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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding Narrowband PCS	PP Docket No. 93-253
Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services	GEN Docket No. 90-314 ET Docket No. 92-100

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To: The Commission

REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging, by its attorney, hereby submits its reply comments on the Further Notice of Proposed Rulemaking which proposes to revise the licensing and auction rules governing narrowband PCS for the Major Trading Areas ("MTAs") and Basic Trading Areas ("BTAs").[1] The following is respectfully shown:

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List A B C D E

[1] Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 94-219, released August 17, 1994 ("Further Notice").

I. INTRODUCTION

1. The Commission received comments from thirteen interested parties on the proposals contained in the Further Notice.[2] The commenting parties (the "Commenters") represent a cross section of prior, current and future narrowband PCS applicants and industry participants.[3]

2. All of the Commenters agree to some extent that setting aside certain narrowband PCS channels for designated entities is in the public interest.[4] Otherwise,

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[2] Comments were filed by AirTouch Paging, American Paging ("American"), Association of Independent Designated Entities ("AIDE"), Essence Communications ("Essence"), David J. Lieto ("Leito"), Mobile Telecommunication Technologies Corporation ("MTel"), Pagemart, Inc., Paging Network Inc. ("PageNet"), Personal Communications Industry Association ("PCIA"), Puerto Rico Telephone Co. ("PRTC"), San Juan Pacific Management, Inc. ("SJPM"), U.S. Small Business Administration ("SBA"), and Women of Wireless ("WOW").

[3] For instance, AirTouch, MTel, Pagemart, and PageNet won licenses at the nationwide PCS auction. Essence and American Paging were both unsuccessful bidders at the nationwide narrowband PCS auction and have filed for regional licenses. Industry associations such as AIDE and PCIA also weighed in with comments.

[4] See, e.g., Comments of AirTouch Paging at ¶4, AIDE at pp 3-4, American Paging at p. 1, Essence at pp. 3-5, PCIA at p. 6, PageMart at p. 2, PRTC at p. 2, SBA at p. 3, and WOW at p. 1. American also suggests that The Commission start licensing the reserved, but unchannelized narrowband PCS spectrum to open opportunities for all potential competitors. Comments of American at pp. 2-4. This proposal would have the effect of increasing "the pie", so all parties would benefit. AirTouch Paging supports American's proposal and encourages the Commission to adopt it.

the comments of the interested parties centered primarily around the following issues:

- The licensing scheme for the 0-12.5 kHz response channels; and
- Eligibility for the set aside channels.

AirTouch Paging will address each of these issues separately.

II. THE 0-12.5 KHZ BTA RESPONSE CHANNELS SHOULD BE LICENSED ON AN MTA OR GREATER BASIS AND SHOULD NOT BE SET ASIDE FOR ENTREPRENEURS

3. In the Further Notice, the Commission sought comment on whether some of the 0-12.5 kHz BTA response channel should be set aside for entrepreneurs and licensed on a broader geographic basis. Four Commenters directly addressed whether the Commission should set aside the 0-12.5 kHz response channels for entrepreneurs.[5] All of these Commenters agree that it would not serve the public interest to set aside these channels for entrepreneurs because (i) doing so would substantially diminish opportunities for existing carriers to offer enhanced services to the public;[6] and, (ii) most entrepreneurs would not be able to take advantage of the set aside due to the eligibility

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[5] See Comments of AirTouch at ¶¶18-19, MTel at pp. 11-13, PageNet at pp. 2-6, and Pagemart at pp. 12-16. It is interesting that none of the designated entities filing comments in support of the Further Notice even commented on this proposal.

[6] See e.g., Comments of AirTouch Paging a 19, PageMart at pp. 13-14, and PageNet at pp. 2-4.

requirements for these channels.[7] Significantly, the proposal to set aside some of the response channels received virtually no support from the designated entity commenters who were intended to be the beneficiaries of the proposal! Given the substantial opposition, and the absence of designated support to a set aside for these channels, the Commission should not adopt that proposal.

4. The Commenters do support, however, the Commission proposal to redesignate these channels to be licensed on an MTA or greater basis.[8] These Commenters point out correctly that most paging systems provide service over MTA or greater areas.[9] If the Commission uses BTA geographic licensing, existing licensees will be forced to compete for multiple licenses just to cover the core area of their systems.[10] The public interest is not served by limiting opportunities for existing operators to offer enhanced services.

5. AirTouch agrees with the consensus of Commenters that the license area for these response channels should be MTAs at a minimum. As AirTouch pointed out in its

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[7] See, e.g., Comments of AirTouch Paging at ¶19 and PageNet at p. 4.

[8] See Comments of AirTouch Paging at ¶18, PageMart at pp. 15-16, and PageNet at pp. 5-6.

