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

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS	)	GEN Docket No. 90-314 ET Docket No. 92-100
	)	
Implementation of Section 309(j) the Communications Act -- Competitive Bidding, Narrowband PCS	)	PP Docket No. 93-253

To: The Commission

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COMMENTS OF AIRTOUCH PAGING ON THE
FURTHER NOTICE OF PROPOSED RULEMAKING

Mark A. Stachiw
Vice President, Senior
Counsel & Secretary
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Dallas, TX 75251
(972) 860-3200

Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky &
Walker LLP
1299 Pennsylvania Ave., N.W.
Tenth Floor
Washington, D.C. 20004
(202) 508-9500

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SUMMARY

AirTouch Paging ("AirTouch") is commenting on the Further Notice of Proposed Rulemaking pertaining to the narrowband PCS allocation.

The Further Notice proposes to reconfigure the channel allotments to eliminate the Basic Trading Areas ("BTAs") as licensed geographic service areas. AirTouch supports this change. BTAs are too small given the wide-area nature of messaging services. Also, too many border territories would suffer from a loss or diminution of service caused by the interference protection criteria that would apply if unaffiliated carriers were licensed on the same channel in adjoining BTAs. The Commission should use the Major Trading Areas as the appropriate licensing area for more localized narrowband services.

The Further Notice also proposes to create additional regional and nationwide licenses by reconfiguring the previously allocated but as yet unassigned channels, and by releasing the 1 megahertz of narrowband PCS spectrum that is held in reserve. AirTouch strenuously opposes these changes on multiple grounds: (1) The development of a sound spectrum management policy requires that the Commission maintain sufficient constancy in the allocation process to permit auction participants to formulate and implement rational business plans; (2) Fundamental fairness requires that previous bidders who paid substantial sums of money for regional and nationwide channels be given a reasonable period of time to develop the acquired spectrum before the carefully considered allocation plan is drastically altered; and, (3) Events which have transpired since the original allocation was crafted preclude a public interest

finding that there is a substantial unmet need at present for additional regional and nationwide channels. Based upon these considerations, AirTouch urges the Commission to abandon the proposal to create additional regional and/or nationwide channels at this time.

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AirTouch Paging ("AirTouch"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules,[1/] hereby comments on the Further Notice of Proposed Rulemaking released April 23, 1997 in the above-captioned proceeding.[2/] The following is respectfully shown:

[1/] 47 C.F.R. § 1.415.

[2/] Report and Order and Further Notice of Proposed Rulemaking (GEN Docket No. 90-314; ET Docket No. 92-100; PP Docket No. 93-253), FCC 97-140, released April 23, 1997 (the "Further Notice").

I. AirTouch Is An Interested Party

1. AirTouch is one of the largest providers of narrowband messaging services, including one-way paging services, in the United States.[3] AirTouch has been particularly active in all phases of the allocation, assignment and deployment of narrowband PCS spectrum.[4] Based on this background, AirTouch has a legitimate, cognizable interest in this proceeding, and a substantial basis in experience for informed comment.

II. The Public Interest Is Served By Converting the Smallest Service Areas From BTAs to MTAs

2. The Commission proposes to change its existing narrowband PCS allocation scheme to reallocate all of the Basic Trading Area ("BTA") channel blocks and some of the Major Trading Area ("MTA") channel blocks to create larger service areas. Specifically, the Commission proposes to (a) redesignate the two remaining 50 kHz paired channels as nationwide channels; (b) establish one nationwide, three regional, and one MTA-based channel pairs from the 50/12.5 kHz channel pairs; and

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[3] AirTouch provides local, regional and nationwide services on systems that are authorized under Part 22 (lowband, VHF, UHF and 931 MHz frequencies), Part 90 (929 MHz frequencies) and Part 24 (narrowband PCS frequencies).

[4] In 1991, AirTouch (under its name at the time, PacTel Paging) filed Petitions for Rulemaking seeking the allocation of 900 MHz reserved spectrum for two innovative narrowband services: advanced architecture paging (RM-7979) and ground-to-air paging (RM-7860). Since that time, AirTouch has actively participated in every phase of the narrowband services including commenting on every proposed rule change, participating in every auction, and now by developing narrowband services on channels for which it has received licenses (i.e., one asymmetrically paired nationwide channel and an asymmetrically paired channel in three of the five regions).

