

resources exclusively on network deployment in the near term. NextWave's preferred restructuring option has always been a restructuring plan in which it would repay every dollar of its auction bids, plus interest. NextWave's initial filing in the Restructuring Proceeding included a request for a deferral under which the government would receive the entire bid amount, plus interest on interest, thereby keeping the government whole.⁵⁷ In materials appended to that filing, NextWave provided evidence that financial instruments in which interest "accrues" but is not paid in cash until some future date are commercially reasonable and frequently used by start-up ventures in capital-intensive industries.⁵⁸ Moreover, prior to the Commission's release of its Restructuring Order, the Congressional Budget Office issued a memorandum on C block restructuring options, in which it indicated that a deferral would have considerably less impact on the federal budget than any other restructuring plan the Commission was considering.⁵⁹

NextWave was not alone in advocating consideration of a deferral option. Numerous interested parties filed arguments and supporting documentation in favor of this option.⁶⁰ Moreover, the record contains many letters from Members of Congress supporting this or similar solutions, evidencing Congress' desire that the Commission utilize this or some equally effective means of engendering rapid and efficient delivery of competitive wireless services to the public.⁶¹

⁵⁷ See NextWave Comments, WT Docket No. 97-82, filed June 23, 1997, at p. 4.

⁵⁸ *Id.*, Appendix A at 7-11.

⁵⁹ See Congressional Budget Office, *Impending Defaults by Winning Bidders in the FCC's C Block Auction: Issues and Options*, (Sept. 1997) at 3, 10.

⁶⁰ The *Restructuring Order*, at n. 39, contains a partial list of parties that submitted deferral proposals or substantive comment on that issues.

⁶¹ See The Honorable James M. Inhofe, Don Nickles, and Conrad Burns, *ex parte* letter, August 7, 1997; The Honorable John McCain, *ex parte* letter, August 19, 1997; The Honorable Daniel

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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Charla M. Rath
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November 24, 1997

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 Sakelaris

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

NorthWest
(5,572,974)

Great Lakes
(14,336,451)

Md-West
(20,009,304)

NorthEast
(8,618,386)

NY Metro
(22,263,521)

Philly - (8,724,694)

Md-Atlantic
(16,452,851)

West
(28,324,562)

South East
(11,238,259)

SouthWest
(15,441,001)

Md-America
(12,029,134)



NextWave Telecom Inc.

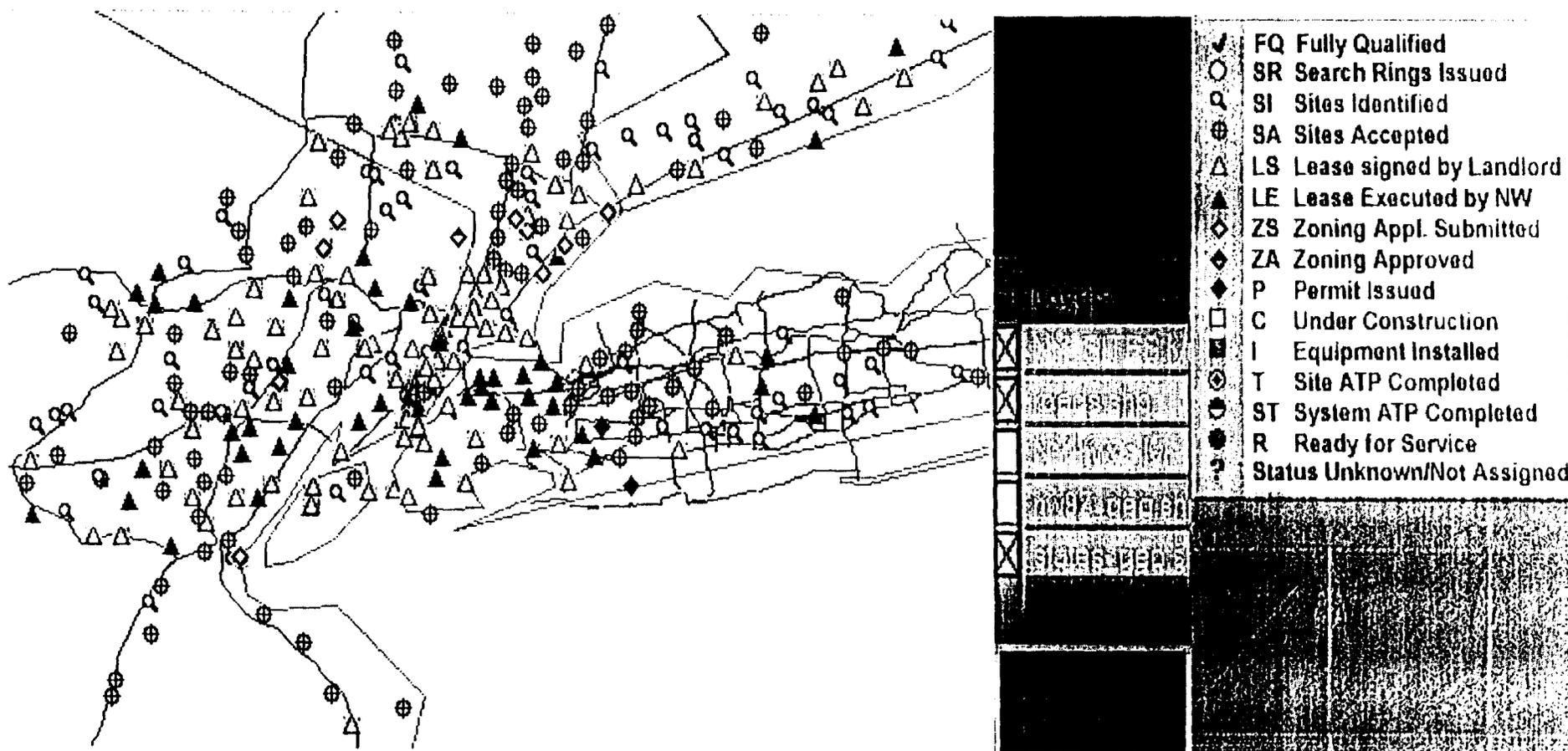
on its new 10 megahertz licenses, and now the company wants a little respect for the network construction it has ac-

