

APC had far more contacts in the month before the PCS rule making decision than in the month before the preference rule making decision. Third, ACT's claim that APC "stop[ped] abruptly" making contacts after December 23, 1993, ignores the fact that APC resumed making permissible contacts after the holidays to discuss PCS rule making issues.

ACT also criticizes APC's ex parte notifications. Under a correct reading of the Commission's rules, APC's notices were more than sufficient. But ACT does not read Section 1.1206(a)(2) correctly. It paraphrases the rule as requiring "that a written report be filed concerning contacts that are made" (p. 25). In fact, the rule contains no such requirement. It unambiguously states:

Any person who in making an oral ex parte presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings shall provide on the day of the oral presentation an original and one copy of a written memorandum . . .

Moreover, in adopting the rule, the Commission made it clear that "persons making oral presentations that substantially reiterate their own written comments need not file such a memorandum."^{13/}

When APC limited its discussions to matters that were contained in its documents already on file, APC was not required by the Commission's Rules to file any notifications whatsoever. APC, however, for the sake of complete

^{13/} First Report, 2 F.C.C. Rcd. 3021, 3032 (1982).

disclosure, chose to report any meetings that occurred even if the contacts with Commission personnel were quite casual and did not constitute "presentations" in a formal sense. On those few occasions when APC's discussions raised matters that were outside the scope of its filed submissions, those matters were properly summarized in APC's notifications.

II. OTHER PETITIONS SIMILARLY PROVIDE NO BASIS FOR RECONSIDERING THE GRANT OF APC'S PREFERENCE.

Other petitions urge the grant of preferences to others. APC takes no position on the merits of these preference requests, but must respond where the petitions address APC's request.

AMT/DSST. To support its claim that the Commission penalized it for proposing a spectrum plan that varies from the Commission's plan, AMT/DSST states that APC's proposal also varied from the Commission's plan because APC proposed 50 MHz spectrum blocks when it applied for its preference in November 1991 (p. 18). APC, however, amended its proposal to propose two 40 MHz MTA spectrum blocks. The Commission's decision to allocate two 30 MHz MTA spectrum blocks with the capacity to aggregate up to 40 MHz per licensee is a reasonable outgrowth of APC's proposal.^{14/}

^{14/} AMT/DSST asks the Commission in the summary, but not the body of its petition, to reconsider the grant to APC, Cox Enterprises, Inc. and Omnipoint Communications, Inc. only "to the extent that such grants are based on an inconsistent application of relevant criteria . . . or on a record tainted by procedural inadequacies" (p. i). AMT/DSST does not detail those inadequacies or demonstrate how a grant to APC cannot be squared with a grant to AMT/DSST. Even a grant of AMT/DSST's

Nextel. Although Nextel's digital mobile technology may be innovative in its ability to permit SMR systems to co-exist, we disagree with Nextel (pp. 7-10) that it is more innovative for PCS than APC's PathGuard™ System. Even if, however, the Commission were to award Nextel a preference for its technology, such an award would not detract from the value of APC's development of a technology that permits sharing between two very unlike services -- PCS and point-to-point microwave.^{15/} Accordingly, Nextel's comparison of its technology to PathGuard™ provides no basis for reconsidering the grant of a preference to APC.

* * *

The petitions present no grounds for reconsidering the grant of a preference to APC. Over the past four and one-half years, APC has located the spectrum in which PCS will be implemented, demonstrated how that spectrum can be used to inaugurate PCS, and invented the technology by which that spectrum can be shared.^{16/} It has crafted effective sharing

request thus would not require reconsideration of APC' grant.

^{15/} Indeed, Nextel stated at an earlier juncture in this docket that it "does not contest the Commission's tentative award of PCS pioneer's preferences to APC, Cox and Omnipoint." Comments of Fleet Call, Inc., p. 6 (Jan. 29, 1993).

^{16/} QUALCOMM notes that it "designed, developed, manufactured and installed the CDMA system that APC used to verify its FAST technology" and that its engineers "worked side-by-side with APC personnel to conduct the tests reported on by APC" (p. 3 n.9). We hope that these remarks do not convey the impression that QUALCOMM engineers had anything to do with the development of the FAST (now PathGuard™) System, as contrasted with the development of the CDMA interface APC

criteria and has done groundbreaking propagation research. It has deployed two experimental PCS systems, both serving the Washington, D.C./Baltimore, Maryland region, and has implemented three distinct PCS services used by several hundred test subjects on those systems. It has conducted substantial, state-of-the-art market trials to gauge consumer demand. All of this information it has submitted to the Commission for its use and for the benefit of the public. APC also has proposed and continues to propose comprehensive resolutions for regulatory issues confronting the Commission.

In short, APC has done all the work the Commission could ask of a PCS pioneer. The Commission should affirm APC's preference.

Respectfully submitted,

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utilized to test the PathGuard™ System. APC alone developed PathGuard™ (although QUALCOMM hardware was, of course, useful in verifying, but not developing, PathGuard™).

CERTIFICATE OF SERVICE

I, Kurt A. Wimmer, hereby certify that a copy of the foregoing pleading has been sent by hand delivery, facsimile and Federal Express (*) or Federal Express (***) to the following on this 26th day of April, 1994:

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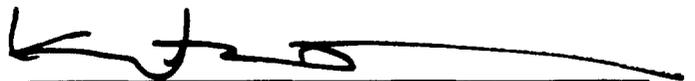
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