(c) convert the four BTA-based 12.5 kHz unpaired response channels to regional channels.[5] The Commission proposes these changes based upon its perception that "larger licensing areas may be more suitable to the actual configuration of narrowband systems."[6] Although AirTouch supports the elimination of BTA service areas because BTAs often are too small to permit carriers to meet public needs, AirTouch strenuously opposes any creation of additional nationwide or regional channels. Radically altering the narrowband allocation to the detriment of those who participated in good faith in the prior nationwide and regional auctions is contrary to the public interest.

3. AirTouch agrees that BTAs provide too limited a geographical area for the provision of meaningful messaging services given the evolution of the market toward wide-area services. This problem is particularly acute in the northeastern United States where high population densities have resulted in the designation of several BTAs which cover very small geographic territories.[7] In some instances, these areas are so small that the ability to operate a full- powered narrowband PCS station is compromised by the protection criteria that must be abided by to avoid causing interference to adjoining markets.[8]

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[5] See Further Notice, ¶ 31.

[6] Further Notice, ¶ 29.

[7] The BTAs in Rhode Island, Massachusetts and Connecticut are particularly small. This problem also exists in other areas, such as the Central Valley of California.

[8] Several commenters pointed out in the early stages of the narrowband proceeding that many BTAs are less than 50 miles across at certain points, which makes the operation of a full-powered base station problematic within large portions of the

(continued...)

4. The elimination of BTAs also makes sense in order to facilitate and streamline the auction process. There are 493 BTAs as compared to 51 MTAs. In view of the dramatically higher number of BTAs, auctioning licenses on a BTA basis necessarily adds complexity and greater potential for delay to the competitive bidding process. Ironically, adding complexity and delay can serve to the particular disadvantage of small businesses -- the precise entities that smaller service areas were intended to benefit -- because small businesses may be ill-equipped to dedicate personnel to the auction process.[9]

5. Reconfiguring service territories as between BTAs and MTAs creates no unfairness with regard to incumbent narrowband PCS licensees since there have not as yet been any narrowband PCS auctions for smaller localized service territories.[10] Thus, the proposed realignment is happening early enough in the auction process to avoid the unfairness associated with retroactive rulemaking that, as is discussed in greater detail below, must be avoided if the Commission's spectrum allocation decisions are to have the consistency that is necessary to foster intelligent business planning.

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[8](...continued)
service territory. See discussion at 9 FCC Rcd 1309, ¶ 9 (Memorandum Opinion and Order on reconsideration in the narrowband proceeding).

[9] This is especially true when a simultaneous closing rule is employed. Small businesses are particularly unable to dedicate the human resources to participate in multi-month auctions that would result if BTA service areas are used.

[10] Indeed, the existing allocation scheme with diminishing service areas was factored in by bidders in determining the amount they were willing to pay for the licenses they ultimately were the high bidder on.

6. Based upon the foregoing, AirTouch supports the elimination of BTA service areas. All channels previously designated for licensing on a BTA basis should, instead, be licensed by MTA.[11/]

III. Additional Regional and Nationwide Channels Should Not Be Created At This Time

7. The Commission's proposal to redesignate some of the unlicensed spectrum to create additional nationwide and regional channels has sent shock-waves through the narrowband industry. The proposal creates the serious concern that previous bidders in the nationwide and regional narrowband auctions may have been incented to bid up the prices paid for channels by what now appears, in light of the Commission proposal, to have been an **artificial** scarcity of regional and nationwide channels. Such a result not only is contrary to the public interest, but is contrary to explicit provisions in the Communications Act.

A. Prior Decisions Regarding the Number of Regional And Nationwide Channels Should Not Be Revisited At This Time

8. The Commission created the existing PCS service and the channel allocation scheme after developing an extensive record. Indeed, ten separate petitions for rulemaking requesting allocations in the 900 MHz band for advanced paging were

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[11/] In the traditional paging services, AirTouch has advocated the use of MEAs (major economic areas) rather than MTAs as the basis for geographical licensing. AirTouch has made this proposal in order to avoid otherwise unnecessary payments to Rand McNally for the use of its MTA designations. However, in the narrowband PCS services, licensing fees already have been paid to Rand McNally, thus eliminating this concern.

