTouch Waiver is Unopposed

5. Several grandfathered licensees, including AirTouch, have filed waivers with the Commission seeking an extended period of time to convert PCP systems to the use of dedicated transmitters.^{17/} These waivers were listed for comment in the same Public Notice as the Reconsideration Requests. No one has opposed the AirTouch waiver request which is supported by complete public interest showings.^{18/} Nor have the other similar waivers drawn any opposition.

^{15/} (...continued)

same frequency. Similarly, a statewide regional licensee would have sharing rights with a local system in the state.

^{16/} AirTouch understands that other parties have asked for minor relief from the strictures of the exclusivity rules by waiver.

^{17/} To AirTouch's knowledge, waivers have been filed by Arch, ComTech Paging, Message Center Beepers, Metrocall, Inc., and AirTouch.

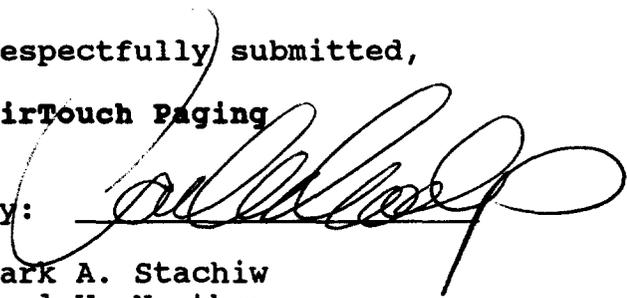
^{18/} The public interest would be served by granting these waiver requests because (i) the requesting parties built systems based upon the Notice of Proposed Rulemaking which did not include a requirement of dedicated transmitters for systems with differing coverage areas, (ii) the requesting parties are not speculators, and (iii) there are insufficient resources or equipment to convert the systems to dedicated transmitters within eight months.

6. If the Commission adopts the changes sought by the Reconsideration Requests these waivers would be rendered moot. However, if the Commission is unable to act quickly to adopt the changes requested, AirTouch urges the Commission to move forward and grant these waiver requests.^{19/}

7. The foregoing premises having been duly considered, AirTouch respectfully requests that the Commission proceed with the adoption of the changes sought by the Petitions for Reconsideration.

Respectfully submitted,

AirTouch Paging

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^{19/} Granting of these waivers would permit the licensees to have some certainty that they will have twenty-four months to construct their systems which would permit some of these parties to secure the additional financing necessary to construct dedicated transmitters. In the absence of a waiver grant and expeditious rule changes, the licensees would be forced to attempt to undertake construction as if no waiver was granted. This would clearly not serve the public interest.

CERTIFICATE OF SERVICE

I, Tana Christine Maples, a secretary in the law firm of Bryan Cave, hereby certify that on this 11th day of April, 1994, a copy of the foregoing **REPLY COMMENTS OF AIRTOUCH PAGING (FORMERLY PACTEL PAGING)** was sent by hand delivery or first-class mail, postage pre-paid to each of the following:

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