

EX PARTE OR LATE FILED



ORIGINAL
DOCKET FILE COPY ORIGINAL

Kathleen Q. Abernathy
Vice President
Federal Regulatory

AirTouch Communications
1818 N Street N.W.
Washington, DC 20036

Telephone: 202 293-4960
Facsimile: 202 293-4970

May 27, 1994

RECEIVED

MAY 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

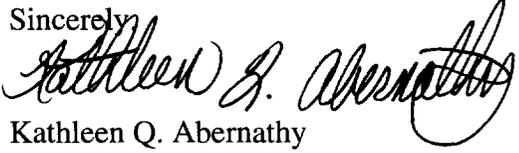
RE: PP Docket 93-253, Implementation of Section 309(j) of the Communications Act, Competitive Bidding

Dear Mr. Caton:

On Friday, May 27, 1994, R. Preston McAfee, on behalf of AirTouch Communications met with Evan Kwerel and Jonathan Cohen of the FCC's Office of Plans & Policy. The attached document was provided during the meeting. Please associate the attached material with the above-referenced proceeding.

Two copies of this notice were submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

Kathleen Q. Abernathy

Attachment

cc: Evan Kwerel
Jonathan Cohen

No. of Copies rec'd 021
List ABCDE

Auction Design Issues

Presentation to:

Federal Communications Commission
Washington, D.C.

by

R. Preston McAfee
University of Texas

and

Analysis Group, Inc.

on behalf of
AirTouch Communications

May 27, 1994

Evaluating the Competitive Effects of Non-Majority Ownership Interest

- Factors that Support Establishing a Relatively High Partial Ownership “Safe Harbor”
 - Allows More Complex Ownership Structures
 - Enables More Efficient Formation of Consortia
 - Reduced Threat of Divestiture Encourages Increased Participation in Auction
 - Reduced Administrative Complexity, While Retaining DOJ/FTC Oversight
- Primary Factor Militating Against A Relatively High Ownership Threshold
 - Variety of Opinions Exist Regarding When Partial Ownership Constitutes Effective Control
(see attached opinions)
- Better to Err on Too High a “Safe Harbor”
 - Too Low -- Prevents Efficient Allocations
 - Too High -- Possibility of Anticompetitive Allocations, But DOJ/FTC Enforcement of Antitrust Laws Would Prevent Such Outcomes

A Non-Majority Owner's Ability to Control Depends on the Distribution of Share Ownership

- The More Concentrated the Ownership of Shares, the Less is the Ability of a Non-Majority Owner to Exercise Control
- Empirically, in 78 Percent of *Fortune 500* Firms, the Largest Shareholder Owns at Least Five Percent of the Firm, and the Average Holding of the Five Largest Shareholders is 29 Percent (Schleifer and Vishny, *JPE*, 1986)
- Thus, Non-Majority Shareholders Generally Face Several Other Owners with Significant Ownership Shares, Limiting the Ability of Any One Non-Majority Owner to Exercise Control

Variety of Opinions Regarding When Partial Ownership Constitutes Control

- In a Case Involving Partial Stock Acquisition, A Court Held That a Twenty Percent Ownership Need Not be Divested Because There Were No Common Directors, Officers, or Employees, and No Proof of Control (see *U.S. v. Amax* 402 F. Supp. 956, 974)
- In an Instance of Partial Stock Acquisition Where the Acquiring Firm Apparently Intended to Gain Control, a Court Held that Twenty Percent Ownership Was Sufficient to Influence the Acquired Firm's Policies (see *Gulf & Western Industries v. Great Atlantic & Pacific Tea Co.* 476 F.2d 687, 694)
- Regarding "Safe Harbors" for Partial Stock Acquisitions, Areeda and Turner Suggest a Five Percent Threshold on *Ad Hoc* Grounds (see *Antitrust Law*, ¶1203)

Creating SubMTAs for Designated Entities Creates a Difficult Bargaining Problem

- Only Matters When Designated Entity Owns Less Than 50%
- SubMTA Improves Designated Entity's Bargaining Position by Providing "Walk-Away" Threat
- If Designated Entity Must Own a Portion of MTA
 - Holdup Threat May Deter Consortia Involving Designated Entities
 - Designated Entity May Get Stuck with Worst Submarket to Minimize Holdup Threat
- Better to Require Repayment of Bidding Credit If Designated Entity Ceases Participation
 - Also Provides "Walk-Away" Threat for Designated Entity
 - Payment Should Be to Government, not Designated Entity
 - To Deter Inefficient Partnership Dissolution

Auctioning C After A & B Versus All Simultaneously

- Auctioning All Simultaneously
 - Improves Allocative Efficiency
 - Ensures That Prices Are Similar
 - Minimizes Bidder Regret
 - Makes “Contingent Consortia” Difficult or Impossible
- Auctioning C After A & B
 - Encourages Losers in A & B Auction to Form Consortia with Designated Entities
 - Permits Consortia Based on Outcome in A & B
- Conclusion Depends on How Important Consortia Are For Designated Entities
 - Tradeoff Between Efficiency and Support for Designated Entities
- May Be Better to Use Bidder Credits Rather Than Sequential Auctions to Encourage Designated Entities

BTAs Versus MTAs for Designated Entities

- Use of BTA-Sized Licenses
 - Encourages Participation of Smallest Firms
 - Permits Assembly of Economically Significant Regions
 - Increasing Efficiency
 - Some Low Value BTAs May Not Sell, But This Would Only Occur If It Were the Efficient Outcome
 - Makes Build-Out Requirements More Costly to Implement and More Complex to Enforce
 - Requires More Complex Auction

Minimum Compatibility Requirements

- o Essential if Commission is to Ensure that Industry Standards are Uniform Across Country and that Subscriber Equipment is Compatible on Similar Networks
- o Particularly Important to Ensure that Emergency Voice and Data Calls (E911) can be Placed on Any PCS Network in a PCS Frequency Band Using Similar Technologies
- o Will be Too Late to Address E911 Issue if Wait Until After the Industry Builds Out and After There are a Number of Crisis with Emergency Calls
- o Also Protects Against Interference Between Different PCS Carriers; Cannot Address Interference Issue Without First Addressing Issue of Compatibility
- o Need not Mandate Specific Standards to Ensure Minimum Compatibility; Need Only put Burden on Industry Through the Licensing Process
- o This Issue is Important Enough to Request Further Comment in Decision on Reconsideration
- o Further Comment will not Slow Down the Auction Process Since Parties will Bid for Spectrum Regardless of Whether There is a Standard
- o Further Comment will, however, Benefit the Public by Allowing the FCC to Take the Steps Necessary to Ensure that Subscribers have Equipment that is Effective in Emergency Situations and can be Used Across the Country