received by the Commission and generated substantial public comment.[12] These rulemaking petitions were followed by a Notice of Inquiry on PCS services generally,[13] an en banc hearing on PCS,[14] and a Notice of Proposed Rulemaking in which the Commission sought specific comments regarding the allocation of spectrum for narrowband PCS services.[15] After carefully reviewing this extensive record, the Commission adopted its First Report and Order in the PCS proceeding, and further refined the allocation decisions in a Memorandum Opinion and Order on reconsideration.[16] These decisions allocated a certain number of nationwide and regional channels, while specifically reserving a smaller number of channels for use in local territories, holding that

> we recognize that there are a variety of narrowband PCS services that could be offered at the local level. We believe that by providing channels at the local level we will foster broader participation in narrowband PCS, allowing entry by smaller

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[12] See Petitions for Rulemaking of Telocator Network of America filed January 12, 1991 (RM-7617); Mauntauk Telecommunications filed June 6, 1991 (RM-7760); Echo Group L.P. filed July 30, 1991 (RM-7782); PacTel Paging filed August 2, 1991 (RM-7979) and October 15, 1991 (RM-7860); Dial Page, L.P. filed October 11, 1991 (RM-7977); MTel filed November 12, 1991 (RM-7978); PageMart, Inc. filed February 28, 1992 (RM-7800); Skycell Corp. filed May 29, 1992 (no RM number assigned); Paging Network Incorporated filed June 1, 1992 (no RM number assigned).

[13] See Notice of Inquiry (GEN Docket No. 90-314), 6 FCC Rcd 6601 (1991).

[14] An en banc hearing on PCS was held on December 5, 1991.

[15] Amendment of the Commission's Rules to Establish New Personal Communications Services (GEN Docket No. 90-314; ET Docket 92-100), Notice of Proposed Rulemaking and Tentative Decision, 7 FCC Rcd 5676 (1992).

[16] Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services (GEN Docket No. 90-314; ET Docket No. 92-100), First Report and Order, 8 FCC Rcd 7162 (1993), recon. in part, 9 FCC Rcd 1309 (1994).

firms and businesses, increase competition and promote diversity in the provision of narrowband PCS services.[17]

9. Against the backdrop of this decisionmaking process, the Commission's stated rationale for creating new regional and nationwide licenses is particularly weak. The statement at paragraph 30 of the Further Notice that "there **may** also be additional demand to provide narrowband PCS on a regional or nationwide basis"[18] is completely unsupported by any citation to record or extra-record evidence. The Commission should not restructure a carefully considered allocation proceeding upon so casual an observation.

B. Sound Spectrum Management Policy Precludes the Creation of Additional Regional or Nationwide Channels at this Time

10. Several members of the Commission and the Commission's staff have advocated the adoption by the agency of a comprehensive spectrum management policy.[19] In reviewing these pronouncements, AirTouch finds the recent remarks of Commissioner Ness to be a particularly compelling articulation of the need for a reasonable degree of constancy in the Commission's spectrum allocation decisions:

> Regulatory certainty is critical to entrepreneurs and the financial community.
>
> . . . While it is tempting to 'fine-tune' our rules every time we have a better idea, we must recognize that each rule change

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[17] First Report and Order at ¶ 24.

[18] Emphasis added.

[19] See, e.g., Statement of Reed E. Hundt, Chairman, to the Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, U.S. House of Representatives, February 12, 1997; Keynote address by Michele C. Farquhar before CTIA's Wireless '97 Conference March 3, 1997, San Francisco, California, entitled "Markets, Spectrum and the FCC: Revolutionizing the Way We Look at Spectrum Management, Allocation, Assignment and Licensing."

> alters the assumptions on which business plans are built. Revisions intended to benefit bidders may have the opposite effect.
>
> Marketplace behavior may begin to reflect the assumption that our rules will continue to evolve and that there is no need to comply with those already on the books. That would be grossly unfair to those who diligently follow the rules as written, and would unduly reward those who camp-out on the Commission doorstep.[20]

11. These comments of Commissioner Ness reaffirm important themes highlighted in a recent Spectrum Policy white paper[21] which concluded that:

> the Commission's spectrum policy should promote administrative certainty. . . . Furthermore, the Commission should exercise its jurisdiction to reallocate spectrum and change the rules governing use of spectrum with due regard for the reasonable expectations of incumbent licensees.[22]

Notably, Chairman Hundt appears to have endorsed this aspect of the Spectrum Policy white paper when he stated recently that "we should get spectrum into the private market in a measured but steady way."[23]

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[20] Remarks of Commissioner Susan Ness before CTIA's Wireless '97 Convention, San Francisco, California, March 3, 1997, entitled "Spectrum Management -- Myths and Realities," p. 7.

