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LAW OFFICES OF
PAUL, HASTINGS, JANOFSKY & WALKER LLP

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A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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) 668-6200

THE INTERNATIONAL FINANCIAL CENTRE
OLD BROAD STREET
LONDON EC2N 1HQ
TELEPHONE 44 (171) 562-4000

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

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

TELEPHONE (202) 508-9500
FACSIMILE (202) 508-9700

INTERNET www.phjw.com

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

399 PARK AVENUE
NEW YORK, NEW YORK 10022-4697
TELEPHONE (212) 318-6000

345 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94104-2635
TELEPHONE (415) 835-1600

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

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

ARK MORI BUILDING
12-32, AKASAKA 1-CHOME
MINATO-KU, TOKYO 107, JAPAN
TELEPHONE (03) 3586-4711

WRITER'S DIRECT ACCESS
(202)508-9570
cwnorthr@phjw.com

Karen Gulick
Office of Commissioner Tristani
Federal Communications Commission
445 Twelfth Street, SW; Room 8-C302
Washington, D.C. 20554

Re: Revision of Part 22 and part 90 of the Commission's Rules to Facilitate Future
Development of Paging Systems
WT Docket No. 96-18

Dear Ms. Gulick:

As a follow-up to our meeting of May 3, 1999, in which Mark Stachiw and I, on behalf of AirTouch Paging ("AirTouch"), discussed with you various issues pending before the Commission on reconsideration in the captioned proceeding, attached is a copy of AirTouch's Comments on the Petitions for Reconsideration. AirTouch's Comments address, *inter alia*, AirTouch's opposition to the inclusion of an "all box" in the FCC Form 175 permitting auction participants to select "all" markets thereby creating phantom mutual exclusivities, and AirTouch's support of upfront payments for each license on which the auction participant intends to bid.

May 5, 1999
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Karen Gulick

May 5, 1999

Page 2

Pursuant to section 1.1206(b) of the Commission's rules, two copies of this letter and attachments are hereby filed with the Secretary's office. Kindly refer any questions in connection with this matter to the undersigned.

Very truly yours,

A handwritten signature in cursive script that reads "Carl W. Northrop". The signature is written in black ink and includes a stylized flourish at the end.

Carl W. Northrop

of PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Magalie Salas, Secretary

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Revision of Part 22 and Part 90
of the Commission's Rules to
Facilitate Future Development
of Paging Systems

) WT Docket No. 96-18
)
)
)
)

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

) PP Docket No. 93-253
)
)

**COMMENTS OF AIRTOUCH PAGING ON
PETITIONS FOR RECONSIDERATION**

AIRTOUCH PAGING

Mark A. Stachiw
Vice President, Senior Counsel
and Secretary
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Suite 800
Dallas, TX 75251

Carl W. Northrop
Christine M. Crowe
PAUL, HASTINGS, JANOFSKY
& WALKER LLP
1299 Penn. Avenue, N.W.
Tenth Floor
Washington, D.C. 20004

Its Attorneys

May 9, 1997

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems)	WT Docket No. 96-18
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To: The Commission

**COMMENTS OF AIRTOUCH PAGING ON
PETITIONS FOR RECONSIDERATION**

AirTouch Paging ("AirTouch"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules,^{1/} hereby submits its comments on the Petitions for Reconsideration of the Second Report and Order and Further Notice of Proposed Rulemaking (the "Order") adopted in the captioned proceeding. The following is respectfully shown:

I. Introduction and Summary

1. AirTouch provides commercial mobile radio paging services on UHF, VHF and 900 MHz band frequencies on a local, state-wide, regional and nationwide basis throughout the United States. AirTouch's continued expansion of existing networks, as well as deployment of new systems to provide service to the public, will be affected by the Commission's Order. AirTouch also has been an

^{1/} 47 C.F.R. § 1.429.

active participant in the instant proceeding which seeks to convert to a geographic license approach for the future licensing of paging spectrum. AirTouch submitted comments and reply comments on both the Commission's interim proposals and permanent licensing rules.^{2/} Several parties have requested reconsideration and/or clarification of aspects of the Order which AirTouch addressed in detail in its earlier-filed comments and/or replies. Therefore, AirTouch is well-equipped to provide informed comment on these issues and AirTouch is an interested party in this proceeding.

