

Inexplicably, in a section of the *Restructuring Order* labeled “Background,” all of this record material is dismissed in two brief paragraphs that begin with the statement that “the Commission declines to further explore these [deferral] proposals.”⁶² The rationale for this dismissal is impenetrable and does not constitute reasoned decision making. Although the Commission characterizes deferral in various ways that could be interpreted as evincing a belief that such proposals are not commercially viable,⁶³ it fails to ground such characterizations on record evidence or draw any nexus whatsoever between its action and the record. Moreover, the Commission justifies its dismissal of deferral on the unadorned pretext that deferral would be “unfair” to unsuccessful bidders,⁶⁴ without considering substantial contrary record evidence and argument that deferral is not unfair to anyone and is wholly in accord with the Commission rules and relevant precedent.

Plainly, the Commission gave the deferral option short shrift. Such treatment is directly at odds with relevant precedent requiring the Commission to consider responsible alternatives to its chosen policy and give a reasoned explanation for its rejection of such alternatives.⁶⁵ The record in this proceeding fully supports adoption of a modest deferral

Patrick Moynihan, ex parte letter, August 4, 1997; The Honorable Rick Boucher, ex parte letter, July 25, 1997; The Honorable Richard Burr, ex parte letter, August 11, 1997; The Honorable Thomas Davis, ex parte letter, July 30, 1997; The Honorable Sue W. Kelly, ex parte letter, August 11, 1997; The Honorable John D. Dingell, ex parte letter, September 16, 1997; The Honorable Ralph M. Hall, ex parte letter, September 15, 1997; The Honorable W.J. “Billy” Tauzin, ex parte letter, August 13, 1997; The Honorable W.J. “Billy” Tauzin and Edward J. Markey, ex parte letter, September 16, 1997.

⁶² See *Restructuring Order*, at para. 18 (footnote omitted). In the footnote, the Commission lists 25 interested parties who had recommended the deferral option, and admits that it is only a partial listing.

⁶³ See, e.g., *id.*, at para. 18 (“We do not wish to adopt temporary solutions such as those that might only postpone these difficulties and further prolong uncertainty.”).

⁶⁴ See *id.*, at paras. 18-19.

⁶⁵ See *City of Brookings Mun. Telephone Co. v. F.C.C.*, 822 F.2d 1153, 1169 (D.C. Cir. 1987). Where, as here, the agency fails in this regard, its decision has uniformly resulted in reversal. See *id.*; see also *Yakima Valley Cablevision, Inc. v FCC*, 794 F.2d 737, 746 (D.C. Cir. 1986).

as a reasonable means of furthering the Commission's stated goal of speeding the utilization of C block spectrum in the public interest, and NextWave urges the Commission to reconsider the *Restructuring Order* and expand the menu of options to include deferral.

III. CONCLUSION

NextWave respectfully requests that the Commission reconsider the *Restructuring Order* in accordance with the discussion in this petition.

Respectfully submitted,

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APPENDIX A

Appendix A

Broadband PCS Payments To-date

<u>Rank</u>	<u>Company Name</u>	<u>AB-Block Amount Paid</u>	<u>C-Block Amount Paid</u>	<u>DEF-Block Amount Paid</u>	<u>TOTAL</u>
1	Sprint	\$ 2,211,622,053	\$ -	\$ 544,200,663	\$ 2,755,822,716
2	AT&T Wireless	\$ 1,684,418,000	\$ -	\$ 406,773,532	\$ 2,091,191,532
3	PCS PrimeCo	\$ 1,103,373,896	\$ -	\$ -	\$ 1,103,373,896
4	PacTel	\$ 695,650,000	\$ -	\$ -	\$ 695,650,000
5	NextWave	\$ -	\$ 474,364,803	\$ 30,419,950	\$ 504,784,753
6	Powertel	\$ 416,343,449	\$ -	\$ 31,250,616	\$ 447,594,065
7	Aerial	\$ 289,140,034	\$ -	\$ -	\$ 289,140,034
8	BellSouth	\$ 82,056,001	\$ -	\$ 205,144,775	\$ 287,200,776
9	Cox Communications	\$ 256,996,526	\$ -	\$ -	\$ 256,996,526
10	Omnipoint Communications	\$ 40,000,000	\$ 50,913,326	\$ 121,963,235	\$ 212,876,561
11	Western Wireless	\$ 88,636,090	\$ -	\$ 80,862,731	\$ 169,498,821
12	Ameritech	\$ 158,100,000	\$ -	\$ -	\$ 158,100,000
13	Pocket Communications	\$ -	\$ 142,676,289	\$ -	\$ 142,676,289
14	GTE	\$ 106,355,002	\$ -	\$ -	\$ 106,355,002
15	General Wireless, Inc.	\$ -	\$ 105,965,775	\$ -	\$ 105,965,775