[21] Gregory L. Roston and Jeffrey S. Steinberg, "Using Market-Based Policy to Promote the Public Interest," January, 1997, pp. 20, 21.

[22] Id.

[23] Presentation of Chairman Reed E. Hundt before CTIA Wireless '97 Convention and Expo, San Francisco, California, March 4, 1997 (Competition, Wireless Deployment, and New Spectrum Policy), p. 3. A new allocation of nationwide and regional channels at this time could not be considered "measured" or "steady" when the carefully considered channel configurations are revisited before all the prior channel assignments have been made and before the commercial roll-out of the service has proceeded to the point where demand can be assessed.

12. The Further Notice pays lip service to these important spectrum management policies by posing the question as to "what effect increasing the service area size of as-yet unlicensed channels will have on existing narrowband PCS licensees"[24] However, by tentatively concluding that the creation of more regional and nationwide licenses will serve the public interest, the Commission appears uninterested in the answer to this question. In fact, it will not.

13. AirTouch is not suggesting that the Commission should never consider in the future whether additional regional or nationwide narrowband channels are required. However, now is too soon. The nationwide narrowband PCS auction took place during July 1994 and some of the resulting channel assignments were not made until January 1995.[25] The regional narrowband PCS auction took place in October/November 1994, and some of the channels assignments resulting from that auction were not made until late April 1995.[26] The narrowband PCS rules accord licensees substantial time to initiate service. Indeed, the first construction benchmark for nationwide channels does not arrive until five years after the initial grant date.[27] Trade press reports indicate that, to date, narrowband PCS services have been rolled out only in relatively isolated test markets in part due to delays in the development

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[24] Further Notice at ¶ 32.

[25] See Paging Network of Virginia, Inc., 10 FCC Rcd 1016 (1995) (granting the PageNet nationwide narrowband license on January 6, 1995).

[26] See Public Notice, Report No. CN-95-08, released April 27, 1995.

[27] See 47 C.F.R. § 24.103(a) and (b).

and delivery of equipment by the manufacturers.[28] The bottom line is that the narrowband PCS regional and nationwide services are in their infancy. It is much too early to make an assessment regarding the extent to which the previous channel assignment scheme will prove adequate to meet market demands. The proposed realignment of geographic areas is decidedly premature.[29]

C. Elimination of Most MTA and BTA Licenses Is Contrary to the Communications Act

14. The Commission's proposal to eliminate virtually all of the smaller geographic licenses violates the Communications Act. Section 309(j)(3)(B) of the Communications Act requires the Commission to disseminate licenses among a variety of applicants, including small business. By eliminating many of the smaller geographic licenses, the Commission will frustrate the desires of many small paging operators to participate in providing narrowband PCS services. Indeed, in originally allocating spectrum in MTA and BTA license areas, the Commission stated: "We believe that by providing channels at the local level, we will foster broader participation in narrowband PCS, allow entry by smaller firms and businesses, increase competition and promote diversity in the provision of narrowband services."[30] These important regulatory objectives will be frustrated if the channel

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[28] Indeed, with the exception of PageNet and MTel, no other licensee has yet been able to receive equipment in sufficient amounts to implement a nationwide or regional system.

[29] Of course, to the extent that bidders perceive there to be a need for additional regional or nationwide licenses, they can during the auction aggregate MTAs into regional or nationwide licenses.

[30] First Report and Order, 8 FCC rcd 7162 at ¶ 27.

allotments are further skewed toward regional and nationwide as compared to local service areas.

