

Summary of AirTouch Paging's Positions on Market-Area Licensing Rules

Scope of Auction Use

- Site-by-site licensing should be replaced with an MTA-based auction scheme for all paging channels, including lower band PCP channels
- Nationwide exclusive PCP channels, including those under construction, should be excluded from the auction

Application Procedures

- 929 and 931 MHz channels should be auctioned first, followed by lower band channels
- Applicants should be required to identify every channel in each MTA on which they desire to bid (i.e., no "All"box on the Form 175)

- A separate upfront payment based on MTA population should be required for each channel in each MTA on which the applicant seeks eligibility to avoid "Phantom MX" situations

Conduct of the Auction

- Auctions should be conducted with a market-by-market, frequency-by-frequency stopping rule
- Bidding credits and other preferences should not be accorded to any selected groups of bidders
- Winning bidders should be allowed to establish "secondary" facilities pending action on their long form application

Post Auction Service Requirements

- Winning bidders should be required to construct facilities to serve 10% of the population of MTA within first year after grant, 33% within 3 years, and 66% in 5 years
- There should be no "substantial service" exception
- Geographic partitioning along recognized geographic boundaries should be allowed

Issues of Particular Concern to AirTouch Paging

- PCP carriers should be allowed to complete construction of authorized stations and retain nationwide exclusivity of their qualifying systems
- There is a critical need for mechanisms to streamline the auction process to keep uncontested frequencies from being tied up in an auction
- Well-conceived construction benchmarks are necessary to avoid speculation

The Public Interest Will be Served by Granting Exclusivity to PCP Carriers that Build Qualifying 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
- 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 meets the criteria for channel exclusivity . . . will be granted exclusivity under this section at the time of initial licensing. Such licensing will expire unless the proposed system . . . is constructed and operating within [the construction deadline] (Emphasis Added)

- The existing rules have never settled and have been in existence less than 3 years

AirTouch Deserves Exclusivity on 929.4875 MHz

- AirTouch now holds authorizations for approximately 435 facilities on 929.4875 MHz throughout the nation
- AirTouch has completed construction of over 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 has met all nationwide exclusivity requirements set forth in Section 90.495 of the rules

Mechanisms to Streamline the Auction Process

- Require applicants to specifically apply for each frequency in each MT for which they want to bid. This will avoid "Phantom MX" situations
- Require separate upfront payments for every channel on which bidding eligibility is sought to assure a seriousness of purpose:
 - MTAs 1 to 10 \$10,000 per channel/per market
 - 11 to 30 5,000
 - above 30 2,500
- Provide for market-by-market, frequency-by-frequency stopping rules

Market-by-Market, Frequency-by-Frequency Stopping Rules are Essential

- The Commission proposed this approach
- No one opposed it. All who addressed the point endorsed the Commission's proposal
- These channels are not fungible, which eliminates the need for simultaneous market closings
- Early termination of auctions for uncontested channels reduces the complexity of the auction
- Channel expansion via secondary licensing can occur as soon as frequencies close

Meaningful Construction Requirements Will Serve the Public Interest

- A first year construction benchmark (10%) will deter speculation
- The third year benchmark (33 1/2%) and fifth year (66 2/3%) benchmarks will foster ubiquitous service and reduce warehousing
- A death penalty for failing to meet standards will return fallow spectrum to the public domain
- A substantial service "exception" will allow anti-competitive behavior (i.e., buying spectrum to block a competitor's expansion)
 - No localized niche services have developed that require this exception

Market-by-Market, Frequency-by-Frequency Stopping Rules are Essential

- The Commission proposed this approach
- No one opposed it. All who addressed the point endorsed the Commission's proposal
- These channels are not fungible, which eliminates the need for simultaneous market closings
- Early termination of auctions for uncontested channels reduces the complexity of the auction
- Channel expansion via secondary licensing can occur as soon as frequencies close

Meaningful Construction Requirements Will Serve the Public Interest

- A first year construction benchmark (10%) will deter speculation
- The third year benchmark (33 1/2%) and fifth year (66 2/3%) benchmarks will foster ubiquitous service and reduce warehousing
- A death penalty for failing to meet standards will return fallow spectrum to the public domain
- A substantial service "exception" will allow anti-competitive behavior (i.e., buying spectrum to block a competitor's expansion)
 - No localized niche services have developed that require this exception

ATTACHMENT E

EX PARTE OR LATE FILED

COPY

LAW OFFICES OF
PAUL, HASTINGS, JANOFSKY & WALKER LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ROBERT P. HASTINGS (1910-1996)
COUNSEL
LEE D. PAUL
LEONARD S. JANOFSKY
CHARLES M. WALKER

