DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC

RECEIVED
APR - 2 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF AIRTOUCH PAGING

Mark A. Stachiw, Esq.
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Suite 800
Dallas, TX 75251
(214) 860-3213

Carl W. Northrop, Esq.
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004-2400
(202) 508-9570

April 2, 1996

TABLE OF CONTENTS

SUMMARY ii

I. Overview 1

II. Broad Support Exists for Many Positions Advocated by AirTouch 2

III. Rules Governing MTA Auctions Can Be Tailored to Mitigate Concerns 7

IV. The Proposed Formulas for 900 MHz Contours Do Not Serve the Public Interest 12

V. Safeguards Against Speculation and Anti-Competitive Activities Are Necessary 14

VI. BETRS Can Be Preserved Without Special Preferences 17

VII. An Exclusive Licensing Scheme is Appropriate for the Lower Band Shared PCP Channels 18

VIII. Conclusion 21

SUMMARY

AirTouch Paging ("AirTouch") is filing its reply to the comments on the proposed rule changes to implement a geographic area licensing plan for paging services.

The reply documents substantial industry support in the record for many key positions advocated by AirTouch, including the following: (a) generally, site-by-site licensing should be replaced with an MTA-based auction scheme for all paging channels, including lower band shared channels; (b) nationwide exclusive PCP channels, including those still under construction, should be excluded from the auction; (c) auction rules must be carefully crafted to avoid licensing delays that will inhibit the expansion of existing systems; (d) anti-speculation safeguards are required, including rules making geographic area licensees subject to construction obligations to guard against having channels lie fallow; (e) no paging channel cap should be imposed; and, (e) the fixed mileage service and interference contours specified in Part 22 of the rules should be utilized for all 900 MHz band frequencies.

AirTouch disagrees with those who claim that MTAs are too big. MTAs strike a reasonable balance between larger and smaller systems, and will prove workable as long as the Commission adopts liberal partitioning rules and

rules that encourage cooperative arrangements between co-channel operators on common frequencies.

The reply points out the overwhelming opposition in the record to the proposed new formulas that the Commission suggested to derive 900 MHz service and interference contours. AirTouch agrees that abandoning the longstanding fixed mileage contours would have a devastating impact and would not serve the public interest.

Based upon substantial support in the record, AirTouch advocates the adoption of various mechanisms to guard against speculation and anti-competitive activities in the course of the auction.

AirTouch opposes granting any special preferences or set asides to BETRS applicants. The substantial development of BETRS services on certain channels in rural areas will cause the highest and best use of these channels in the market area to be further BETRS services, meaning that the auction process will serve to preserve and promote BETRS service without special provisions being required.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC

In the Matter of	)	
	)	
Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF AIRTOUCH PAGING

AirTouch Paging ("AirTouch"), by its attorneys, hereby files its reply to the comments filed in response to the Notice of Proposed Rulemaking (the "NPRM")[1/] in the above-captioned proceeding regarding geographic area licensing for paging. The following is respectfully shown:

I. Overview

1. AirTouch has reviewed the comments filed in this proceeding[2/] and the record provides substantial support for AirTouch's views on the key elements of the geographic licensing proposal needed to serve the public

---

1/ FCC 96-52, released February 9, 1996.

2/ Over 60 comments were filed, many of which reflected the views of multiple companies. Over 50 paging companies were represented, as well as a variety of other interests, including industry associations, engineering firms, etc.

interest.[3] Additionally, AirTouch will reply comments to several new proposals that were raised in the comments and not earlier addressed by AirTouch.[4]

II. Broad Support Exists for Many Positions Advocated by AirTouch

2. Rather than rearguing positions developed in detail in AirTouch's Comments, this reply simply highlights the aspects of AirTouch's (and, in some instances, the Commission's) proposals which received substantial and broad support, thereby demonstrating an emerging industry consensus on many important aspects of the geographic area licensing plan.[5]

---

[3] See Comments of AirTouch on the Notice of Proposed Rulemaking filed March 18, 1996 (the "AirTouch Comments"). See also discussion, infra, at Section II.

[4] See discussions at Sections III through VII, infra.