15. The Commission's proposal would in effect deny small businesses the ability to garner spectrum to continue their existing businesses and to participate in narrowband PCS. Bids for nationwide and regional PCS channels were tens of millions of dollars and would be out of reach for most small businesses.[31] Even with bidding credits and installment payments, the cost of buying and deploying systems over a regional or nationwide area will exceed the wherewithal of most small operators. Given that many paging companies are truly small businesses, financing systems on this scale will be impossible. An allocation scheme which devotes a variety of narrowband channels to local uses meets the statutory requirements much better because small businesses are better situated to acquire licenses without government assistance.[32]

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[31] For example, high bidders for the nationwide narrowband PCS channels paid between $37,000,000 (Paging Network of Virginia) and $80,000,000 (Paging Network of Virginia) for their channels. See Public Notice, Mimeo No. 44177, released August 2, 1994. Successful bidders in the regional channel auction bid from $8,000,000 (Insta-Check Systems) to $151,544,001 (PCS Development Corp.) net of their bidding credits. See Public Notice, Mimeo No. 50867, released November 29, 1994.

[32] It should be a goal of the Commission to try and get spectrum into the hands of small and disadvantaged businesses with minimal need for government subsidies or assistance. Indeed, the disruptions being caused by the potential defaults by broadband Block C bidders provides compelling evidence of the benefits of encouraging small business participation without turning the FCC into a lender. The Commission's original plan to allocate some narrowband spectrum in localized geographic areas to allow small and disadvantaged businesses to acquire spectrum is the right approach, as opposed to increasing the bidding credits available to small and disadvantaged businesses.

16. The Commission's recent Report on means to identify and eliminate market entry barriers for small businesses[33] touts the fact that the Commission has "adopted band plans that included licenses for small geographic areas and spectrum blocks; thus promoting economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies and businesses operated by minorities or women."[34] This Report also points out the pernicious effect that changing rules in mid-stream can have on small businesses that are seeking to participate in auction proceedings.[35] The Commission would be disregarding the sound findings of this report if it were to reduce the number of local narrowband channel assignments as proposed in the Further Notice.

D. Incumbents Should Not Be Prejudiced By Artificial Scarcity

17. A review of the results of the nationwide and regional auctions reveals that there was spirited bidding for licenses resulting in substantial sums of money paid to the Federal Treasury by messaging service providers to enable them to participate in the provision of advanced messaging services.[36] The results were dictated in large measure by the allocation decisions made by the Commission which

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[33] Section 257 Proceeding to Identify and Eliminate Barriers for Small Businesses (GEN Docket No. 96-113), Report, FCC 97-164, released May 8, 1997.

[34] Id. at ¶ 114.

[35] Id. at ¶ 147.

[36] The nationwide auction winners paid $617,006,674 in the aggregate; the regional channel auctions raised $490,901,787 in the aggregate. See Public Notice, Mimeo No. 44177, released August 2, 1994; Public Notice, Mimeo No. 50876, released November 29, 1994.

effectively put the industry on notice that the number of regional and nationwide frequencies that would be available in the near-term was limited. For the Commission to revisit this issue and allocate additional regional and nationwide channels so soon means that the scarcity was artificial and that interested parties were forced to overpay by virtue of the Commission's allocation decisions.

18. The potential adverse consequences of such a result cannot be overstated. To recognize the dangers that arise when auction winners are perceived to have "overpaid" for spectrum, the Commission need only look at the devastating impact of the low bids in the broadband PCS D, E and F block auction on the ability of PCS C block auction winners to finance their business plans. Of course, there is a major difference between the broadband and narrowband circumstances. In the broadband context, the C block bidders put their money on the table **knowing in advance** that additional broadband spectrum (i.e., the D, E and F blocks) would be forthcoming shortly. Here, the narrowband bidders had no notice that additional regional or nationwide channels were on the horizon. Indeed, the Commission had **specifically rejected** the recommendations of several commenters that a larger number of channels should be dedicated as an initial matter for regional and nationwide services.[37] Under these circumstances, it would be fundamentally unfair to subject regional and nationwide narrowband PCS auction winners to the market

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[37] Memorandum Opinion and Order, 9 FCC Rcd 1309, ¶ 16 (1994) (establishing regional license areas but rejecting proposals to eliminate BTA/MTA licenses).

dislocations that would be created by dramatically altering the spectrum allocation scheme to create new regional and nationwide channels at this time.[38]

19. In AirTouch's view, nothing will undermine public confidence in the competitive bidding procedure faster then creating the impression that the allocation rules are not stable and that any bidding decisions may be based on false information. There being no apparent constituency urging the Commission to revisit its narrowband PCS allocation rules at this time, the Commission should not make such fundamental changes.