2. AirTouch supports a conversion from the current site-by-site licensing to a geographic area licensing scheme for paging which will facilitate the development of wide-area paging systems throughout the country. The Commission's Rules, if properly modified, should decrease the licensing burdens imposed on paging service providers and provide geographic area licensees with the necessary flexibility to respond effectively to consumer demand. However, AirTouch strongly urges the Commission to reconsider certain rules as proposed in several of the petitions. Some of the recently adopted rules will create "artificial" mutual exclusivities, force licenses for which there is only one interested party to auction, artificially skew the prices paid for licenses, encourage speculation and gamesmanship during the auction, foster greenmail after the auction, and delay the introduction of service to the public. AirTouch respectfully submits that each of these results is contrary to the

^{2/} Joint Comments on Interim Licensing Proposal filed AACS Communications, Inc., AirTouch Paging, et al. on March 1, 1996; Reply Comments on the Interim Proposal filed by AirTouch Paging on March 11, 1996; Comments of AirTouch Paging on the Notice of Proposed Rulemaking filed March 18, 1996; Reply Comments of AirTouch Paging on the Notice of Proposed Rulemaking filed April 2, 1996.

Commission's auction authority contained in the Communications Act of 1934, as amended, and the public interest.

3. In summary, AirTouch supports the elimination of the "all" box on the FCC Form 175 short-form application, and agrees that separate upfront payments should be made for each license on which eligibility to bid is sought. Standing alone, these two simple modifications to the Commission's Rules will substantially reduce the possibility of artificial mutual exclusivities in the paging auctions, and will speed introduction of service to the public.

4. AirTouch also supports those petitions urging the Commission to award geographic licenses to those incumbent licensees who already satisfy certain construction benchmarks in their relevant markets or meet previously-set requirements for nationwide exclusivity. AirTouch strongly opposes the adoption of a vague alternative "substantial service" standard which will only encourage speculation and insincere bidding.

5. AirTouch supports the continued disclosure of bidder identity information during the auction. AirTouch also favors the adoption of safe-harbors to the anti-collusion rules.

6. AirTouch supports petitions seeking the use of multiple economic areas ("MEAs") instead of major trading areas ("MTAs") as the appropriate geographic licensing area for non-nationwide 929 MHz and 931 MHz paging channels, reconsideration of the small business preferences adopted by the Commission, requests for reconsideration and/or clarification of rules relating to the replacement of site-specific licenses with system licenses, the protection of grandfathered facilities and the ability of incumbents to modify their systems post-

auction. AirTouch supports the adoption of more specific rules relating to the resolution of interference disputes between adjacent geographic area licensees and the establishment of notification and coordination procedures to avoid potential interference between geographic area licensees and incumbents.

7. AirTouch also supports requests for clarification of the penalties for failing to meet construction obligations, reconsideration of the elevation of the status of certain non-exclusive licensees, and reconsideration of the Commission's rejection of proposals to limit further sharing of shared channels.

8. Finally, AirTouch strenuously opposes the petitions filed requesting the retention of site-by-site licensing of Basic Exchange Telecommunications Radio Service ("BETRS") or mandatory partitioning of rural areas, presumably at the expense of the paging geographic area licensee.

II. Discussion

A. The Commission Must Take Steps to Prevent Artificial Mutual Exclusivities

9. AirTouch supports the petitions filed by Paging Network, Inc. ("PageNet"), Arch Communications Group, Inc. ("Arch") and the Personal Communications Industry Association ("PCIA") urging the Commission to eliminate the "all" box on the FCC Form 175 short-form application and to require auction participants to submit specific upfront payments for each license for which eligibility is sought.^{3/} The ease of checking the "all" box and submitting a downpayment