[5] Many commenters oppose the move toward market area licensing, claiming that the current licensing scheme is working and should not be altered. See, e.g., Comments of: DataFon II and ZipCall Long Distance, p. 2; Western Radio, pp. 2-3; Mobilfone Service, Inc, Rinkers Communications, Metamora Telephone Company, Communications Sales and Service, Inc., ATS Mobile Telephone, Inc., Baker's Electronics and Communications Inc., HEI Communications, Inc., Pigeon Telephone Company, Porter Communications, Inc., Benkelman Telephone Company and Wauneta Telephone Company, Paging Associates, Inc., Wilkinson County Telephone Company, Inc., and B&B Beepers (collectively, the "Hill & Welch Clients"), passim,; Sunbelt Transmission and Snider Communications Corporation, pp. 1-2; Pioneer Telephone Company, pp. 2-7; MobileMedia, p. 13; Consolidated Communications Mobile Services, Inc., pp. 4-5; Paging Coalition

(continued...)

3. Many Commenters agreed that:

a. The public interest will be served by replacing site-by-site licensing with a geographical area licensing plan for paging.[6]

b. All paging channels are candidates for market area licensing. Some special considerations may apply to the shared PCP channels.[7]

---

[5] (...continued)
(Ameritel, Anserphone, CommNet, Radiofone, Teletouch, et al.), p. 5; Rule Communications, pp. 13-14. AirTouch senses that the Commission is determined to move away from site-by-site licensing, and has therefore focused its Comments on designing a geographic area licensing scheme that is workable and will permit paging services and companies to continue to proliferate.

[6] See, e.g., Comments of: AirTouch, pp. 2-3; Arch Communications Group and Westlink Licensee Corporation, pp. 3-4; Paging Partners Corporation, p. 2, MTEL, p. 3; Paging Network, pp. 4-6; MetroCall, p. 5,; AT&T Wireless, p. 1; A+ Networks, p. 2; PCIA, pp. 8-12; ProNet, Inc., p. 2; Ameritech Mobile, p. 2; Paging Partners, p. 2, Source One Wireless, p. 2, Huffman Communications, pp. 1-2. The supporters represent both a substantial number of the total pagers in service throughout the nation and also a broad array of sizes of carriers.

[7] The commenters cited in note 6, supra, generally support market area licensing for all paging bands. A few argue that the lower band channels and the shared PCP channels present particular problems and require special attention. See, e.g., Comments of: A+ Networks, pp. 9-12; PCIA, p. 17; ProNet, pp. 3-5; Small Business in Telecommunications, pp. 9-10; Blooston & Mordkofsky Clients (Page Hawaii, Lubbock Radio, WT Services, and Mobile Phone of Texas, pp. 1-3. See also discussion infra, at Section VII. AirTouch has considerable concern with the view that VHF and UHF channels should be licensed on a smaller geographic area than 900 MHz channels. All paging
(continued...)

c. Major Trading Areas ("MTAs") provide an appropriate geographic area for paging licenses,[8] provided that the Commission adopts liberal partitioning rules[9] and permits adjacent market operators to participate freely in consortia or coalitions.[10]

d. Nationwide exclusive PCP channels, including those still under construction,[11] should be exempted from the auction.[12]

e. Market areas in which there is an insufficient geographic area available to allow new licensees to meet construction requirements should be awarded to the existing licensee serving over 66 2/3% of the

---

[7] (...continued)
channels are fungible and thus should be licensed on the same geographic area basis.

[8] See, e.g., Comments of: AirTouch, pp. 15-16; Arch and Westlink, pp. 6-7; MTEL, p. 6; American Paging, p. 3; PageNet, pp. 4-6; AT&T Wireless, pp. 2,5; A+ networks, p. 3; PCIA, p. 17. See also discussion infra, at Section III.

[9] See, e.g., Comments of: Puerto Rico Telephone, p. 8; MetroCall, p. 15; PCIA, p. 18; ProNet, p. 8; Paging Coalition, p. 21.

[10] See, e.g., Comments of: Mobilmedia, pp. 25-26; MetroCall, p. 21; Paging Coalition, p. 18.

[11] See, e.g., Comments of: AirTouch, pp. 8-12; Arch and Westlink, pp. 4-6; Caraway Communications, p. 3; MetroCall, p. 21; PCIA, pp. 12-13,; TSR Paging, passim.