20. Based upon the foregoing considerations, AirTouch urges the Commission to abandon its proposal to created additional regional and/or nationwide channels at this time. Incumbents who acquired regional and nationwide channels should be given a fair opportunity to deploy their services, at which point a reassessment of the market needs by the Commission would be appropriate.

IV. The 1 MHz of Narrowband Spectrum in Reserve Should Not Be Released at this Time

21. The Commission tentatively concludes in the Further Notice that the 1 MHz of spectrum that was reserved for future narrowband uses should now be channelized and licensed.[39] The Commission's stated rationale for this action is contained in a single sentence indicating that releasing the reserve "will serve the

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[38] Narrowband PCS licensees, however, do share one important aspect with the C block winners -- neither has had a chance to build systems and both are seeking financing. The effect of a competing provider in the same area being auctioned for less can have a dramatic affect on existing licensees' ability to get financing.

[39] Further Notice, ¶ 34.

public interest by facilitating competition, opening the market to new entrants, and allowing existing narrowband PCS licensees to expand their systems through access to additional spectrum."[40] AirTouch strenuously objects to the release of the reserved spectrum at this time. The decision to hold this spectrum in reserve was made following the development of a substantial record, and the Commission has failed to cite sufficient evidence of public need to warrant abandoning this earlier decision.[41] Furthermore, releasing reserve spectrum at this time would be contrary to the development of a rational spectrum management policy.

22. The Commission issued its original Notice of Proposed Rulemaking regarding the allocation of narrowband spectrum in 1992.[42] The agency proposed to allocate 3 MHz of 900 MHz spectrum for narrowband services: 901-902 MHz, 930-931 MHz and 940-941 MHz. Many commenters, including AirTouch (formerly known as PacTel Paging), supported the allocation of 3 MHz of spectrum for advanced messaging uses. Considerable evidence regarding the growth of the messaging market was offered in support of these recommendations.

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[40] Id.

[41] Indeed, the industry originally proposed releasing all the spectrum at once. The Commission chose not to go that route, and all bidders took this into account in their bidding strategies.

[42] Amendment of the Commission's Rules to Establish New Personal Communications Services (GEN Docket No. 90-314; ET Docket No. 92-100), Notice of Proposed Rulemaking and Tentative Decision, 7 FCC Rcd 5676 (1992).

23. Nevertheless, the Commission ultimately decided to channelize and release only 2 MHz of narrowband spectrum, while holding the remaining 1 MHz in reserve. The Commission at that time found as follows:

> [W]e have reconsidered our original proposal to channelize and license the entire 3 MHz of available 900 MHz spectrum at this time. We now believe that less spectrum is sufficient to support the narrowband PCS proposals before us. Further, given the diversity in channel bandwidths and other operational considerations associated with these proposals, this approach will allow us to respond to the growth and development of narrowband PCS services as well as potential new future services.[43]

24. If anything, events which have transpired since this decision in 1993 have reduced the need for additional narrowband spectrum. The following market developments have occurred:

a. PCP Channel Exclusivity -- The Commission altered the rules governing private carrier paging (PCP) channels in order to allow operators to earn exclusivity.[44] These new PCP exclusivity rules allowed operators to earn exclusivity on a nationwide, regional and/or local basis, thereby dramatically increasing the pool of narrowband spectrum available to provide wide-area messaging services. A large number of carriers have devoted considerable attention over the past several years to licensing, constructing and placing in service substantial local, regional and nationwide networks utilizing these PCP frequencies. Consequently,

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[43] First Report and Order, 8 FCC Rcd 7162 at ¶ 19 (1993).

[44] PCP Exclusivity Order, 8 FCC Rcd 8318 (1993), recon. in part, 11 FCC Rcd 3091 (1996).

much of the unmet demand for one-way messaging services has been accommodated on the 929 MHz PCP exclusive channels.

b. 900 SMR -- In 1995, the Commission auctioned 1,020 licenses to provide 900 MHz SMR services over 51 major trading areas.[45] Some providers of narrowband messaging services were major participants in the 900 MHz SMR auction, and garnered substantial spectrum over broad geographic areas to be used in conjunction with existing narrowband resources to provide innovative advanced messaging services.[46] Some of the pent-up demand for additional narrowband spectrum identified in the original narrowband PCS proceeding have been met or can be met through the 900 MHz SMR allocations.

c. Flexible Use Rules -- The Commission has eliminated unnecessary restrictions on the permissible uses to which spectrum can be put to accord licensees maximum flexibility to provide benefits for public services. For example, rules have been relaxed to allow cellular licensees, PCS broadband licensees, IVDS licensees, 220-222 MHz licensees and others to provide paging services on their allocated channels.[47] These flexible use rules provide many avenues to satisfy the public's demand of for narrowband services.