^{3/} Petition for Reconsideration and Clarification filed by PageNet ("PageNet Petition") pp. 10-12; Petition for Partial Reconsideration and Request for Clarification filed by Arch ("Arch Petition"), pp. 5-8; Petition for Reconsideration filed by PCIA ("PCIA Petition"), pp. 10-13.

sufficient to secure eligibility for the largest market to be bid on, rather than listing specific licenses and submitting upfront payments for each, encourages artificial mutual exclusivities. Only one auction participant needs to check the "all" box in order to create mutual exclusivities for all licenses offered. The failure to adopt channel-specific upfront payments for each license on which an auction participant seeks to bid exacerbates the potential for artificial mutual exclusivities. The result is that many licenses for which there is only a single interested party will be subject to the competitive bidding process. This result is contrary to the Communications Act. As PageNet pointed out, the Communications Act requires the Commission to take steps to resolve mutual exclusivities rather than create mutual exclusivities in order to auction spectrum and increase Federal revenues. Indeed, in the recently concluded Wireless Communications Services ("WCS") auction, there were a substantial number of licenses which only received one bid -- a result of artificial mutual exclusivities. With respect to a number of licenses offered at the WCS auction, the winning bid was \$1, which conclusively indicates that only one party was seriously interested in each of those licenses yet the licenses were subjected to an auction anyway -- a clear violation of the statutory intent.

**B. Incumbents Meeting Certain Construction Benchmarks
and Incumbents with Nationwide Licenses Should
be Subject to Streamlined Licensing**

10. PageNet, Arch, PCIA, Advanced Paging, Inc. ("Advanced"), Metrocall, Inc. ("Metrocall"), and the law firm of Blooston, Mordkofsky, Jackson & Dickens ("Blooston"), all urge the Commission to exclude from the auction process licenses for which certain construction benchmarks (e.g., coverage of 70 percent of the population in the market, satisfaction of the five-year construction build-out requirement) already have been met prior to the commencement of the auction process.^{4/} In the alternative, some of these petitioners suggest that the Commission limit eligibility in such cases to the incumbent satisfying such benchmarks and co-channel licensees in adjacent market areas.^{5/} AirTouch agrees.^{6/} Licensees providing service to a substantial portion of the market area should not be subject to auction, since only the incumbent will be able to satisfy the specific construction benchmarks set forth in the Commission's Rules. To permit new entrants to bid on these licenses,

^{4/} PageNet Petition, pp. 4-6; Arch Petition, p. 7; PCIA Petition, pp.4-7; Petition for Reconsideration filed by Blooston ("Blooston Petition") pp. 10-11; Petition for Reconsideration filed by Advanced ("Advanced Petition"), pp. 3-12; Petition for Partial Reconsideration and Clarification filed by Metrocall ("Metrocall Petition"), pp. 6-9 [Metrocall accurately points out that the auction of already licensed spectrum is ultra vires, because the Commission's Rules creating broad license areas will create, instead of avoid, mutual exclusivities, and the auctioning of encumbered spectrum will not speed the introduction of service to the public.]

^{5/} Arch Petition, p. 7; PageNet Petition, p. 6. AirTouch would support the idea that if the incumbent failed to apply for the license, the market area license would go to auction.

^{6/} For the same reasons, AirTouch believes that groups of incumbent paging licensees who, together, meet certain coverage requirements within the relevant market also should be excluded for the competitive bidding process. In these instances, a new entrant geographic area licensee still would be unable to meet the construction benchmarks.

where the only construction obligation they will be able to satisfy is that of "substantial service," invites speculation and greenmail into the auction process.^{7/}

11. Limited eligibility in these special circumstances serves the public interest. It recognizes the substantial investment made by incumbent licensees to develop systems providing wide-area service throughout the market. It also prevents speculators and greenmailers from using the auction process to exert undue influence over incumbents. For example, under the rules adopted by the Commission, which provide a "substantial service" alternative to specific construction benchmarks, speculators and/or competitors can acquire a geographic area license and prevent the incumbent licensee from expanding its system in response to customer demand for five years, while building nothing for the first five years of the license term.^{8/} In these circumstances, the geographic area licensee may be in a position to extract substantial sums of money from the incumbent in exchange for the geographic license and the associated ability to expand the incumbent's existing system. Additional discussion of the "substantial service" alternative appears below.

