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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Association ("NTCA") submits this reply to oppositions to its Petition for Reconsideration and Clarification of the Commission's *Second Report and Order* released in the above proceeding on February 24, 1997 (" *Second Report and Order*").

A number of parties have filed oppositions to the petition filed by NTCA and similar petitions filed by parties requesting reconsideration of portions of the *Second Report and Order.* These parties have not demonstrated that the Commission acted properly in changing its longstanding policy with respect to the authorization of the Basic Exchange Telecommunications Service ("BETRS"). The Personal Communications Industry Association ("PCIA"), for

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example, recites the Commission's basis for according BETRS secondary status but fails to address the essential points NTCA made.[1]

Each of the conclusions PCIA recites is assailable. The fact that both BETRS and paging are classified as "commercial communications services" for regulatory purposes under Title III of the Communications Act does not settle the public interest issue NTCA raised. The Commission itself authorizes BETRS only for the purpose of delivering basic exchange services that are included in universal service. In fact, the Commission authorized the BETRS service specifically to promote the delivery of universal service.[2] Its decision to license the spectrum used for BETRS on a geographic basis and accord site specific licenses secondary status plainly relegates the achievement of universal service in rugged hard to reach rural areas to the lowest of priorities. As NTCA stated in its petition, the commitment to the achievement of universal service, at least, requires consideration of alternatives which will ensure the availability of the BETRS services in areas where that service is the most feasible way to bring local exchange service to customers.

PCIA also relies on the Commission's conclusion that the decision to require BETRS providers to purchase new spectrum will not raise prices or reduce the quality of service. PCIA's reliance and the Commission's conclusion are incorrect. There are no auction costs for the spectrum used to deliver BETRS today but additional costs will certainly be incurred in the future whenever providers need additional spectrum to expand service in the area or to expand to

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1 PCIA Opposition at 3.

2 NTCA Petition at 2.

unserved areas using BETRS. In fact, a number of petitioners that already provide BETRS anticipate that the auction scheme will seriously impair their ability to satisfy requests for local exchange telephone service.[3] They also indicate that secondary licensing is not a solution as providers will not be willing to make significant investments in infrastructure that will only have to be abandoned at the whim of the geographic licensee.[4] The Commission should not ignore these providers who base their comments on actual experience with the service instead of speculation.

PCIA also places merit on the conclusion that partitioning will accommodate the need of BETRS providers. Providers interested in site licenses alone will not be reasonably accommodated by partitioning rules that would force them to purchase areas they will not need. A better alternative to meet the public's needs for BETRS was suggested by several rural telephone companies that proposed mandatory partitioning of rural areas at no cost to the prospective BETRS licensee. NTCA supports these petitioners' alternative and believes this is a reasonable alternative the Commission must consider seriously to reduce the adverse impacts of its licensing rules.[5] The Commission should adopt the proposal to ensure the continued availability of the service to provide universal service to remote areas. Petitioners have shown that the proposal will benefit the public without causing harm to geographic area licensees. The

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[3] Petition of Lincoln County Telephone System, Inc. ("LCTS") at pp. 2 & 6, *also,* Big Bend Telephone Company, Inc. "(BBTC"), Mid Rivers Telephone Cooperative, Inc. ("MRTC"), Century Telephone Enterprises, Inc.("CTE"), and Nucla-Naturita Telephone Company ("NNTC").

[4] *Id.*

[5] Petitions of LCTS, NNTC, MRTC, BBTC, and CTE at p. 7.

mandatory partitioning alternative reduces the adverse impact the auction scheme will have on the public while minimizing disruption and hardship to other interested parties.

NTCA also disagrees with Air Touch's claim that it would be contrary to law or the public interest for the Commission to retain the of site-by-site licensing or the mandatory partitioning alternative.[6] AirTouch claims that the proposals would prevent potential auction participants from associating a value to the license and cause uncertainty in the auctions. They state that their ability to achieve wide area service would be jeopardized. These claims do not rise to insurmountable legal obstacles. No potential licensee has the absolute right to a licensee that permits wide area service. The Commission is charged with the duty to promote the public interest and has the discretion to adopt rules that ensure the continued availability of BETRS for the delivery of basic local exchange services. The Commission is charged with the obligation to weigh competing private interests and cannot ignore its overall universal service policy goal in the pursuit of auction policies that treat the spectrum as a mere commodity having no relationship to the overall public purposes that must be considered in designing all auctions. Congress explicitly provided in Section 309(j) (3) that the Commission must "include safeguards to protect the public interest in the use of the spectrum . . . and promote the purposes specified in Section 1 [pertaining to universal service] " in deciding whether to use and how to design competitive bidding systems for the licenses it awards. This directive certainly suggests that the Commission has the authority to adopt rules providing for site-by-site licensing of BETRS or mandatory partitioning.

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[6] AirTouch at 21.

CONCLUSION

For the above stated reasons, NTCA requests that the Commission reconsider its decision to auction BETRS spectrum and to relegate new site licensees to secondary status. NTCA urges the Commission to retain rules permitting site by site licensing and co-primary operations for BETRS licensees. As an alternative, NTCA supports the mandatory partitioning proposal as a means to ensure that BETRS will still be available in rural areas.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

By: _____
David Cosson
(202) 298-2326

By _____
L. Marie Guillory
(202) 298-2359

Its Attorneys

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

May, 19, 1997

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply to Oppositions to Petition for Reconsideration of the National Telephone Cooperative Association in WT Docket No. 96-18/PP Docket No. 93-253 was served on this 19th day of May 1997, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

Gail C. Malloy

Gail C. Malloy

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814-0101
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802-0106
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844-0105
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832-0104
Washington, D.C. 20554

International Transcription Service
21o00 M Street, N.W.
Suite 140
Washington, D.C. 20037

Mr. Kent Nilsson, Chief
Network Service Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 253
Washington, D.C. 20554

Harold Mordkofsky, Esq.
John A. Prendergast, Esq.
Blooston, Mordkofsky, Jackson
& Dickens
2121 L Street, N.W., Suite 300
Washington, D.C. 20037

Mark A. Stachiw, Vice President,
Airtouch Paging
Three Forest Plaz
12221 Merit Drive
Suite 800
Dallas, TX 75251

Carl W. Northrop, Esq.
Christine M. Crowe, Esq.
Paul, Hastings, Janofsky & Walker LLP
1299 Pennsylvania. Avenue, N.W.
Tenth Floor
Washington, D.C. 20004

Katherine M. Holden, Esq.
Stephen J. Rosen, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Robert L. Hoggarth, Senior Vice President
Personal Communications Industry Communications
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561