APPENDIX B

NextWave progresses on its market buildout

By Linda Kay Sakelar

NextWave Telecom Inc. said it successfully made the \$12.5 million second down payment

completed during the last year.

"We have made substantial progress in our national network buildout," said Edward

block personal communications services properties. It was granted an additional 25 licenses in the recent auction of D-, E- and F-block spectrum.

With 163 million total pops in 88 PCS markets, NextWave says it is the third largest wireless franchise in the Unit-

NextWave's market holdings don't geographically blanket the United States, as do the markets of carrier Sprint PCS. However, NextWave stresses that its licensed areas are heavily populated.

"Ninety percent of the U.S. population lives in the 50 largest markets, and we have 40 of the top 50 markets," said NextWave spokeswoman Jennifer Walsh.

The company launched a demonstration PCS network recently in San Antonio, which will be one of the first markets NextWave plans to commercially launch.

"NextWave is well positioned to launch PCS systems in four major markets before the end of this year," said Knapp, "and five additional markets by early next year."

Other markets scheduled for launch this year include Boston, Orlando, Fla., and San Diego. Early next year, NextWave plans to offer service in New York, Los Angeles, Houston and Washington, D.C.-Baltimore.

"At this time, 90 percent of the microwave links needed to clear our spectrum have been relocated or will be relocated for initial network launch. We have identified and prequalified thousands of cell sites, and we have signed hundreds of leasing agreements for our PCS antennas," Knapp said.

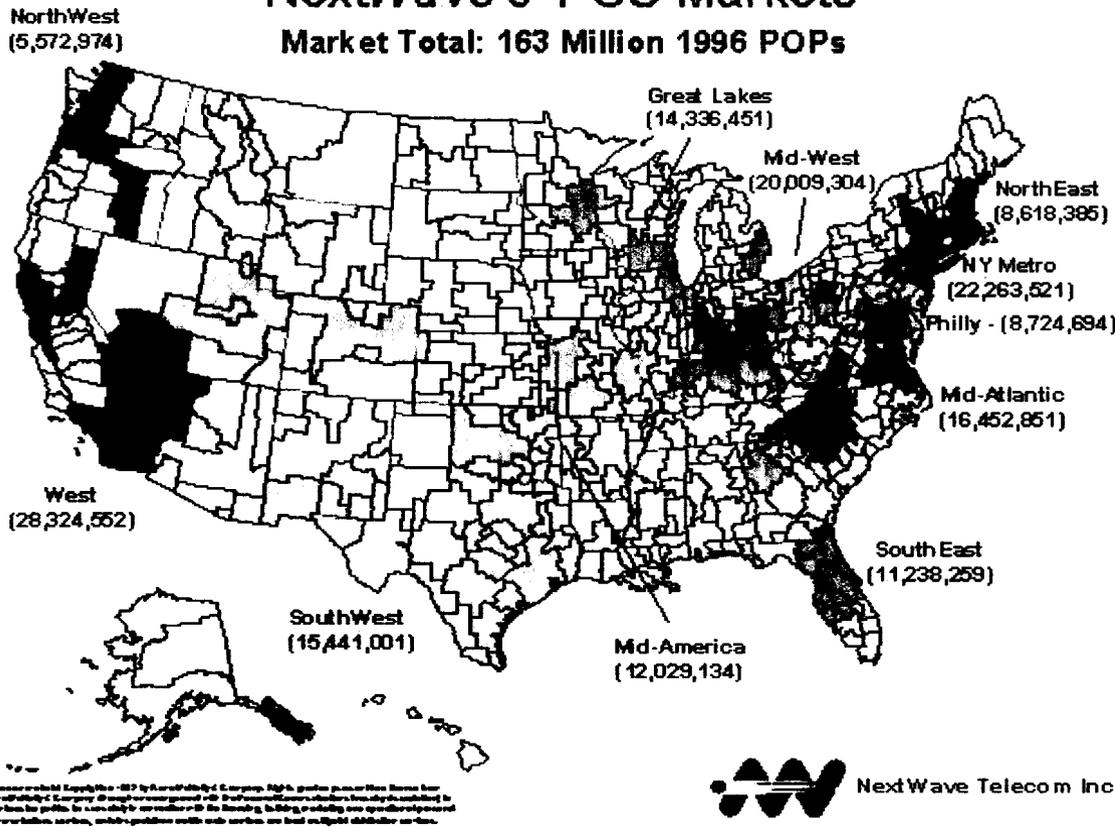
The company has 12 offices around the country. Seven switch sites have been acquired and are under construction; 300 cell site leases have been signed, and about 900 leases are being negotiated.