[9] See Comments of AirTouch at ¶18, PageMart at pp. 8-9, and PageNet at pp. 5-6.

[10] See Comments of PageMart at p. 13.

Comments, most paging systems now encompass at least one MTA, and some encompass multiple MTAs.[11] Therefore, given the considerable support for MTA or greater response channel licensing, the Commission should redesignate the BTA response channels as MTA response channels.

III. ANY SET ASIDE SHOULD PROVIDE MAXIMUM OPPORTUNITIES FOR TRULY SMALL BUSINESSES

6. In the Further Notice, the Commission proposed setting aside four of the six MTA channels and both BTA channels for entrepreneurs/designated entities.[12] All of the Commenters generally supported the use of some set asides to promote the licensing of designated entities. However, virtually all Commenters opposed converting the BTA channels to nationwide or regional licenses.[13] The Commenters found that nationwide or regional set aside licenses would not serve the public interest because: (i) changing the allocation in so radical a fashion would be

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[11] See Comments of AirTouch at ¶18. See also Comments of PageNet at pp. 5-6.

[12] Further Notice at ¶¶73-78.

[13] See e.g. Comments of AirTouch at ¶¶ 11-17 (only two BTA licenses should be set aside and should be licensed on an MTA basis), Leito (license on BTA basis), MTel at pp. 3-10 (Commission should not license set aside channels on nationwide basis), Pagemart at pp. 2-11 (set aside only channels with existing credit and license on regional geographic basis), PCIA at pp. 7-8 (do not create nationwide set aside licenses), PRTC at pp. 2-5 (Do not set aside Channel 19), SJPM (license on BTA basis), and WOW (license on MTA basis). But see Comments of AIDE at pp. 3-4.

fundamentally unfair to bidders who paid substantial prices for nationwide narrowband PCS auctions based upon the previously announced licensing scheme,[14] (ii) alterations in mid-stream of this nature would disrupt the Commission's carefully designed auction process,[15] (iii) eliminating "local" license areas could lead to some less populated areas not receiving service as early,[16] and (iv) increasing the territory would disadvantage small designated entities by imposing substantial barriers to purchasing and constructing narrowband PCS systems.[17]

7. As AirTouch Paging pointed out in its Comments, the challenge facing the Commission in determining the appropriate geographic size of the set aside licenses is to balance the geographic area covered by a license against the number of licenses available to designated entities.[18] Most of the Commenters support tilting that balance from here forward away from nationwide licenses.[19] AirTouch's market experience clearly indicates, however, that BTAs are

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[14] See Comments of MTel at pp. 3-6 and PCIA at p. 7.

[15] See Comments of AirTouch Paging at ¶9, and Mtel at pp. 10-11.

[16] See Comments of Leito and SJPM.

[17] See Comments of WOW at pp. 2-4.

[18] See Comments of AirTouch Paging at ¶18.

[19] See Comments of AirTouch Paging at ¶17 (MTA), Leito (BTA), M Tel at p. 3-10 (not nationwide), PageMart at pp. 2-11 (regional), PCIA at pp. 7-8 (not nationwide), SJPM (BTA), and WOW (MTA).

too small to meet consumer demands. So, the Commission should transform the BTA licenses into either MTA or regional licenses.

8. Several Commenters also point out that the eligibility for the set aside channels is too broad to serve the public interest.[20] These Commenters support AirTouch Paging's observation that broadening the eligibility standards to include non-traditional designated entities would limit opportunities for the historically disadvantaged designated entities.[21] As AIDE points out, the Commission's policy to broaden the eligibility standards would be the eviscerate the policy to give preferences to designated entities:[22]

> By way of analogy to the games of ancient Rome, it is as if the Romans decided to feed the Christians only to smaller lions. However benevolent this policy might be in some abstract sense, the Christians will still likely be some lion's lunch.[23]

9. AirTouch concurs. By setting the financial test for "entrepreneurs" so high the Commission risks failing to meet the statutory objectives of promoting minority and women owned participation in wireless services.

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[20] See Comments of AirTouch at ¶¶20-24, AIDE at pp. 5-7, and PCIA at p. 5.

[21] See Comments of AirTouch Paging at ¶¶21-24, AIDE at pp. 4-7, and PCIA at p. 5.

[22] Comments of AIDE at p. 5.

[23] Comments of AIDE at p. 5.

The Commission's definition of entrepreneur includes many large, publicly-traded companies to which the legislation was not intended to apply.[24] Accordingly, the Commission should narrow the eligibility for the entrepreneur blocks to (i) small businesses with revenues under $40 million, (ii) women owned firms, and (iii) minority owned firms.