[12] See, e.g., Comments of: AirTouch, pp. 10-12; Arch and Westlink, pp. 4-6, American Paging, p. 2; PageNet, p. 8, TSR Paging, p. 4.

population without being subject to competing applications.[13]

f. The auction rules must be crafted to avoid "phantom MXs" by requiring bidders to apply for each license individually and make minimum upfront payments for every frequency in every MTA on which they want to bid.[14]

g. A market-by-market, frequency-by-frequency stopping rule is necessary to speed the auctions along.[15]

h. Winners of market area licenses should be subject to minimum construction requirements. The Commission should add a first year requirement (10% of the population) to the proposed third year (1/3 of the population) and fifth year (2/3 of the population) benchmarks for licensees.[16] The relevant contour for

---

[13] See, e.g., Comments of: AirTouch, pp. 40-41; Arch and Westlink, pp. 20-22; Source One, p. 3; Paging Partners, p. 3; Mobilmedia, p. 21; PageNet, pp. 36-39; MetroCall, p. 8; A+ Networks, p. 10; PCIA, pp. 28-29; Paging Coalition, p. 8.

[14] See, e.g., Comments of: AirTouch, pp. 43-45; Arch and Westlink, pp. 22-24; American Paging, p. 5; PageNet, pp. 42-43; PCIA, p.30; Sunbelt and Snider, p. 3; Pioneer Telephone, pp. 6-7; MetroCall, p. 20; A+ Networks, p. 10.

[15] See, e.g., Comments of: AirTouch, pp. 34-36; Arch and Westlink, pp. 17-19; MobileMedia, pp. 26-27; American Paging, p. 5; PageNet, p. 43; A+ Networks, pp. 9-10; PCIA, p. 30.

[16] AT&T Wireless, pp. 2-3, 7 (supports 1/3 population coverage requirement for the first year); AirTouch, p. 17; Arch and Westlink, p. 7; American Paging, p. 4; A+ Networks, p. 5; PCIA, p. 21.

determining compliance with construction requirements should be the interference contour.[17] The substantial service alternative must be abandoned.[18]

i. No paging spectrum cap should be imposed.[19]

j. The new formulas proposed for calculating 929 and 931 MHz service and interference contours should not be adopted because they are inaccurate, burdensome, disruptive and do not serve the public interest.[20] The fixed mileage contours in Part 22 of the rules should apply to all 900 MHz paging frequencies.[21]

k. Incumbents who do not acquire the market area license should be accorded some flexibility to make

---

17/ See discussion infra at Section IV.

18/ See, e.g., Comments of: AirTouch, pp. 18-20; Arch and Westlink, pp. 8-9; PageNet, p. 33; AT&T Wireless, p. 8; Paging Coalition, p. 4.

19/ See, e.g., Comments of: AirTouch, p. 30; Arch and Westlink, p. 15; MobileMedia, p. 23; American Paging, p. 5; PageNet, p. 37; MetroCall, p. 18; PCIA, p. 27; ProNet, p. 10; Paging Coalition, p. 17; Ameritech, p. 14.

20/ See, e.g., Comments of: AirTouch, pp. 21-26; PageMart, pp. 2-7; Liberty Cellular, passim; PageNet, pp. 10-16; Metrocall, p. 9; Ameritech Mobile, pp. 3-4.

21/ See, e.g., Comments of: Caraway Communications, p. 2; Source One, pp. 3-4; Paging Partners, p. 4; MTEL, pp. 7-9; Pioneer Telephone, pp. 12-15; Page America, p. 2; A+ Networks, pp. 4-5; PCIA, p. 24; ProNet, p. 15; Paging Coalition, p. 10; Radiofone, p. 7.

system changes even if they result in small incursions into unserved area.[22]

4. Based upon the broad support for the foregoing positions, which serve the public interest as identified by the Commission in the NPRM, AirTouch urges the Commission to include these concepts in the final rules. Additionally, AirTouch concurs with the other commenters that the Commission must expeditiously issue an order adopting permanent licensing rules in light of the repeated indications by interested parties that time is of the essence.[23]

III. Rules Governing MTA Auctions Can Be Tailored to Mitigate Concerns

5. While there is substantial support for the use of MTAs as the geographic licensing area, it is not universal. Some carriers, both large and small,[24] contend that MTAs are too large in many cases, will create

---

[22] See, e.g., Comments of: Caraway Communications, p. 3 (allow expansions into uncovered area of 50 square miles or less); MetroCall, p. 10 (allow expansions by incumbents into contiguous unserved area); Pronet, p. 4 (allow minor relocations and intra-BTA expansions by incumbents who serve a large portion of the BTA).