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

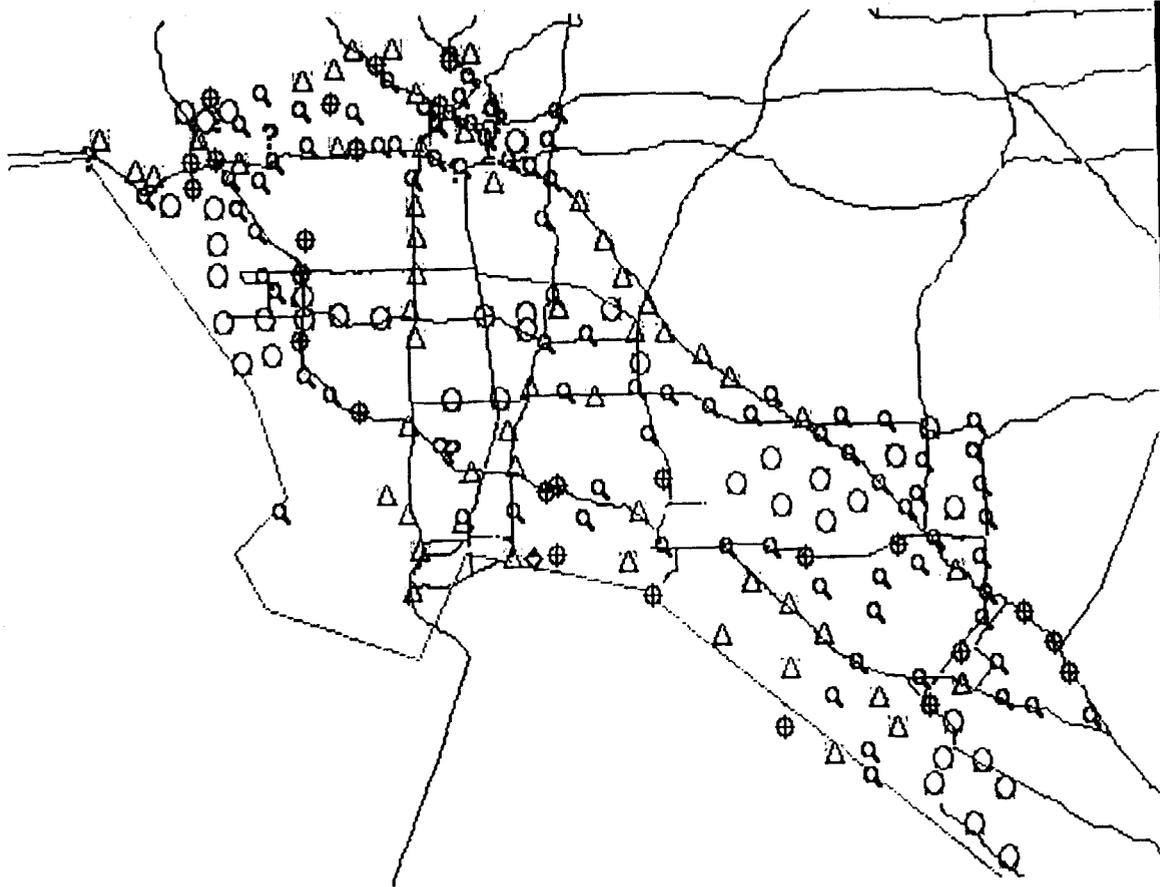
The company owns 63 C-

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

New York

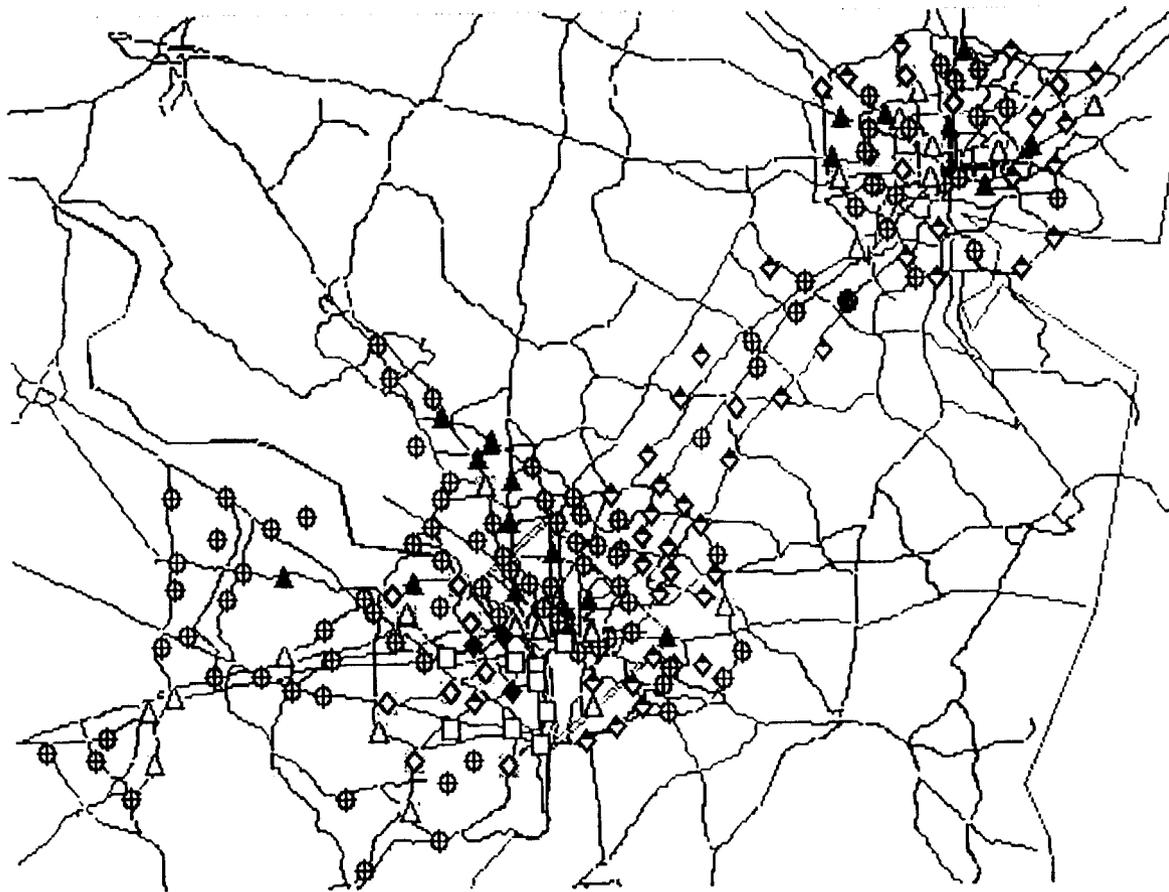


Los Angeles

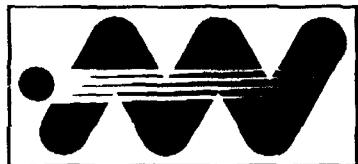


✓	FQ Fully Qualified
○	SR Search Rings Issued
⊙	SI Sites Identified
⊕	SA Sites Accepted
△	LS Lease signed by Landlord
▲	LE Lease Executed by NW
◇	ZS Zoning Appl. Submitted
◆	ZA Zoning Approved
◆	P Permit Issued
□	C Under Construction
■	I Equipment Installed
⊗	T Site ATP Completed
⊛	ST System ATP Completed
●	R Ready for Service
?	Status Unknown/Not Assigned

Boston

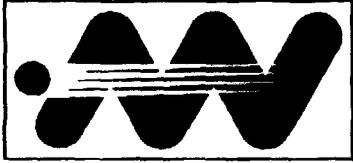


✓	FQ Fully Qualified
○	SR Search Rings Issued
○	SI Sites Identified
⊕	SA Sites Accepted
△	LS Lease signed by Landlord
▲	LE Lease Executed by NW
◇	ZS Zoning Appl. Submitted
◆	ZA Zoning Approved
◆	P Permit Issued
□	C Under Construction
■	I Equipment Installed
⊙	T Site ATP Completed
⊙	ST System ATP Completed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



NextWave Telecom Inc.

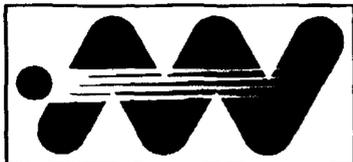
- ➔ Founded in 1995 to build and operate PCS networks
- ➔ Paid \$500 million to U.S. Treasury for licenses thus far
- ➔ Third largest number of licensed POPs among cellular and PCS licensees in the U.S. after AT&T and Sprint
- ➔ 163 million POPs covering 95 markets
- ➔ Highest concentration of POPs in major cities of any wireless carrier



Convergence of Developments

- ➔ Telecom Reform Act
- ➔ New PCS Spectrum
- ➔ Low Cost, Fixed Government Financing
- ➔ CDMA Commercialized
- ➔ Trend for Brands to Bundle

Result: Strong, unsatisfied demand for resale minutes. Mission to wholesale low cost, high quality wireless MOUs

