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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Improving the Commission's Processes	)	PP Docket 96-17
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Comments of
AirTouch Communications, Inc.
and U S WEST NewVector Group, Inc.

AirTouch Communications, Inc. ("AirTouch") and U S WEST NewVector Group, Inc. ("NewVector") hereby submit comments in response to the Commission's Notice of Inquiry issued on February 8, 1996.[1] As major providers of wireless services and holders of numerous FCC authorizations,[2] AirTouch and NewVector applaud the Commission's desire to continue to improve the speed and quality of service to the public by building on the procedural reforms adopted over the past two years. The proposals made herein are intended to assist the Commission in furthering its streamlining goals — specifically, the goals of the Wireless Telecommunications Bureau ("WTB").

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1 In the Matter of Improving Commission Processes, PP Docket No. 96-17, FCC 96-50, released February 14, 1996 (hereinafter, "NOI").

2 AirTouch provides cellular services in MSAs and RSAs throughout the United States. NewVector provides cellular service in some fifty cellular markets in the western United States. AirTouch is in the process of completing a merger of its cellular interests with those of NewVector. AirTouch and NewVector are also partners in an A/B Block PCS licensee, PCS PrimeCo L.P. Finally, through its subsidiary, AirTouch Paging, AirTouch is one of the largest paging service providers in the U.S., operating in twenty-one states and the District of Columbia.

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Summary

AirTouch and NewVector strongly suggest that modifications to the Commission's rules governing Commercial Mobile Radio Service ("CMRS") transfer of control and assignment applications would further the Commission's goals of reducing paperwork required from FCC licensees. Specifically, AirTouch and NewVector recommend that the Commission at least eliminate the requirement for prior Commission approval of pro forma assignments and transfers of control involving internal corporate reorganizations and reincorporations. This can be accomplished by granting immediately those pending Part 22 Rewrite petitions that seek to eliminate certain unnecessary pro forma application requirements. Further, the Commission should use its forbearance authority under new Section 10 of the Communications Act to eliminate all pro forma transfer/assignment applications, and replace them with a simple notification requirement. Moreover, the application process for other changes in ownership or control of CMRS licensees can be streamlined by eliminating time limits on consummation of transactions and related notification filings, similar to proposals recently adopted for microwave licensees in the Part 101 proceeding. AirTouch and NewVector also recommend that the Commission consolidate different services' transfer and assignment application forms to eliminate duplicative review of the same transaction by different WTB Branches.

I. Need for streamlined transaction application processing

The Commission has become a victim of its own success: its expedited licensing processes[3] have created a dramatic increase in the number of CMRS licensees it regulates. In 1995, the Commission granted 102 broadband PCS authorizations.[4] At the conclusion of the C block PCS auction in 1996, potentially 493 new licensees will become subject to the CMRS transfer/assignment rules. In the narrowband arena, the Commission granted nationwide and regional narrowband PCS licenses to thirteen different entities. It is expected that the Commission will hold auctions for approximately 1,800 additional narrowband PCS licenses over the next year. These narrowband licenses are, of course, in addition to the approximately 500 entities that currently hold Part 22 paging licenses.[5] Furthermore, former private carriers reclassified as CMRS providers pursuant to the 1993 Budget Act are currently grandfathered with private carrier status through August, 1996. Thereafter, they too will be subject to CMRS transfer and assignment policies, thereby adding approximately 400 new paging licensees

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3 "Licenses won at auction have been issued in an average of four months. In contrast . . . cellular licenses issued by lottery were granted in approximately 14 months, and cellular licenses granted through comparative hearing were issued in approximately four years." NOI at 5.

4 Commission News Release 54546, FCC Grants 99 Licenses for Broadband Personal Communications Services in Major Trading Areas (June 23, 1995). There were also three "Pioneers Preference" broadband PCS licenses issued.

5 If the Commission adopts its market area licensing approach for paging, the Commission will be issuing thousands of new authorizations.

to the mix.[6] Moreover, the paging industry has experienced significant consolidation over the last ten years, a trend which is likely to continue in the foreseeable future.