NextWave said it has invested \$60 million in the network, to date. The company has \$1.4 billion total in vendor financing from Hughes Network Systems Inc. and Lucent Technologies Inc.

NextWave will not sell service to the public, but intends to offer the airtime on a wholesale basis to resale companies.

NextWave's PCS Markets

Market Total: 163 Million 1996 POPs



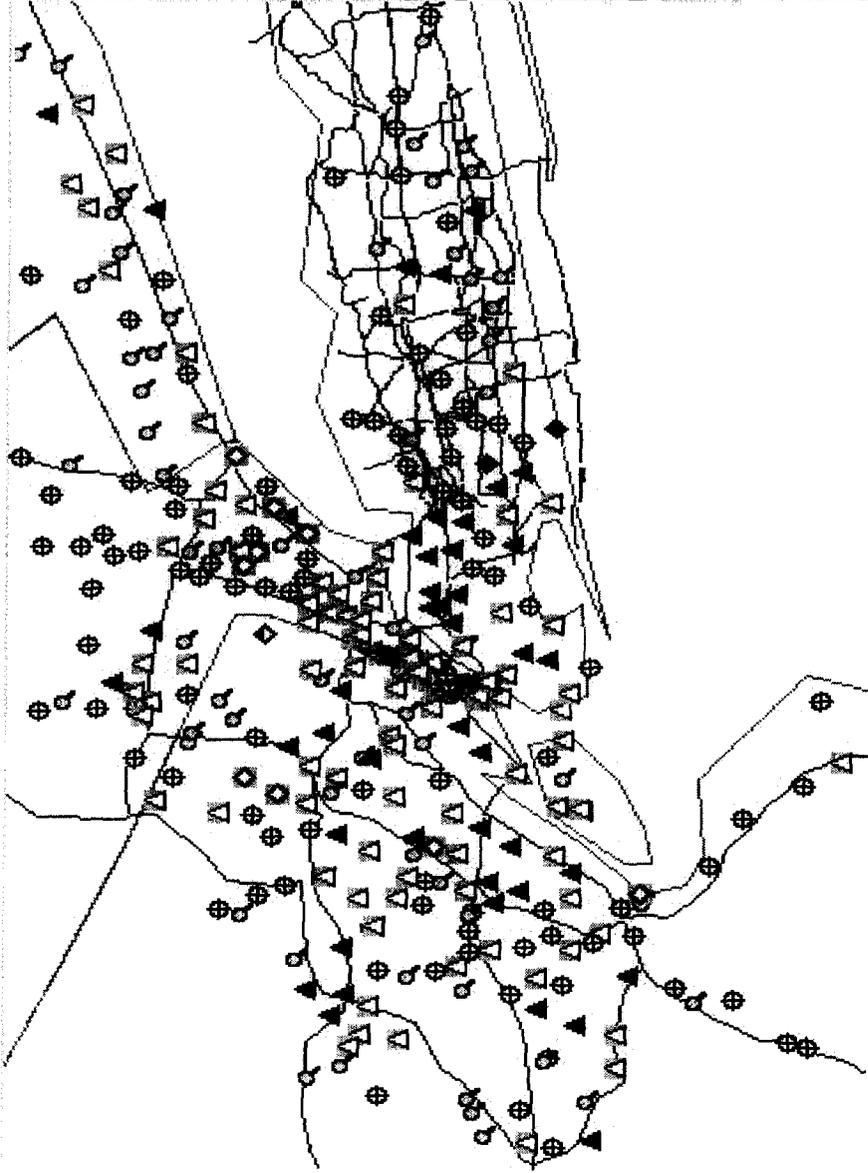
on its new 10 megahertz licenses, and now the company wants a little respect for the network construction it has ac-

Knapp, chief technical officer and senior vice president of engineering.