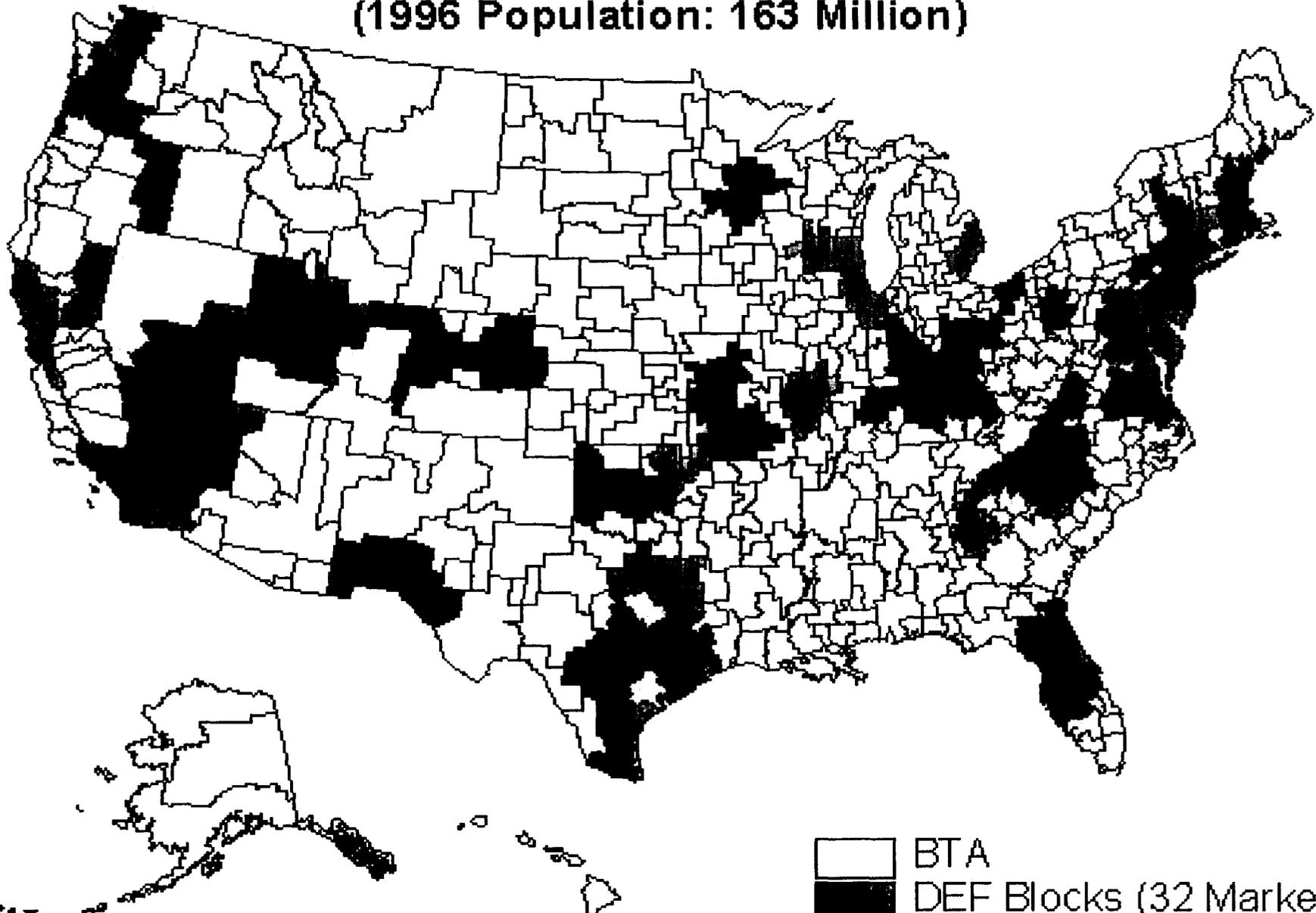


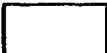
Broadband PCS Payments To-Date

<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
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14	GTE	\$ 106,355,002	\$ -	\$ -	\$ 106,355,002
15	General Wireless, Inc.	\$ -	\$ 105,965,775	\$ -	\$ 105,965,775

NextWave's PCS Markets

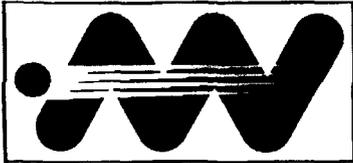
(1996 Population: 163 Million)



-  BTA
-  DEF Blocks (32 Markets)
-  C-Block (63 Markets)