[23] The urgency of concluding this proceeding quickly was cited by many commenters. See, e.g., Comments of: AirTouch, p. 3; Arch and Westlink, p. 3; A+ Networks, p. 12; PCIA, p. 6.

[24] For example, Ameritech, MobileMedia and Metrocall join smaller carriers in questioning the use of MTAs.

artificial conflicts,[25] and that the use of MTAs along with the proposed construction benchmarks will force carriers to build in lesser populated areas before consumer demand warrants. These commenters argue instead in favor of BTAs,[26] MSA/RSAs,[27] BEAs,[28] or self-defined service territories.[29] AirTouch disagrees that the solution is to adopt smaller licensing areas.[30] Instead, AirTouch believes these concerns can be fully addressed by making minor changes in the MTA proposal.

6. The concern over artificial conflicts can be eliminated by the Commission adopting liberal rules governing the voluntary partitioning of markets and bidding consortia. Many commenters advocate changes that encourage

---

25/ The expressed concern is that two carriers operating on a common frequency at opposite ends of an MTA could be forced to compete for the geographic license or risk being forever foreclosed from expansion, even if the only areas of real interest are those proximate to their current operations. See, e.g., Comments of Pioneer Telephone, pp. 6-7; Sunbelt and Snider, p. 3.

26/ See, e.g., Comments of: Source One, p. 3; Consolidated Communications, pp. 4-5.

27/ See, e.g., Comments of Paging Partners, p. 3.

28/ See, e.g., Comments of Small Business in Telecommunications, p. 16.

29/ See, e.g., Comments of: Hill & Welch Clients, p. 2; Sunbelt and Snider, p. 3; Mobilmedia, p. 13.

30/ BTAs or another smaller geographic area would result in many more auctions (with attendant delay) and additional "dead zones" between systems. This does not serve the public interest.

and facilitate cooperative arrangements between bidders by which MTAs are partitioned to conform to actual market conditions.[31] AirTouch believes that partitioning should be allowed on any mutually agreeable basis (e.g., along BTA boundaries, county boundaries, MSA/RSA boundaries, state lines or any other subdivision agreed by the parties to meet service objectives) either before or after (but not during) the auction.

7. AirTouch urges the Commission to expressly state that it expects and encourages co-channel operators in adjacent markets to cooperate to fill-in unserved areas between their respective systems, either by partitioning, forming joint ventures, or creating bidding consortia. In the highly developed paging industry, such arrangements must be viewed as pro-competitive because they foster wide-area service and reduce the need for co-channel separations that create dead zones of coverage. Cooperative arrangements between incumbent co-channel operators are not territorial divisions of markets or combinations in restraint of trade, and the Commission must be careful to avoid overly broad statements regarding the implications of the antitrust laws

---

[31] See note 9, supra.

which will have a chilling effect on legitimate transactions.[32]

8. With regard to the concern that MTA-based grants will force premature construction in areas where a market has not yet developed, this concern is best resolved by clarifying that the population coverage requirements will be measured with reference to the geographic licensee's composite interference contours[33] -- as opposed to the service area contours -- of constructed and operating stations.[34] By defining the construction requirements in this manner, the Commission will substantially mitigate the concern expressed by small carriers that the combination of MTA territories with construction benchmarks will force them to build in areas where need has not yet developed.

---

[32] Of course, carriers seeking to engage in such agreements must comply with the antitrust laws. AirTouch only suggests the Commission avoid espousing positions which may discourage conduct that would be permitted by the antitrust laws.

[33] See, e.g., PageNet Comments, p. 40, which discuss the rationale for using the interference contour as the coverage benchmark.

[34] Several commenters do not clearly specify whether their support for the population coverage requirement is based upon the service contour or the interference contour. AirTouch knows from conversations with other carriers, however, that most use the interference contour as the relevant contour for system planning purposes, which supports the use of the interference contour as the construction benchmark as well.

9. With these modifications, the Commission will be able to retain MTA licensing, which will be much less cumbersome and more efficient than moving to a smaller market size. Use of smaller licensing areas would result in too many auctions, substantial numbers of additional dead zones and too great a potential for delay. And, while it may be that "one size doesn't fit all" in terms of current paging footprints, MTAs do strike a balance between large and small systems,[35] particularly if the aforementioned flexibility is worked into the MTA scheme.