The company owns 63 C-

ed States. NextWave also claims to be the "largest independent PCS company in the world."

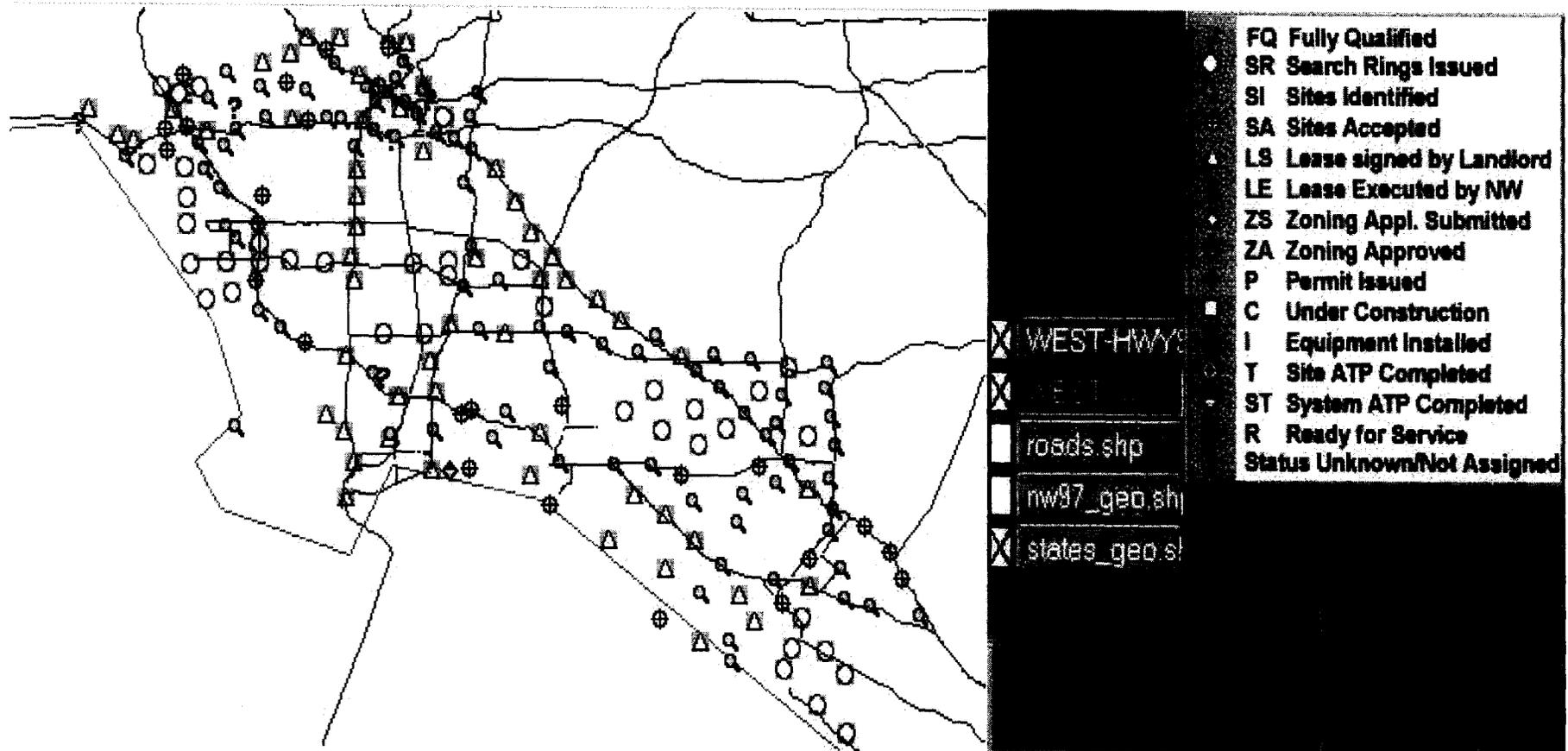
New York



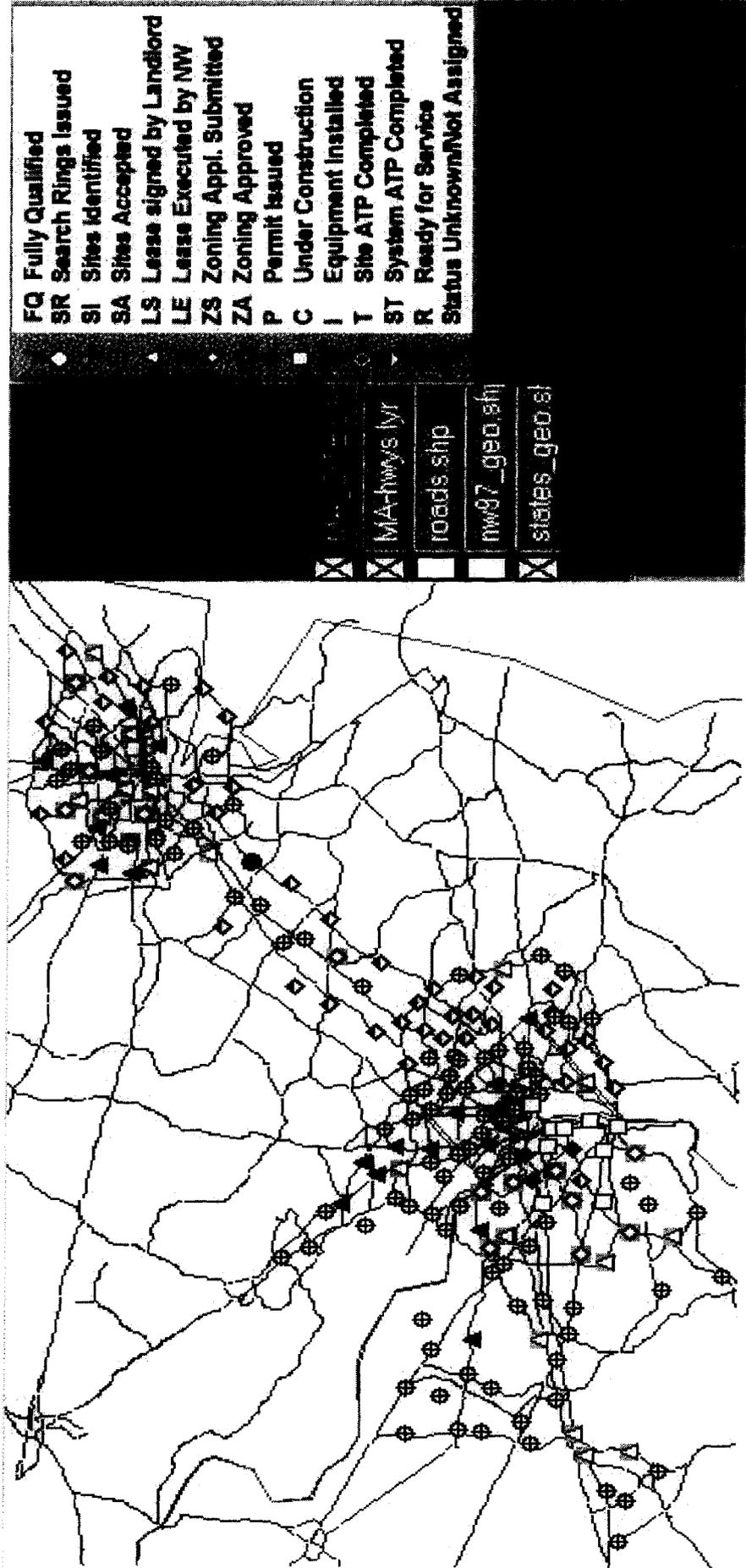
NY_SITES.M
 roads.shp
 NY-hwys.lyr
 nw97_geo.shp
 states_geo.shp

FQ Fully Qualified
SR Search Rings Issued
SI Sites Identified
SA Sites Accepted
LS Lease signed by Landlord
LE Lease Executed by NW
ZS Zoning Appl. Submitted
ZA Zoning Approved
P Permit Issued
C Under Construction
I Equipment Installed
T Site ATP Completed
ST System ATP Completed
R Ready for Service
Status Unknown/Not Assigned

Los Angeles



Boston



Certificate of Service

I, Kay Hawkins, hereby certify that on this 24th day of November, 1997, a copy of the attached Petition for Reconsideration of NextWave Telecom Inc. was hand delivered to the following:

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