These CMRS licensees will undergo changes in ownership or control as a result of industry consolidation, the formation of strategic alliances, and the need for capital infusion, in addition to those changes made in the normal course of business. As a result, the Commission could be inundated with requests for approval of transfers and assignments over the next few years. AirTouch and NewVector submit that streamlining the transfer and assignment process as proposed herein will further the Commission's goals of reducing paperwork burdens and processing times. Such action will also promote efficient corporate reorganizations by allowing licensees to quickly modify their corporate structures to respond to market conditions, thereby allowing licensees to serve the public more efficiently and economically.

II. The FCC should eliminate the requirement of filing certain pro forma assignment and transfer of control applications by acting on pending Part 22 petitions for reconsideration or using its forbearance authority

AirTouch and NewVector submit that the Commission can and should find that no transfer of control or assignment has occurred within the meaning of Section 310(d) of the Communications Act, and therefore no prior consent should be required, when CMRS licensees undertake purely internal, intracorporate reorganizations or reincorporations.[7] Absent a substantial change in the ultimate ownership or control of a

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6 Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Third Report and Order, 9 FCC Rcd 7988, 8165-66, (1994).

7 Section 309(d) provides as follows:

(continued...)

licensee, the Commission is not required to review the ultimate controlling owners' or controlling entities' qualifications. However, the Commission currently reviews these qualifications when, for example, a licensee files pro forma applications requesting approval to change its state of incorporation, or to insert a new corporation into the chain of control, even when the ultimate controlling entity remains the same.

These proposed changes to the pro forma application process can be made immediately as the issues have been fully briefed in a pending proceeding and are "ripe" for consideration. Specifically, in the Part 22 Rewrite proceeding, BellSouth, AirTouch, McCaw, and CTIA all agreed that prior Commission approval of certain pro forma changes was unnecessary and a waste of scarce Commission and licensee resources.[8] No party disagreed with this proposal. Thus, the Commission can very quickly and easily implement the streamlined procedures proposed herein by immediately issuing a "Partial

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[7] (...continued)
"No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby..." 47 U.S.C. 309(d). See also section 309(c)(2)(B), which states that 30 day public notice is not required for "consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control." 47 U.S.C. 309(c)(2)(B).

[8] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, 9 FCC Rcd 6513 (1994). BellSouth recommended that the Commission eliminate pro forma transfer of control and assignment application filings for purely intracorporate transactions. Comments of BellSouth, CC Docket 92-115, filed October 5, 1992, at 12-13. When the FCC declined to take such action, BellSouth and AirTouch requested reconsideration of this issue. AirTouch Paging, Arch Communications, McCaw (now AT&T Wireless), and CTIA all supported BellSouth's request.

Order on Reconsideration" regarding the uncontested issues in the Part 22 Rewrite proceeding. AirTouch and NewVector further suggest that, to the extent the Commission may be concerned about maintaining the accuracy of its records or potential problems arising from cumulative pro forma assignments/transfers of control, it can establish a notification requirement in which applicants would certify that the ownership changes are not, even on a cumulative basis, substantial. Of course, all licensees would continue to be subject to the Commission's full enforcement authority if they fail to obtain prior FCC approval of any substantial transfer of control or assignment.[9]

Congress has given the FCC an important new statutory tool to eliminate the need for all pro forma transfer applications filed by wireless telecommunications carriers. Specifically, Section 10 of the Communications Act of 1934, as amended,[10] demonstrates Congress's strong intent that the FCC forbear whenever the conditions

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[9] This would include sanctions that could be imposed on licensees if "rolling" non-substantial transfers or assignments have, on a cumulative basis, resulted in substantial transfers of control.

[10] Section 10(a), which was added by Section 401(a) of the Telecommunications Act of 1996, provides that:

"[T]he Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that —

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest." (Emphasis added.)

enumerated in Section 10 are met. AirTouch and NewVector submit that the instant proposal meets the conditions of Section 10(a) because such pro forma approvals by the FCC are: 1) "not necessary to ensure" that the licensee's charges, classifications, practices or regulations are just and reasonable and are not discriminatory; and 2) "not necessary for the protection of consumers." In addition, the elimination of these unnecessary approvals is certainly in the public interest and is pro-competitive because it will decrease costs for the Commission and licensees, resulting in increased efficiencies that can be passed on to the public.