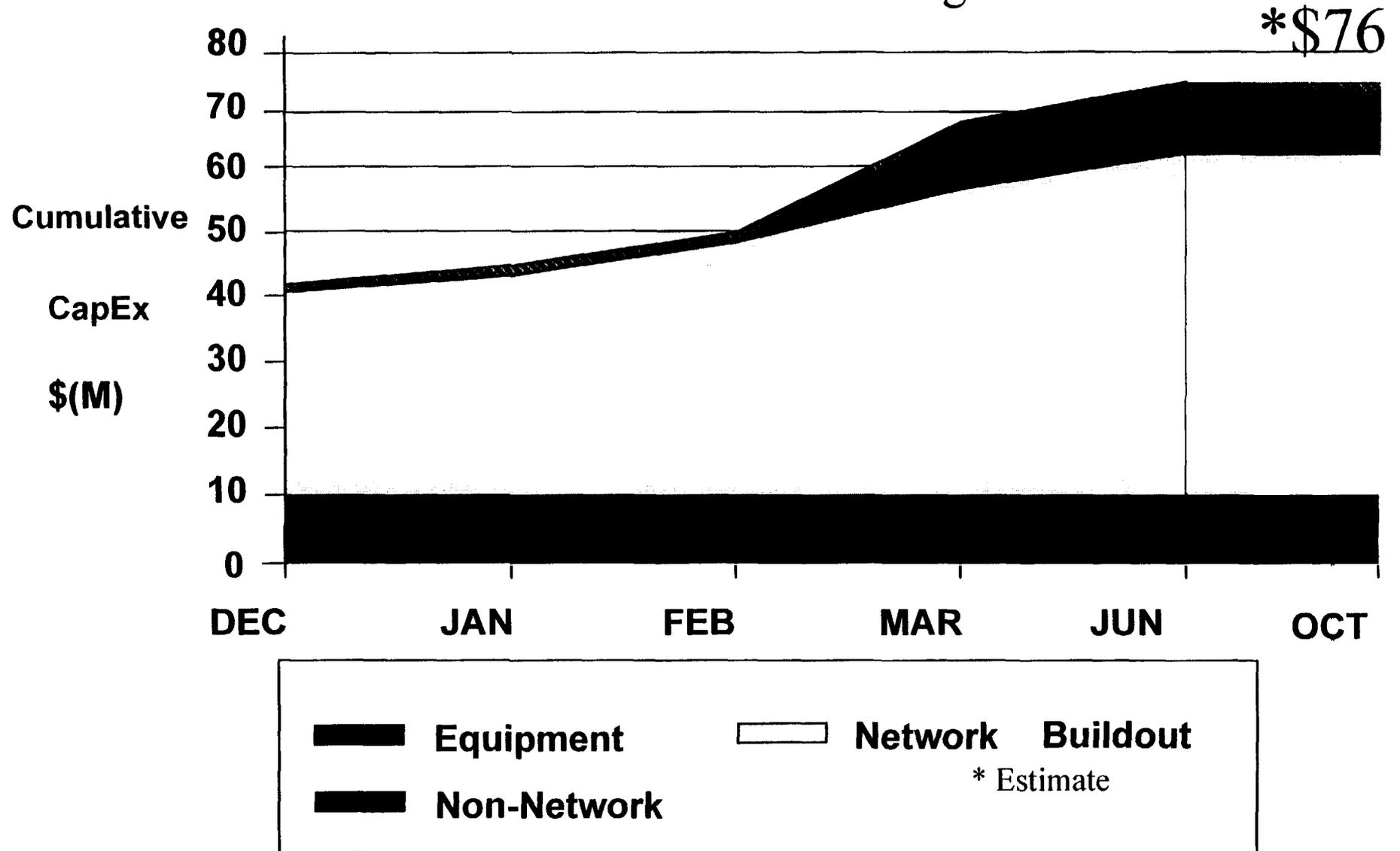
NextWave PCS is a service mark of NextWave Telecom Inc. All other marks are the property of their respective owners. © 1996 NextWave Telecom Inc. All rights reserved. This document is for informational purposes only and does not constitute an offer of any service. Service availability is subject to change without notice. Serviceable areas only. Service not available in all areas.