12. The Commission correctly decided to exclude from the auction process channels deemed nationwide exclusive under the pre-existing rules. AirTouch

^{7/} As AirTouch pointed out in its original comments, the substantial service alternative is contrary to public policy and disrupts the auction by making the obligation of the winner uncertain.

^{8/} It is interesting that the Commission is very concerned about anti-competitive behavior in the auction between bidders, but does not seem concerned about this type of anti-competitive behavior.

supports this Commission decision wholeheartedly.^{9/} AirTouch strenuously opposes the requests for reconsideration of this decision submitted by Blooston and Advanced.^{10/} The exclusion of nationwide paging licenses from the auction process is consistent with the public interest. The exclusion of nationwide licenses from auctions acknowledges the significant investment made by nationwide licenses in these systems in reliance upon the Commission's existing exclusivity rules.^{11/} Exclusion from auction also is required by principles of due process. The licenses excluded from the competitive bidding process are those with respect to which the license holders had a reasonable expectation of nationwide exclusivity for their operations. The Commission found that the nationwide licensees requested nationwide exclusivity

^{9/} AirTouch notes that Mobile Telecommunications Technologies Corp. ("MTel") has filed a Petition for Partial Reconsideration ("MTel Petition") requesting reconsideration of the Commission's denial of nationwide exclusivity to MTel on frequency 931.4375 MHz. MTel's Petition does not seek to overturn the award of nationwide exclusivity to other licensees (including Nationwide 929.8875 LLC (the "LLC"), an entity jointly owned by AirTouch and Arch), and AirTouch understands that MTel has no objection to the retention of nationwide exclusivity by the LLC. However, MTel's Petition does question whether the Commission may have treated similarly situated parties in a different manner. While AirTouch can perceive differences in the likely expectations concerning the prospects for nationwide exclusivity between the 931 MHz and 929 MHz channels, AirTouch does not object to MTel being granted exclusivity on frequency 931.4375 MHz.

^{10/} Blooston Petition, p. 5; Advanced Petition, pp. 4-5 [each petitioner argues that the exclusion of nationwide licenses from the auction process places those licensees at a competitive advantage].

^{11/} In fact, these reasons are similar, although not identical, to those which it is argued warrant the exclusion from auctions of licenses for markets in which the incumbent already meets certain construction benchmarks. These reasons are even stronger in the case of nationwide licenses, given the amount of financial and human resources devoted to the development of these systems. The Commission has recognized that the expectations of licensees are an important public interest goal to be preserved. See Advanced Mobile Systems, MM Docket No. 87-268 (Released April 21, 1997) para. 12.

on a timely basis pursuant to the FCC's Rules and constructed compliant nationwide systems. Failure to exclude those licenses from the auction process would have impermissibly modified those licenses in violation of licensees' due process rights.

**C. The Commission Should Eliminate the
Substantial Service Alternative
to Construction Benchmark**

13. AirTouch supports the petitions filed by PageNet,^{12/} Arch, PCIA, ProNet, Inc. ("ProNet"), Metrocall and Blooston urging the Commission to eliminate the substantial service alternative to specific construction benchmark.^{13/} As petitioners pointed out, substantial service has not been adequately defined by the Commission. This vague concept will spawn volumes of litigation at the five-year mark when parties attempt to determine whether a geographic area licensee has satisfied its construction obligation and should retain its license.

14. In addition, substantial service is a concept which is not appropriately applied to the use of paging spectrum. Substantial service usually refers

^{12/} PageNet also requests that the Commission adopt a significantly expedited construction schedule (i.e., that the geographic area licensee must provide service to one third of the population of the market within one year). PageNet Petition, p. 10. AirTouch supports specific construction benchmarks, and itself proposed more stringent construction benchmarks than those proposed by the Commission. AirTouch respectfully submits that the construction benchmarks it proposed (10 percent of the population within the first year of the license term in addition to the Commission's three- and five-year construction benchmarks) strikes a reasonable balance between PageNet's proposal and the Commission's existing rules which enable a geographic licensee to construct nothing for at least the first three (and potentially five) years of its license term, thereby delaying service to the public.