10. The concern that an MTA-based licensing scheme will force incumbents to buy large territories in which they have no serious interest also can be addressed by allowing limited incumbent expansion rights as suggested by many commenters. The public interest would be served by permitting de minimis extensions of contour into the unserved area of a market area licensee by an incumbent operating on the same channel, provided that no interference to an existing site was created. Various alternatives are

---

[35] Notably, some commenters have proposed that certain channels be available on a larger than MTA basis. See, e.g., Comments of Caraway Communications, p. 5, and Preferred Networks, p. 20, advocating adoption of the narrowband PCS plan with some nationwide, some regional and some MTA channels. See also Comments of AirTouch, p. 16, and Arch and Westlink, p. 7, which advocate that recaptured 929 MHz nationwide channels be auctioned on a nationwide basis.

suggested by commenters, including (a) a 40-mile rule,[36] (b) a 50% overlap rule,[37] (c) a rule allowing contiguous expansions within a BTA if the incumbent already serves a high percentage of the BTA population,[38] and (d) other formulations.[39] All of these suggestions serve the public interest by mitigating the problem of having an incumbent "frozen in place" if it doesn't bid on or win the market area license.

IV. The Proposed Formulas for 900 MHz Contours Do Not Serve the Public Interest

11. In its Comments, AirTouch urged the Commission to abandon its proposed new formulas for determining service and interference contours for 900 MHz channels because they would not serve the public interest. AirTouch raised both substantive and procedural concerns and questions of law and

---

36/ See, e.g., Comments of: MetroCall, p. 11; Paging Coalition, p. 2; Ameritech, p. 17.

37/ See, e.g., Comments of Western Radio, pp. 3-4.

38/ See, e.g., Pronet Comments, p. 14. AirTouch submits that this rule, if adopted, should be converted to an MTA basis, and that an incumbent serving66 2/3% or more of the population should be allowed contiguous expansion rights into unserved areas.

39/ See, e.g., Comments of Carraway, p. 3 (allow expansions into a 50 square mile unserved area); ProNet, p. 13 (minor relocations allowed upon loss of site); Rule Radio, pp. 15-16 (allow expansion sites within 25 miles in major markets and 100 miles in rural areas). AirTouch submits that this rule, if adopted, should be converted to an MTA basis.

policy.[40] Many comments resoundingly agree that the formulas themselves are seriously flawed, and their use would be disastrous to the public interest.[41]

12. The 900 MHz formulas were considered by several parties to be of sufficient importance to be a (if not the) major focus of their comments. For example, PageNet devotes substantial attention to the harm the formulas cause by providing detailed results from real world propagation studies demonstrating that the new formulas are grossly inaccurate and will result in interference.[42] In addition, Ameritech leads off its comments with a stinging technical analysis of the formulas which is buttressed by practical operational concerns as well.[43] Furthermore, Comp Comm, one of the leading independent wireless engineering firms in the United States, devotes its entire comments to a detailed recitation of the flaws in the proposal.[44]

13. The comments also raise serious questions regarding the lawfulness of a retroactive imposition of substantially reduced interference protection for existing

---

[40] AirTouch Comments, pp. 21-26.

[41] See notes 20 and 21, supra.

[42] PageNet Comments, pp. 18-27.

[43] Ameritech Comments, pp. 2-7.

[44] Comp Comm Comments, passim.

licensees. PageNet offers a cogent analysis indicating that an unconstitutional "taking" would occur.[45] Other commenters cite the legal standards governing retroactive rulemaking and the involuntary modification of licenses as a legal bar to the proposal.[46] Whether or not the Commission accepts these legal arguments, it is apparent that imposing the formulas will lead to protracted litigation which will delay both existing licensing and geographic licensing. It would be a serious mistake to create opportunities for delay or mischief when the existing fixed mileage contours in Part 22 of the rules, which have served the public interest so well, could be maintained with unanimous industry support.[47]

---

[45] PageNet Comments, pp. 18-27.

[46] See, e.g., Comments of: Carraway Communications, p. 4; Paging Coalition, p. 14; Ameritech, p. 6.

[47] AirTouch does believe some flexibility is warranted. Accordingly, licensees should use the fixed mileage separation standards unless they can demonstrate that the proposed facility does not in fact lead to interference. The AirTouch Comments endorsed a revised formula developed by Comp Comm that would allow 900 MHz licensees and applicants to engineer short-spaced facilities. AirTouch also supports the creation of an industry forum to refine the interference protection criteria for 900 MHz stations that would allow carriers to pull in their contours near their borders to reduce dead zones while maintaining protection against interference.