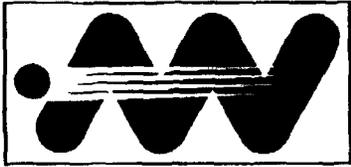




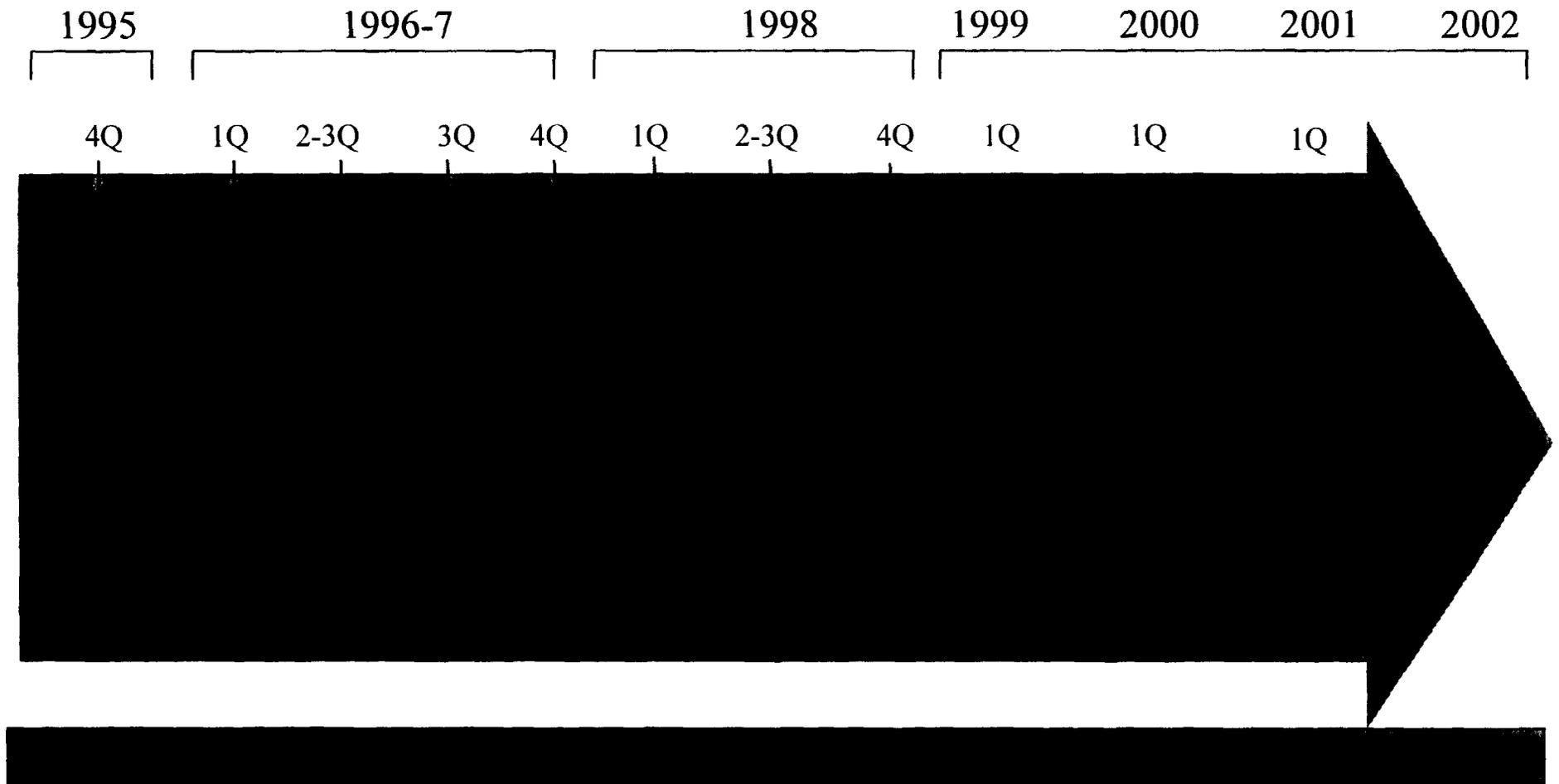
NextWave Capital Investment

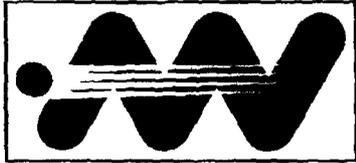
Construction in Progress



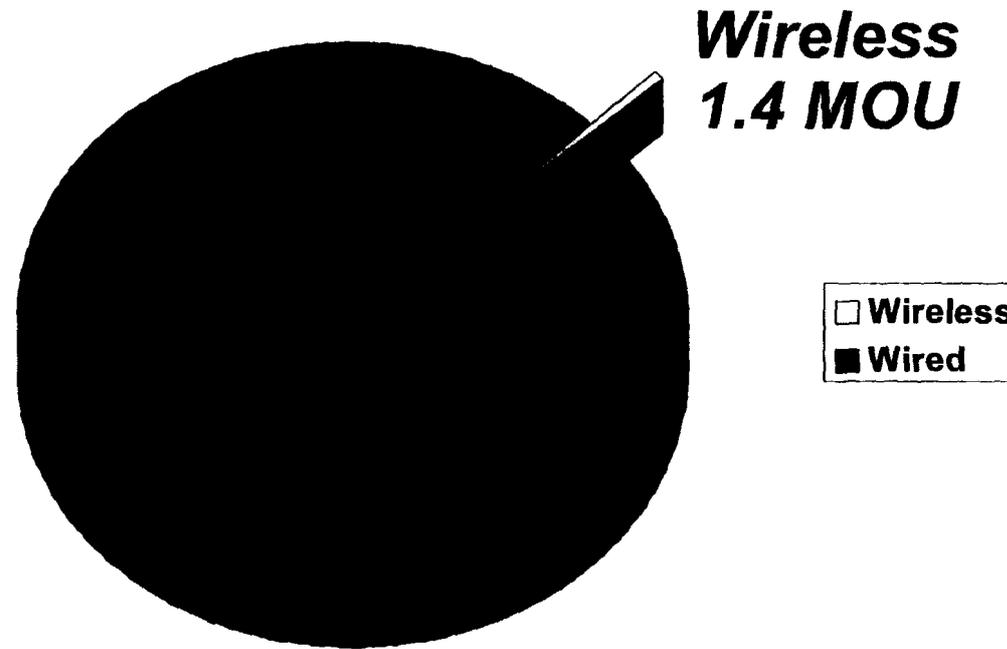


Network Buildout Plan

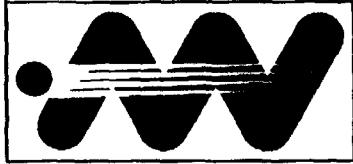




The True Measure of Penetration is MOUs

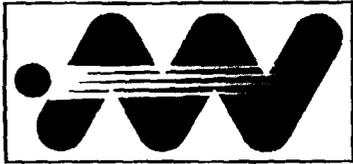


***For every wireless minute consumed,
100 landline minutes are consumed***