^{13/} PageNet Petition, pp. 6-9 [noting concisely that substantial service is inconsistent with the Act's goals of promoting wide-area systems and efficient use of spectrum, and preventing spectrum hoarding, speculation and anti-competitive behavior]; Arch Petition, p. 6; PCIA Petition, pp. 7-10; Petition for Reconsideration and Clarification filed by ProNet ("ProNet Petition"), pp. 21-22; Metrocall Petition, pp. 16-18; Blooston Petition, p. 8.

to the development of niche geographic services within a specific area within the market or portion of the spectrum. However, paging carriers typically offer service on a wide-area basis in response to customer demand. Niche services serving a small, confined service area have not emerged or been proposed by any commenter and would not promote continued development of wide-area systems. Nor would such a carrier survive: thus, the spectrum would remain fallow. Further, paging licenses operate within a narrow band of spectrum, which would effectively preclude new entrants from using a discrete portion of the spectrum to develop niche services.

15. Moreover, the substantial service alternative permits spectrum to lie fallow, or to be only minimally used, for the first five years of the license term. Depending on how low a threshold is established for substantial service, spectrum may not be utilized efficiently and effectively for the entire license term.^{14/} This result is contrary to the Act, which authorizes the Commission to utilize competitive bidding in order to speed deployment of service to the public and promote the efficient use of the spectrum.^{15/} Finally, the substantial service alternative encourages speculation and greenmail in the auction process. Auction participants without a bona fide interest in serving a market could participate in an auction and hold a license for five years without having any obligation to construct facilities. Meanwhile the geographic license could preclude incumbents from making system

^{14/} In the WCS service, the Commission provided specific examples of what construction levels would satisfy the substantial service test. See, Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, FCC 97-50, released February 19, 1997, para. 113. Although the examples assist in defining substantial service with respect to WCS, no such guidance has been provided with respect to paging services, and the definition is still completely unclear.

^{15/} 47 U.S.C. § 309(j)(3).

modifications in response to consumer demand.^{16/} The geographic area licensee would then be in a prime position to extract a premium from incumbents for the market area license (and resultant ability to expand existing service areas). A substantial service standard also fosters the activities of application mills who can entice unwary investors with the promise of an FCC license and no associated construction requirements for five years.^{17/}

D. The Commission Should Disclose Bidder Identities

16. PageNet, PCIA and Metrocall have urged the Commission to reconsider its decision to withhold bidder identity information during the auction.^{18/} Petitioners correctly point out that the Commission provided no reason in the Order for its departure from past Commission practices and findings that disclosure of such information is in the public interest. AirTouch also agrees with petitioners' observation that the lack of bidder identity information will place incumbents at a substantial disadvantage in the auction process and will preclude auction participants from accurately evaluating the value of licenses on which they are bidding.

17. Incumbent licensees are unfairly prejudiced by the denial of bidder identity information. Other auction participants will be able to determine with

^{16/} AirTouch has repeatedly pointed out to the Commission that this can lead to competitive abuses. If a competitor can buy the spectrum and deny its competitors the ability to meet market challenges, it might not only pay a premium to do so, but would also subvert the public interest.

^{17/} The Commission, like AirTouch, is concerned about the activities of these mills. The Commission should take its own lead and not adopt any rules which might foster these abuses.