1299 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2400

TELEPHONE (202) 508-9570
FACSIMILE (202) 508-9700

INTERNET WWW.DHJW.COM

399 PARK AVENUE
NEW YORK, NEW YORK 10222-4697
TELEPHONE 212 318-6000

343 SANSOME ST. STE. 220
SAN FRANCISCO, CALIFORNIA 94104-3003
TELEPHONE 415 445-7777

1055 WASHINGTON BOULEVARD
STAMFORD, CONNECTICUT 06901-2217
TELEPHONE (203) 961-7400

1299 OCEAN AVENUE
SANTA MONICA, CALIFORNIA 90401-1078
TELEPHONE (310) 319-3300

ARK MORI BUILDING, 30TH FLOOR
2-32 AKASAKA 1-CHOME
MINATO-KU, TOKYO 107 JAPAN
TELEPHONE (03) 3507-0730

600 PEACHTREE ST. N.E. STE 2400
ATLANTA, GEORGIA 30308-2222
TELEPHONE (404) 815-2400

695 TOWN CENTER DRIVE
COSTA MESA, CALIFORNIA 92626-1924
TELEPHONE (714) 688-6200

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2371
TELEPHONE (213) 683-6000

WRITER'S DIRECT ACCESS

(202) 508-9570
cwnorthrop@phjw.com

September 6, 1996

RECEIVED
SEP 6 - 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

OUR FILE NO

25101.74560

VIA MESSENGER

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 September 5, 1996, Kathleen Abernathy, Mark Stachiw and Carl Northrop, all representing AirTouch Paging, met in three separate meetings with Suzanne Toller of Commissioner Chong's Office, Rudy Baca of Commissioner Quello's office and David Siddall of Commissioner Ness' office to discuss the paging licensing rules under consideration in WT Docket No. 96-18.

The presentation was consistent with the comments of record of AirTouch Paging in the docket. An outline of the presentation was left behind, a copy of which is attached.

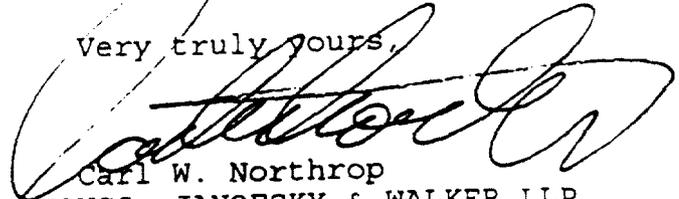
Due to the late hour of the last meeting, this notice could not be submitted prior to the close of the Commission.

PAUL HASTINGS, JANOFSKY & WALKER LLP

Mr. William F. Caton
September 6, 1996
Page 2

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

Very truly yours,



Carl W. Northrop
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosure

cc: w/encl. Suzanne Toller
Rudy Baca
David Siddall

**Presentation of AirTouch Paging
on Market-Area Licensing
Procedures for Paging Services**

(WT Docket No. 96-18)

September 5, 1996

Summary of AirTouch Paging's Positions on Market-Area Licensing Rules

Scope of Auction Use

- Site-by-site licensing should be replaced with an MTA-based auction scheme for all paging channels, including lower band PCP channels
- Nationwide exclusive PCP channels, including those under construction, should be excluded from the auction

Application Procedures

- 929 and 931 MHz channels should be auctioned first, followed by lower band channels
- Applicants should be required to identify every channel in each MTA on which they desire to bid (i.e., no "All" box on the Form 175)

- A separate upfront payment based on MTA population should be required for each channel in each MTA on which the applicant seeks eligibility to avoid "Phantom MX" situations

Conduct of the Auction

- Auctions should be conducted with a market-by-market, frequency-by-frequency stopping rule
- Bidding credits and other preferences should not be accorded to any selected groups of bidders
- Winning bidders should be allowed to establish "secondary" facilities pending action on their long form application

Post Auction Service Requirements

- Winning bidders should be required to construct facilities to serve 10% of the population of MTA within first year after grant, 33% within 3 years, and 66% in 5 years
- There should be no "substantial service" exception
- Geographic partitioning along recognized geographic boundaries should be allowed

Issues of Particular Concern to AirTouch Paging

- PCP carriers should be allowed to complete construction of authorized stations and retain nationwide exclusivity of their qualifying systems
- There is a critical need for mechanisms to streamline the auction process to keep uncontested frequencies from being tied up in an auction
- Well-conceived construction benchmarks are necessary to avoid speculation