V. Safeguards Against Speculation and Anti-Competitive Activities Are Necessary

14. Many commenters agree with AirTouch's concerns that the market area auction rules must be carefully crafted to deter speculative bidding and potentially anti-competitive conduct if they are to serve the public interest. Speculation occurs when insincere applicants buy geographic licenses in the hope of subjecting co-channel carriers to "green mail".[48] Anti-competitive behavior occurs when an aggressive, well-heeled competitor buys the market area license of a neighboring carrier in order to block the carrier's expansion or to force a sale.[49] Obviously, neither of these activities serve the public interest because they frustrate the ability of customers to receive service in a fully competitive market.[50] AirTouch, however, proposed several methods to deter

---

[48] See, e.g., Comments of: PagePrompt USA, p. 4; Ameritech, p. 9.

[49] See, e.g., Comments of: AirTouch, pp. 42-43; PagePrompt USA, pp. 3-4; Pioneer, pp. 11-12; A+ Networks, p. 11; Paging Coalition, p. 4; Ameritech, p. 9. The Commission must take this competitive concern seriously when carriers as financially able as AirTouch and Ameritech foresee potential abuses. The problem was aptly described by the Paging Coalition who fear that an aggressive competitor will become a "slumlord" by buying the geographic license surrounding an adjoining market operator and preventing them from making system improvements.

[50] As AirTouch and others have pointed out, the competitive nature of the paging market has served the public interest well by causing lowering of prices and additional service offerings.

speculative or anti-competitive behavior which received support from many commenters: (a) exempting carriers who serve high percentages of the population from competing applications;[51] (b) separate upfront payments on every channel in every MTA in which an applicant seeks to bid;[52] (c) frequency-by-frequency stopping rules;[53] (d) a one-year construction benchmark of 10% of the population;[54] and, (e) a death penalty for defaulting auction winners.[55]

---

[51] See note 13, supra.

[52] In this regard, the PageNet proposal of a sliding scale with higher per channel minimums for large (top 10) markets (e.g., $10,000) and lesser markets (e.g., $5,000) has considerable merit. On reflection, AirTouch recommends a three-tiered structure of minimum per channel payment requirements: for markets 1 to 10 - $10,000; for markets 10 to 30 - $5,000; and for all other markets - $2,500.

[53] See note 15, supra. Many commenters support the substitution of two rounds for one round as the termination point, as suggested by AirTouch.

[54] See note 16, supra. The Commission also should consider imposing a bond requirement on licensees who do not already serve 10% of the population of an MTA they acquire. A $100,000 bond (sufficient to fund the construction of approximately 5 transmitters) would be appropriate. Carriers should be able to release $20,000 of the bond every time they place a transmitter in service.

[55] AirTouch disagrees with PageMart's view expressed at page 8 of its comments that an incumbent who fails to meet the benchmark should be able to retain authorizations for contiguous sites to the grandfathered system. A more severe penalty is needed to assure that applicants only acquire licenses in areas where they seriously intend to build a ubiquitous system. However, the Commission (continued...)

These proposals will, in combination, act as meaningful safeguards against speculation and anti-competitive bidding.[56]

VI. BETRS Can Be Preserved Without Special Preferences

15. Several commenters support the continuing need for BETRS and ask the Commission to shield BETRS providers from competing applications or bids.[57] AirTouch strongly opposes giving BETRS applicants special treatment because any exception would not serve the public interest.

16. A primary purpose of using auctions is to allow the marketplace and not the Commission to choose between competing uses of spectrum. AirTouch fully expects the auction of wireless spectrum at issue here to demonstrate that there are certain channels in rural areas that are best

---

[55] (...continued)
may allow an incumbent to keep its sites on a secondary basis to the market area licensee to ensure that there is no interruption of service to the public.

[56] AirTouch opposes the proposal by A+ Networks that there should be restrictions on the ability of a carrier to buy out a competitor after acquiring the market area license on the competitor's channel. See A+ Networks Comments, p. 11. It would be too difficult to craft rules that distinguish legitimate from illegitimate transactions.