^{18/} PageNet Petition, pp. 12-14; PCIA Petition, pp. 13-15; Metrocall Petition, pp. 18-19.

reasonable certainty the identity of incumbents bidding within their area of existing operations by matching bidding numbers with areas of known licensed interest. Using that information, the non-incumbent will be able to evaluate rationally the value the incumbent may associate with the particular license. Incumbents, on the other hand, will be unable to determine whether an unidentified newcomer to the market is a carrier with a bona fide interest in the license, a speculator or a competitor seeking only to bid up the price of the incumbent's license to place it at a competitive disadvantage. Consequently, the incumbent is unable to evaluate the value assigned to the license by the other bidder, and is unable to proceed in the auction in a rational manner.^{19/}

**E. Certain Exceptions to the Anti-Collusion
Rules are Necessary**

18. PageNet, PCIA, ProNet and Blooston request that the Commission adopt limited safe-harbors to the anti-collusion rules so that auction participants may commence or continue discussions pertaining to acquisitions, mergers, and inter-carrier agreements which are unrelated to the auction bidding strategies of the subject companies.^{20/} AirTouch agrees. The paging industry has experienced, and is continuing to experience, a period of consolidation and the ability to pursue such transactions has significant implications on the competitive viability of

^{19/} Further, as the Commission has observed previously, this type of information allows bidders to evaluate the value of spectrum being auctioned. Because encumbered paging licenses have never been auctioned, incumbents will have great difficulty setting their value without seeing the value placed by other incumbent bidders on their own spectrum.

^{20/} PageNet Petition, p. 15; PCIA Petition, pp. 23-24; ProNet Petition, pp. 25-26; Blooston Petition, pp.18-19.

paging companies. Also, paging companies are parties to inter-carrier agreements which enable them to provide service to their customers over a larger area, to resolve interference disputes with co-channel licensees, and to provide seamless service to subscribers. Permitting company officials to certify to the Commission that they have complied with the anti-competitive rules, based upon underlying certificates of company employees and representatives, enables licensees to continue these endeavors while still ensuring that no collusive activity occurs.

19. In fact, a more thorough reconsideration of the anti-collusion rule is called for. Those rules appear to be motivated primarily by a desire to increase auction revenues by eliminating cooperative bidding. However, the desire to raise revenues is not supposed to control the auction process.^{21/} Moreover, bans on communications inhibit settlements and engineering solutions to resolve conflicts between applications which subverts the statutory scheme set forth by Congress.^{22/}

F. The Commission Should Replace MTAs with MEAs

20. AirTouch supports PCIA's and Metrocall's requests to replace MTAs with MEAs as the appropriate geographic area for the licensing of non-nationwide 929 MHz and 931 MHz systems.^{23/} Both petitioners persuasively argue that MEAs more accurately reflect the wide-area systems which have been developed in the non-nationwide 929 MHz and 931 MHz frequency bands. PCIA also points out that MEAs are more logical in this instance than are MTAs, because the lower band

^{21/} 47 U.S.C. § 309(j)(7)(A).

^{22/} 47 U.S.C. § 309(j)(6)(E). Indeed, the effect on settlements and engineering solutions may place the entire auction process in question.

^{23/} PCIA Petition, pp. 19-21; Metrocall Petition, p. 24.

paging licenses will be auctioned on an EA basis, resulting in a true building block approach to geographic area licensing. With the adoption of MEAs, lower band operators can aggregate their service areas into an MEA, making that system more efficient, more valuable, and competitive with 929 MHz and 931 MHz MEA licenses. And, the adoption of MEAs will relieve licensees of the burden of remitting royalty payments to Rand McNally for the use of the license area term.

G. The Commission Should Have Rejected Bidding Credits and Installment Payments Altogether

21. PageNet, Arch and PCIA each have requested that the Commission reconsider the application of bidding credits and installment payments to the paging auctions.^{24/} AirTouch agrees. First, in light of the existence of many small businesses within the paging industry already, there is no evidence of a lack of capital to small businesses or that small businesses have experienced barriers to entry into the paging industry.

22. Second, experience with bidding credits indicates that they may distort the auction process by allowing some bidders to bid a reduced amount.^{25/} Moreover, any benefits to the recipient of bidding credits and installment payments places other competitors at a cost disadvantage. Providing some auction participants, but not others, with a means of distorting the amount bid produces an uneven playing field during the auction process. Finally, the Commission's decisions to auction lower band frequencies in smaller market segments (i.e., EAs), and to permit flexible

^{24/} PageNet Petition, p. 16; Arch Petition, pp. 5-6; PCIA Petition, p. 21-23.