The Public Interest Will be Served by Granting Exclusivity to PCP Carriers that Build Qualifying 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
- 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 meets the criteria for channel exclusivity . . . will be granted exclusivity under this section at the time of initial licensing. Such licensing will expire unless the proposed system . . . is constructed and operating within [the construction deadline] (Emphasis Added)

- The existing rules have never settled and have been in existence less than 3 years

AirTouch Deserves Exclusivity on 929.4875 MHz

- AirTouch now holds authorizations for approximately 435 facilities on 929.4875 MHz throughout the nation
- AirTouch has completed construction of over 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 has met all nationwide exclusivity requirements set forth in Section 90.495 of the rules

Mechanisms to Streamline the Auction Process

- Require applicants to specifically apply for each frequency in each MTA for which they want to bid. This will avoid "Phantom MX" situations
- Require separate upfront payments for every channel on which bidding eligibility is sought to assure a seriousness of purpose:
 - MTAs 1 to 10 \$10,000 per channel/per market
 - 11 to 30 5,000
 - above 30 2,500
- Provide for market-by-market, frequency-by-frequency stopping rules

SEPTEMBER 5, 1996

SEPTEMBER 5, 1996

TIMELINE RESPECTING 929.4875 MHz

October 21, 1993

FCC adopts Report & Order, FCC 93-479 in PR Docket No. 93-35 amending rules to provide for PCP channel exclusivity.

November 19, 1993

FCC issues Public Notice, DA-93-1411, requiring incumbents to submit requests for grandfathered exclusivity on or before January 28, 1994.

December 27, 1993

Multiple petitions for reconsideration and/or clarification of the PCP Exclusivity Order filed. AirTouch Paging ("AirTouch") supports reconsideration (a) to allow incumbents a reasonable transition period from the use of multi-frequency to dedicated transmitters, and (b) to adopt state boundaries in lieu of service contours as the protected exclusive area for regional systems.

January 28, 1994

Beepage (a subsidiary of Message Center and predecessor-in-interest to AirTouch) seeks regional exclusivity for a 929.4875 MHz system in the Northeast (ME, NH, VT, CT, MA, RI, NY, NJ, MD, VA, PA and DE).

Note: Message Center sought a temporary waiver of the multiple-frequency transmitter rule to enable it to make a transition from the use of multiple-frequency transmitters to dedicated transmitters.

May 1994

Beepage seeks regional exclusivity for two additional 929.4875 MHz systems, one in the Midwest (MN, WI, IA, IL, MO, KS, OK, AR, LA, SD and NE), and one in the West (AZ, CA, CO, ID, NM, NV, OR, MT, TX, UT, WA and WY).

May 27, 1994

FCC releases Public Notice, DA 94-546, identifying PCP systems found to qualify for local, regional or nationwide exclusivity. The PN indicates that requests seeking a waiver of any exclusivity requirement (e.g., the Message Center multi-frequency transmitter waiver request) will be handled by separate PN.

June 1994 through November 1995

Beepage continues to build its 929.4875 MHz facilities notwithstanding the failure of FCC to act on petitions for reconsideration or petitions for waiver.

December 1995

AirTouch Paging closes on the acquisition of Message Center (including the 929.4875 MHz stations of Beepage).

January 30, 1996

AirTouch withdraws the multiple-frequency transmitter waiver request for its 929.4875 MHz regional systems, certifying that construction has proceeded to the point where it can dedicate exclusive transmitters to these systems, rendering moot the waiver request.

January 31, 1996

AirTouch seeks nationwide exclusivity on 929.4875 MHz on the basis that the acquired facilities plus additional applications satisfy the eligibility criteria for nationwide exclusivity.

February 8, 1996

FCC adopts Memorandum Opinion and Order on reconsideration in the PCP Exclusivity Docket (PR Docket No. 93-35). The waiver request of Message Center is granted allow six months after publication of the Order on Reconsideration (i.e., September 1996) to make the transition from multiple-frequency transmitters to dedicated transmitters.

FCC adopts First Report and Order in WT Docket No. 96-18 (Market-Area Licensing for Paging) ruling that PCP operators who have completed construction of compliant nationwide systems by February 8, 1996 will retain exclusivity.

At the time of this pronouncement, AirTouch had 265 dedicated transmitters in service on 929.4875 MHz (88% of the 300 required).

July 26, 1996

AirTouch certifies that its constructed 929.4875 MHz system satisfies nationwide exclusivity criteria, including dispersion criteria.