[57] See, e.g., Comments of: Puerto Rico Telephone, pp. 3-4; Border to Border, pp. 2-3; Rule Radio, p. 24; Nucla Naturita Telephone, p. 3; OPASTCO. pp. 5-6.

devoted to BETRS.[58] It would not be appropriate, however, to dictate that result by exempting BETRS applicants from competing bids.[59]

17. AirTouch notes that there are an ever-increasing number of alternatives available for providing telephone service in rural areas including conventional two-way, cellular, PCS and mobile satellite services.[60] Indeed, in the PCS services, rural telcos have enjoyed preferences, and appear well poised as a result to provide services in rural areas. This being the case, the public interest would not be served by according special treatment to BETRS applicants.

VII. An Exclusive Licensing Scheme is Appropriate for the Lower Band Shared PCP Channels

18. The area of the NPRM which generated the least amount of concurrence was the licensing treatment to be accorded the shared PCP channels.[61] Some commenters argue

---

[58] Bidders at the auction will determine before they bid the existing uses being made of channels, and will likely steer clear of channels that are already deployed extensively in rural areas and devoted to BETRS.

[59] AirTouch does support broad partitioning options so that the market area licensee can allow BETRS to be provided when it serves the public interest.

[60] Iridium and Globalstar both purport to be able to provide this exact type of service.

[61] Compare Comments of: AirTouch, pp. 13-15; TeleBeeper of New Mexico, p. 2; Preferred Networks, pp. 9-12; (continued...)

that the public interest is best served by maintaining the status quo. Others contend that auctions for some or all of the shared channels would best serve the public interest. Still others advocate an earned exclusivity plan, not unlike the current 929 MHz procedures, which avoids auctions in most cases.

19. AirTouch strenuously disagrees with commenters who support maintaining the status quo on lower band PCP shared channels. Many systems operated on these channels are virtually indistinguishable in terms of nature and scope of service from other Part 90 or Part 22 systems that enjoy exclusive licensing status. Maintaining these as shared channels will not serve the public interest because all new licensing will occur on the shared channels after exclusive licenses are granted on all other channels.[62] The public interest consequences would be severe and negative.

20. AirTouch also notes that the FTC has commented in this proceeding and documented a considerable amount of application fraud that has taken place in paging,

---

[61] (...continued)
PCIA, p. 14; ProNet, pp. 3-5; Teletouch Licenses, pp. 4-5; Small Business in Telecommunications, p. 9; Blooston & Mordkofsky Clients, pp. 1-3.

[62] A+ Networks shares AirTouch's concern that there will be a "goldrush" on the shared channels to the detriment of existing licensees if the status quo is maintained while other channels convert to exclusive geographic licenses. See A+ Networks Comments, pp. 9-10.

particularly with regard to the shared PCP channels.[63] This history raises additional concerns over a "business as usual" approach on the shared channels.

21. On balance, AirTouch believes the public interest is best served by adopting an exclusivity scheme, at least for 152.48 MHz.[64] While AirTouch has no objection to an MTA-based auction, it also would not object to a modified earned exclusivity approach like the one advocated by A+ Networks and PCIA.[65] The only thing that is certain is that if the Commission does not take action it will continue to have substantial problems with this channel.[66]

---

[63] FTC Comments, passim. The FTC Comments casually observe that the freeze inhibits fraudulent application activities by application mills and insincere speculative applicants. FTC Comments, p. 9. This observation should not be seized upon by the Commission to deny granting the relief from the freeze advocated by AirTouch. AirTouch has recommended several narrowly crafted exceptions to the freeze to accord carriers needed flexibility to modify existing systems in response to customer demands. Since speculators do not generally build systems, the relief sought would provide no comfort to the application mills.

[64] As indicated in its original comments, if the Commission is inclined to retain any channels for shared use, the 929 MHz shared PCP channels are the best candidates. See AirTouch Comments, p. 14.

[65] See Comments of A+ Networks, p. 12; PCIA, p. 12.

[66] The problems with this channel have prompted PCIA to request key-down exclusivity, limited sharing, and other proposals over the years.

VIII. Conclusion

The premises having been duly considered, AirTouch respectfully requests that the Commission adopt final rules governing the geographic licensing of paging systems consistent with the foregoing reply comments.

Respectfully submitted,

AIRTOUCH PAGING

Carl W. Northrop, Esq.
Paul, Hastings, Janofsky
& Walker
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004-2400
(202) 508-9570

Mark A. Stachiw, Esq.
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Suite 800
Dallas, TX 75251
(214) 860-3213