By eliminating its pro forma transfer/assignment requirements for wireless carriers, the Commission could quickly eliminate substantial and unnecessary costs and paperwork for itself and licensees. The costs and paperwork currently associated with for these types of pro forma applications is illustrated by the fact that they are virtually identical to those associated with "major" changes in ownership or control. Moreover, multiple filings are usually required for these pro forma transactions given (i) the need to file separate applications for each cellular station (i.e., call sign) and (ii) the need to file separate applications for each associated service (e.g., microwave, private radio, etc.).[11] Based on 1995 public notices, the WTB processed over 400 pro forma applications for

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[11] For example, AirTouch was required to file 53 applications merely to obtain approval to change its state of incorporation in 1994. An additional 24 cellular applications were required for a pro forma transfer of control of other cellular properties to AirTouch Cellular of Michigan in 1995/1996. Other examples include: a pro forma assignment to WWC Holding Co., Inc. required 36 cellular filings (see FCC Public Notices LB-96-06, released November 24, 1995, LB-96-07, released December 1, 1995, and LB-96-14 released February 9, 1996), and 89 applications were required for the pro forma transfer of control of Sprint Cellular authorizations from Sprint Corporation to Sprint Cellular Company (see FCC Public Notice, LB-96-15, released February 16, 1996).

cellular, paging, and PCS licensees. It is clear that the Commission and industry spend a considerable amount of unnecessary time and resources on pro forma transfer and assignment applications and that this is a ripe area for regulatory reform.

III. The Commission should streamline the filing requirements for substantial changes in ownership by eliminating the consummation deadline and related notification filing requirement, consistent with recent modifications to Part 101 of the Commission's rules

For "major" transfer/assignment applications requiring public notice, AirTouch and NewVector recommend that the Commission extend the approach recently adopted in the Part 101 proceeding (and that currently applies to Part 94 licensees) that eliminates the deadline to consummate an approved transaction and related notification filing requirements. For Part 94 licensees (and soon, for Part 101 licensees), the Commission simply updates its database upon grant of a transfer of control or assignment application, and licensees are responsible for notifying the Commission if a transaction is not completed. As the Commission noted in the Part 101 proceeding, such procedures "will reduce administrative burdens and carrier costs" and "avoid the numerous extension requests filed with the Commission each year."[12] The adoption of similar procedures for CMRS transactions that require public notice under the Communications Act would further streamline the transfer and assignment process for existing CMRS licensees and the Commission.

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[12] In the Matter of Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Service, Report and Order, FCC 96-51, released February 29, 1996, at 8.

IV. The Commission should consolidate transfer of control/assignment applications for multiple services into one form in order to eliminate duplicative review of the same transaction by different WTB Branches.

Currently, CMRS licensees are required to submit separate applications to transfer or assign FCC authorizations for different CMRS services, even though the services are licensed by the same bureau. For example, cellular carriers are required to file FCC Form 490 applications with the Commission in order to obtain approval of transfers or assignments of cellular authorizations, but must also file separate Form 702 or 704 applications for authority to assign or transfer control of related microwave stations. AirTouch and NewVector suggest that the Commission adopt procedures that allow licensees to provide a consolidated list of cellular and common carrier microwave call signs in transfer/assignment applications, similar to the Mass Media Bureau Form 314, which allows assignment of a television authorization and all related broadcast auxiliary licenses in one consolidated application. This process would immediately benefit CMRS licensees by reducing paperwork filed with the Commission and eliminating the need to wait for several grants of authority to complete the same transaction.

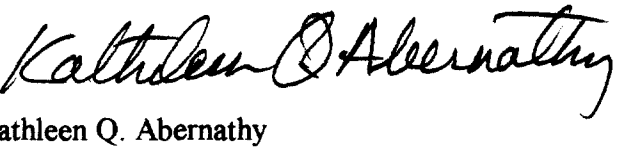
Conclusion

Adoption of the streamlined application processes discussed above is the next logical step in the Commission's drive to become even more responsive to the dynamic industries it regulates. Since streamlining of the licensing process, there are many new licenses and licensees now governed by the Commission. Streamlining the transfer and assignment process to eliminate unnecessary pro forma filings and consoli-

dating Commission review of 'substantial" transactions will benefit all CMRS licensees and the public, and will conserve scarce Commission resources.

Respectfully submitted,

AirTouch Communications, Inc.



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