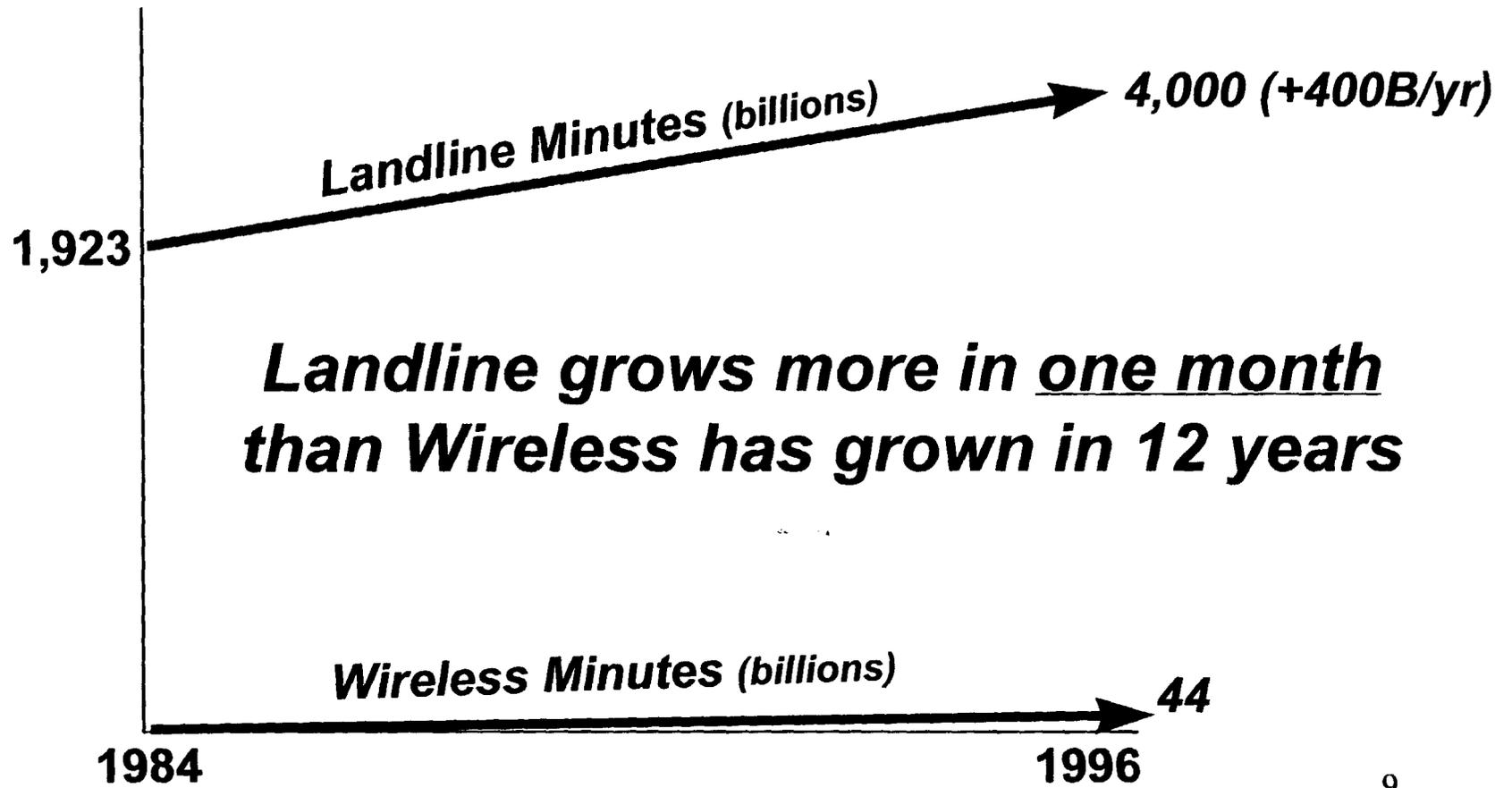


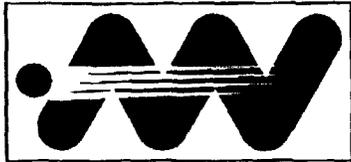
Why is Wireless only 1.4% of Total Minutes?

- Can't be insufficient demand (Service is highly price elastic)
- It's the distribution bottleneck (97% of all subscribers via carrier's own brand, marketing/sales very inefficient, highest cost of operation)

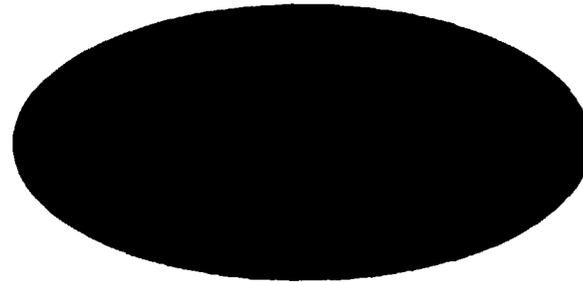
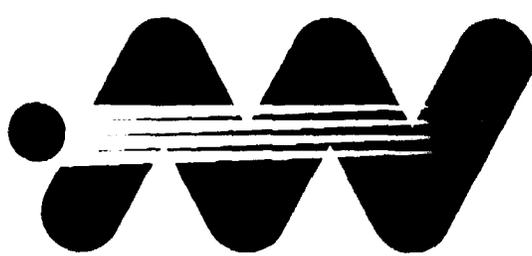


NextWave's Fresh View of Market Share (MOUs)