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[45] 900 MHz SMR Auction Order, 11 FCC Rcd 2639 (1996).

[46] See Public Notice, FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas, 11 FCC Rcd 18599 (1996) (listing licenses won by Paging Network of America, Inc. and other existing narrowband providers).

[47] See Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services (WT Docket No. 96-6), First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8965 (1996), and examples cited therein.

d. Market Area Licensing for Paging -- The Commission recently adopted rules converting traditional paging frequencies from a site-by-site licensing scheme to a market-area licensing scheme utilizing auctions.[48] This conversion will facilitate the provision of wide-area services and, no doubt, foster consolidation into more efficient operating configurations of channels that previously were licensed in patchwork fashion. In the future, these traditional paging channels can be further enhanced through the licensing of response channels that can be paired with them in order to provide advanced interactive messaging services. Again, the results will be additional means of satisfying public demand for messaging services.

25. In sum, external events which have taken place since the Commission's decision to release only two of the three megahertz of narrowband spectrum have served to support the Commission's original decision. Absent compelling evidence to the contrary, the Commission should not revisit this decision on its own motion.

26. The proposal to allocate the additional 1 MHz of reserve spectrum also is directly contrary to other articulated reasons for maintaining the reserve. Having adopted a diverse narrowband channel plan which contained some symmetrically-paired, some asymmetrically-paired and some unpaired channels, the Commission specifically stated its desire to assess the public's relative need for these diverse bandwidths before completing the allocation. Because the Commission has

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[48] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96-18), Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732 (1997).

not even completed assigning the initially allocated 2 MHz of spectrum, and because the commercial roll-out of narrowband services has barely begun, the Commission is in no position to assess the relative benefits of these different channel configurations. For the reasons originally stated, the Commission should continue to defer allocating the 1 MHz reserve until it has a body of market evidence upon which to base any further decision.

27. Similarly, the original allocation decision properly recognized that there will be further advances in narrowband technology in the future for which spectrum should be reserved. At this point, the first generation of narrowband PCS technology has barely been developed, let alone perfected. Little justification can be found for releasing the reserve spectrum at this time when further innovations are certain to occur at a later date. On balance, the proper regulatory policy is to continue to hold the 1 MHz of spectrum in reserve pending further developments in the narrowband markets.

28. The proposal to license the reserve spectrum at this time also is subject to the aforementioned criticism that it reflects a complete lack of constancy in the spectrum allocation process. All of the public interest detriments cited by AirTouch with regard to the proposed creation of additional regional or nationwide channels at this time apply with equal or greater force to the release of the 1 MHz of advanced paging reserve spectrum.

29. As a final matter, AirTouch notes that there has been activity on Capitol Hill which appears to be motivated by a desire to cause the Commission to be

more sensitive to timing issues in the allocation of spectrum.[49] The release of the narrowband reserve at this time would, no doubt, fuel these Congressional undertakings because of the uproar that would be heard from the narrowband industry if all reasonable expectations regarding spectrum availability were altered so dramatically by the Commission's allocation of the 1 MHz of reserve spectrum at this time.

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[49] Both the House Telecommunications Subcommittee and the Senate Commerce Committee are in the process of marking up budget reconciliation legislation. In the process, several legislators have indicated an intention to include provisions in the bill affecting the FCC's auction authority in general, and the timing of auctions in particular.

Conclusion

The foregoing premises having been duly considered, AirTouch respectfully requests that the Commission abandon its proposals to create additional regional and nationwide PCS channels at this time either by reconfiguring the service territories of previously allocated channels or by releasing any or all of the reserve spectrum.

Respectfully submitted,

AIRTOUCH PAGING

By: Mark A. Stachiw (EAJ)

Mark A. Stachiw
Vice President, Senior
Counsel & Secretary
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Dallas, TX 75251
(972) 860-3200

By: E. Ashton Johnston

Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky &
Walker LLP
1299 Pennsylvania Ave., N.W.
Tenth Floor
Washington, D.C. 20004
(202) 508-9500

Its Attorneys

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