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July 2, 1996

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JUL 2 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Notice of *Ex Parte* Contact
WT Docket No. 96-18

Dear Mr. Caton:

On July 1, 1996, Kathleen Abernathy, Mark Stachiw and Carl Northrop, representing AirTouch Paging, and Audrey Rasmussen, representing PageMart II, met in three separate meetings with David Furth and Mika Savir of the Commercial Wireless Division, Rudy Baca of Commissioner Quello's Office and Suzanne Toller of Commission Chong's Office to discuss the transition rule for PCP nationwide exclusivity under consideration in WT Docket No. 96-18.

The enclosed hand-out outlining the presentation topics was distributed. A copy also was delivered to Michelle Farquhar.

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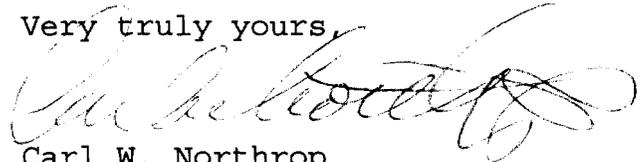
Mr. William F. Caton

July 2, 1996

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Kindly refer any questions in connection with this matter to the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Carl W. Northrop".

Carl W. Northrop

of PAUL, HASTINGS, JANOFSKY & WALKER

Enclosure

cc: David Furth
Mika Savir
Rudy Baca
Suzanne Toller

**Presentation of AirTouch Paging
and PageMart II**

(WT Docket No. 96-18)

JULY 1, 1996

AirTouch Paging has Substantial Operations on 929.4875 MHz that are Entitled to Nationwide Exclusivity Protections

- AirTouch's predecessor in interest (Beep Page) qualified for regional exclusivity on a grandfathered basis on 929.4875 MHz
- AirTouch acquired Beep Page on December 14, 1995 pursuant to FCC consent
- Prior to February 8, 1996 (the Freeze Date), AirTouch filed for nationwide exclusivity on 929.4875 MHz
- Prior to the Freeze Date, PCIA forwarded the AirTouch applications and exclusivity request to the FCC with a favorable recommendation

- AirTouch now holds authorizations for approximately 435 facilities on 929.4875 MHz throughout the nation
- AirTouch has completed construction of 378 licensed sites on 929.4875 MHz and 53 additional sites pursuant to preoperation authority for a total of 431 operating locations
- All construction has been completed within initial CP deadlines
- AirTouch is continuing to build out the channel by virtue of 76 additional licensed locations and 397 coordinated applications that pre-dated the freeze
- AirTouch currently serves over 100,000 subscribers on this channel
- On a single count basis, AirTouch will meet all nationwide exclusivity requirements set forth in Section 90.495 of the rules by July 31, 1996

PageMart Has Substantial Operations on 929.7625 MHz that are Entitled to Nationwide Exclusivity Protections

- PageMart filed over 400 transmitter site applications by March 15, 1994, at which time PageMart requested coordination by NABER of a nationwide exclusive paging frequency
- In May, 1994 PageMart's applications were filed with the FCC as coordinated on 929.7625
- As of December 1, 1994, 929.7625 was included on PCIA's 929 Exclusivity Master List. The FCC began granting licenses to PageMart on 929.7625 in December 1994, and PageMart began construction of its network on the frequency

- In October, 1994 Electronic Engineering Company filed a Petition to Dismiss with the FCC challenging PageMart's nationwide exclusivity on 929.7625. On June 1, 1995 the FCC denied the Petition to Dismiss and upheld PageMart's nationwide exclusivity request on 929.7625
- Consistent with its business plan, PageMart continued to build out the 929.7625 frequency in compliance with the requirements of the construction permits
- On May 10, 1996 the FCC released a Public Notice listing those frequencies that had qualified for nationwide exclusivity and thus would be exempt from the paging freeze and geographic licensing. PageMart's previously coordinated 929.7625 MHz was not on the list
- On May 15, 1996, PageMart filed a notice with the FCC that it had constructed and was broadcasting on 364 transmitters

The Commission's Rules Specifically Provide that Exclusivity Rights Vest at the Time of Licensing, Subject to Divestments in the Absence of Construction

- Section 90.495(c) provides:

A proposed paging system that meet the criteria for channel exclusivity under paragraph (a) of this section will be granted exclusivity under this section at the time of initial licensing. Such licensing will expire unless the proposed system (or a sufficient portion of the system to qualify for exclusivity) is constructed and operating within [the construction deadline]. (Emphasis Added)

The Public Interest Will be Served by Granting Exclusivity to Carriers that Build Compliant Systems Based on Pre-Freeze Applications

- The same public interest benefits that caused the Commission to grant nationwide exclusivity in the first place still apply.
Exclusivity:
 - creates additional competition for nationwide services
 - incents carriers to make investments in nationwide systems
 - recognizes that nationwide systems are incremental in nature and need to continue to be built out after initial investment
- The existing rules have never settled and have been in existence less than 3 years

- Retroactive rulemaking is not favored
- Divestment of nationwide status would be considered a "taking"
- FCC's auction authority was not intended to require incumbents to purchase at auction operating rights previously granted under existing rules

CONCLUSION

The FCC should accord nationwide exclusivity to 929 MHz operations who build compliant systems based upon pre-freeze filings