10. As AirTouch pointed out in its Comments, if the Commission narrows the number of firms eligible for the entrepreneur blocks, it should also reduce the number of channels in these blocks.[25] AirTouch continues to believe that two licenses in each geographic area should be sufficient to allow minority and women owned firms to have a good opportunity to participate in Narrowband PCS services. It does not serve the public interest to allow different providers of service to have vastly different costs of providing service.[26] Accordingly, the Commission should only set aside two channels for the designated entities and continue with the credits already in place for the MTA channels.

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[24] See Comments of AirTouch Paging at ¶¶21-23, and AIDE at pp. 5-6.

[25] See Comments of AirTouch Paging at ¶16.

[26] See Comment of AirTouch Paging at ¶13.

IV. CONCLUSION

11. The foregoing premises having been duly considered, AirTouch Paging respectfully requests that the Commission expeditiously revise its proposed Rules to reflect AirTouch Paging's comments.

Respectfully submitted,

AirTouch Paging

By: Mark A. Stachiw (CAN)
Mark A. Stachiw
Its Attorney

Mark A. Stachiw
AIRTOUCH PAGING
Suite 800
12221 Merit Drive
Dallas, Texas 75251
(214) 458-5200

October 3, 1994

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 3rd day of October, 1994, caused copies of the foregoing **Reply Comments of AirTouch Paging** to be delivered by hand, courier charges prepaid, or by first class U.S. mail, postage prepaid, to the following:

Chairman Reed Hundt*
Stop Code 0101
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

Commissioner Andrew C. Barrett*
Stop Code 0103
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Commissioner Rachelle Chong*
Stop Code 0105
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Commissioner James H. Quello*
Stop Code 0106
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

Commissioner Susan Ness*
Stop Code 0104
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC. 20554

John Cimko, Chief*
Mobile Services Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, DC 20554

A. Richard Metzger, Chief*
Common Carrier Bureau
Federal Communications Commission
2025 M Street, N.W., Room 500
Washington, DC 20554

George Y. Wheeler
Atty. for American Paging, Inc.
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

William J. Franklin
Atty for AIDE
1919 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006-3404

Law Offices of Richard S. Myers
Sean P. Beatty
Attys for David J. Lieto and
San Juan Pacific Management, Inc.
1030 Fifteenth Street, N.W.
Suite 908
Washington, D.C. 20005

Thomas A. Hart, Jr.
Martin C. Rothfielder
Daniel N. Max
Attys for Essence Communications, Inc.
McManimon & Scotland
1275 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20004-2404

David Honig
Executive Director and Counsel
Minority Media and Telecommunications Council
3636 Sixteenth Street, N.W.
Suite B-863
Washington, D.C. 20010

Thomas Gutierrez, Esq.
J. Justin McClure, Esq.
Attys for Mtel
Lukas, McGowan, Nace & Gutierrez, Chartered
Suite 1200
1111 Nineteenth Street, N.W.
Washington, D.C. 20036

Melodie A. Virtue
Henry Solomon
Amelia Brown
Attys for National Paging and Personal
Communications Association
Haley, Bader & Potts
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633

James P. Tuthill
Betsy Stover Granger
Attys for Pacific Bell Mobile Services
140 New Montgomery Street
Room 1525
San Francisco, CA 94105

James L. Wurtz
Atty for Pacific Bell Mobile Services
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Philip L. Spector
Susan E. Ryan
Jon C. Garcia
Attys for Pagemart, Inc.
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W.
Washington, D.C. 20036

Judith St. Ledger-Roty
Atty for Paging Network, Inc.
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Mark J. Golden
Acting President
Personal Communications Industry Association
1019 Nineteenth Street
Suite 1100
Washington, D.C. 20036

Joe D. Edge
Mark F. Dever
Attys for Puerto Rico Telephone Company
Drinker Biddle & Reath
901 Fifteenth Street, N.W.
Suite 900
Washington, D.C. 20005

Jay C. Keithley
Leon M. Kestenbaum
Attys for Sprint
1850 M. Street, N.W.
Suite 1100
Washington, D.C. 20036

Kevin Gallagher
Atty for Sprint
8725 Higgins Road
Chicago, IL 60631

Craig T. Smith
Atty for Sprint
P.O. Box 11315
Kansas City, MO 64112

MaryAnn Pas-Lucas
Texas PCS, Inc.
17422 Ponderosa Pines
Houston, Texas 77090

Jere W. Glover, Esq.
Chief Counsel for Advocacy
Barry Pineles, Esq.
Assistant Chief Counsel
Office of Advocacy
United States Small Business Administration
409 3rd Street, S.W.
Washington, D.C. 20416

Elise M. Wright
Designated Representative
Women of Wireless
P.O. Box 227
Dunn Loring, VA 22027-0227

Tana Christine Maples

Tana Christine Maples

* Denotes Hand Delivery