Carriers' Carrier Business Model



Subscribers

→ Network
Operator

→ High Volume,
Low Cost

→ Enhanced
Services



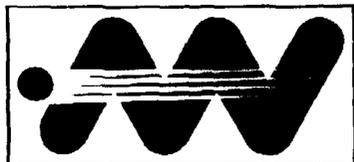
Brand Name



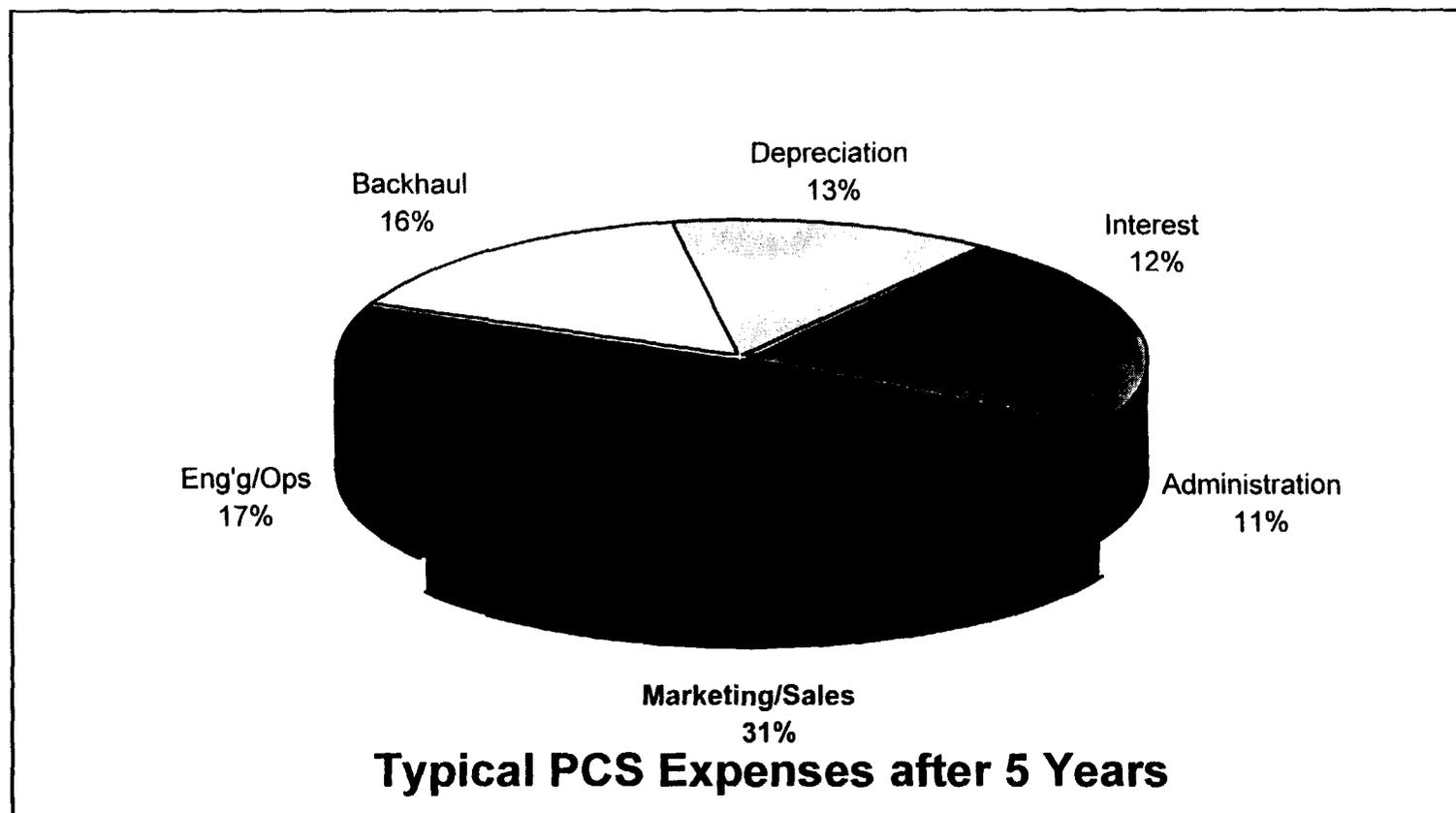
Marketing, Sales,
Distribution

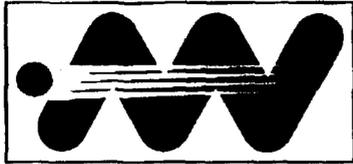


Billing, Customer Care,
Enhanced Services



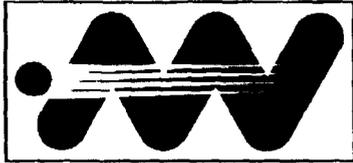
Resale Strategy Reduces Market Entry Barriers for Small Businesses, Women and Minorities





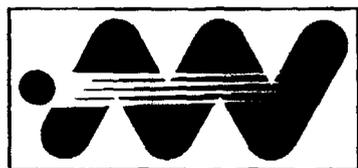
Reseller Account Summary

Reseller	Expected Operations Base
2001 Personal Communications	TX
American Cellular Rental	CA
CalTech International	Southwest/MidWest
Cellexis	Nationwide
Cellnet of Ohio	OH
COMAV	North East, OH
CX Systems	FL
Digital Comm. Network	CA
ECC/PCN	North East
Excel	Nationwide
Federal Network	Nationwide
Florida Wireless	FL
Fox Communications	Nationwide
MCI	Nationwide
New Wave	NY
OneStop	Nationwide
Preferred Cellular	CA
Prepay Technologies	CA
Prime Matrix	CA
RFW	MO, NY
SmarTalk	Nationwide
United Calling Network	Nationwide
Wireless Nation	NY
Wireless Outlet	Nationwide
Wireless Ventures	OH, NY



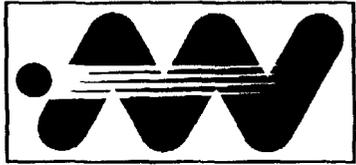
PCS Opportunity for Resellers

- ➔ PCS and long distance, for example, are perfect bundled offering; 90%+ of AirTouch, GTE and Bell Atlantic wireless subscribers choose their long distance product
- ➔ Significant new source of revenue
- ➔ Good margins are possible
- ➔ Many types of differentiated service (mobile, fixed, voice, data, enhanced services)
- ➔ Demonstrably better service than cellular
- ➔ Friendly PCS wholesalers are emerging



The Next*Wave* Philosophy

- ➔ Resellers are our customer
- ➔ We want to do business cooperatively
- ➔ We succeed only if our resellers succeed



Bottom Line

- ➔ **C-block licensees collectively possess comparable talent to national carriers**
- ➔ **C-block licensees collectively add value to wireless market**
- ➔ ***NextWave* has made the fifth largest payment of over \$500 million to the FCC among all the bidders in all PCS auctions**
- ➔ ***NextWave*'s business plan and business strategy are viable and financable**