^{25/} In the context of new spectrum, bidding credits may make sense. However, in the context of encumbered spectrum, bidding credits may favor new applicants over existing licensees who have a long history of serving the public.

partitioning of market areas, also serve to foster participation in the paging industry by small and woman/minority-owned businesses.

**H. AirTouch Supports the Requests for Clarification
of the Commission's Rules Respecting Incumbent
Systems and the Ability of Incumbents
to Modify Their Facilities**

23. Several parties requested clarification of specific provisions of the Commission's Rules relating to protection, operation and modification of incumbent paging systems. AirTouch supports several of these requests.^{26/}

24. AirTouch supports the petitions filed by Metrocall, Nationwide Paging, Inc. ("NPI"), ProNet and Blooston with respect to the replacement of site-specific licenses with system licenses.^{27/} Those petitioners explain that, although the Order permits incumbents to secure system licenses for "contiguous" sites, the Order does not define "contiguous." AirTouch agrees. The term contiguous should not be construed so narrowly as to create holes, gaps, or creases within the incumbent's system license. Such a narrow construction would disserve the public interest because it would effectively preclude service from being introduced in those areas by anyone (as a result of a geographic area licensee's obligation to protect co-channel incumbent operations). Moreover, incumbents should be permitted to provide service to areas in

^{26/} As the requests which AirTouch supports are numerous, AirTouch will not repeat here the detail provided by each requesting petitioner.

^{27/} Metrocall Petition, pp. 22-23; Petition for Partial Reconsideration and Clarification filed by NPI ("NPI Petition"), p. 11; ProNet Petition, pp. 8 and 17; Blooston Petition, p. 8.

which the geographic area could not provide service as a result of the interference protection requirements.^{28/}

25. AirTouch also agrees with Western Paging I Corporation, Western Paging II Corporation (collectively "Western"), and Schuylkill Mobile Fone. Inc. ("SMF") that further clarification is required on what incumbent facilities are protected.^{29/} Incumbent systems protected from the geographic area licensee must include all facilities which are either already timely constructed and operational, and those facilities which are constructed and placed into operation pursuant to construction permits granted by the Commission based upon applications filed with the Commission prior to the auction.

26. AirTouch agrees with ProNet that incumbent licensees should be permitted to replace sites, including perimeter sites, with other facilities, so long as the modified operations do not increase the incumbent's composite interference contour. The incumbent should not be deemed to have surrendered territory to the geographic area licensee,^{30/} but instead should be provided with the flexibility to

^{28/} Blooston Petition, p. 8.

^{29/} Petition for Reconsideration or Clarification filed by Western ("Western Petition"), pp. 3-4; Petition for Reconsideration or Clarification filed by SMF ("SMF Petition"), pp. 3-4; See also, ProNet Petition, pp. 3-6 [protection for all construction permits, regardless of when granted]. These petitioners point out that the language in the Order could be interpreted to mean only those construction permits granted by May 11, 1997 would be protected.

^{30/} Pronet Petition, p. 8.

accomplish all necessary system modifications so long as its composite interference contour is not increased.^{31/}

27. AirTouch supports the petitions arguing that incumbents should be permitted to determine whether modifications are permissible (i.e., do not expand their existing composite interference contour) by using real world engineering data which more accurately reflects the areas in which service is being provided.^{32/} While the tables of fixed service area and interference contour contained in the Commission's Rules should be utilized to determine the composite interference contours of incumbents' systems,^{33/} incumbents need flexibility to provide service in areas in which, due to real world propagation effects, adequate service is not currently being provided (notwithstanding the theoretical coverage in such areas according to fixed radius contours).

28. AirTouch supports the requests of Metrocall and NPI for clarification regarding the elimination of the 1,000 watt limitation on the effective radiated power of facilities operating in 929 MHz non-nationwide systems.^{34/} The Commission should clarify that such changes will be deemed permissible, including at

^{31/} To that same end, if any incumbent is forced to move to a different perimeter site, it should not lose the area previously served.

^{32/} Arch Petition, pp. 2-5 [supporting adoption of formula proposed by Comp Comm, Inc. in this proceeding]; ProNet Petition, pp. 9-14; Blooston Petition, pp. 9-10 [proposing use of 21 dBuV/m formula proposed in this proceeding].

^{33/} This is necessary because much of the data needed to derive the incumbent's contours if a formula was used is unavailable and its collection would be burdensome and could lead to gaming by incumbent licensees (e.g., claiming antennas are higher or more power put out than actually exists).

^{34/} Metrocall Petition, p. 23; NPI Petition, p. 11.

perimeter sites, and should clarify whether licensees must secure coordination from PCIA prior to effecting such facility modifications.

**I. The Commission Should Revise its Rules
Relating to Interference Disputes**

29. AirTouch agrees that the Commission's Rules regarding the avoidance/resolution of interference disputes between adjacent geographic area licensees are too vague and should be revised.^{35/} Both ProNet and Blooston correctly point out that the obligation of adjacent geographic area licensees to negotiate "in good faith" to resolve interference disputes (rather than requiring mileage-based co-channel separations or dBu power levels at the border) is vague and invites debate. Blooston also points out that, while good faith negotiations may be appropriate in the cellular context where licensees have several frequency groups from which to choose in order to resolve interference disputes, geographic area paging licensees will operate on only one frequency pursuant to their authorization. Thus, they will not have the same flexibility or incentives as cellular licensees to modify their operations to resolve disputes.^{36/} AirTouch agrees that more definitive standards are necessary.

30. AirTouch also supports the petitions requesting additional mechanisms to avoid potential interference to incumbent operations by geographic area licensees. Specifically, AirTouch supports the proposal set forth by Blooston which would require geographic area licensees to notify incumbents of proposed

^{35/} ProNet Petition, p. 23; Blooston Petition, p. 17.

^{36/} Unlike cellular, the same paging channel may be held by competitors, so they do not have the same incentives to cooperate in the same market.

operations within 70 miles of the incumbent's facilities, and to conduct field tests to confirm that interference to the incumbent's operations will not be caused.^{37/}

J. The Commission Should Clarify that Geographic Area Licensees Who Fail to Satisfy the Construction Obligations Will Lose Authorizations Relating to All Facilities Constructed Subsequent to the Grant of the Geographic Area License

31. AirTouch supports PCIA's request that the Commission clarify that geographic area licensees who fail to meet the construction requirements in the Commission's Rules will lose authorizations relating to all facilities authorized and constructed subsequent to the grant of the geographic area license.^{38/} This "death penalty" will prevent speculators from cherry-picking prime areas within the market, leaving other areas unconstructed, and being permitted to retain authorizations for those prime facilities notwithstanding their lack of provision of service to the public in all other areas of the market.

K. The Commission Should Reconsider the Effect of its Interference Protection Rules on Non-Exclusive Private Carrier Paging Facilities

32. AirTouch supports the petitions of PageNet, Arch, ProNet and PCIA requesting that the Commission reconsider what appears to be an inadvertent elevation of non-exclusive licensees to exclusive status merely by virtue of the Commission's all-inclusive interference protection rules.^{39/} AirTouch agrees with petitioners that the grant of full interference protection to these licensees, who have

^{37/} Blooston Petition, p. 16.

^{38/} PCIA Petition, pp. 24-25.

^{39/} PageNet Petition, pp. 17-19; Arch Petition, p. 8; ProNet Petition, pp. 23-24; PCIA Petition, pp. 16-17.

failed to obtain exclusivity for their private carrier paging systems even after an opportunity was provided, either by choice or otherwise, is an unjustified result. The Commission set specific construction standards for licensees in the private carrier paging context to obtain exclusivity (and associated interference protection) for their systems. The grant of such exclusivity was based upon a demonstration, through satisfaction of the construction obligation, that the licensee had made a substantial investment in the development of its system. These same demonstrations have not been made by licensees who have not secured exclusivity for their systems. In addition, as pointed out by PageNet, the elevation of these licensees to exclusive status constitutes a modification of co-channel nationwide exclusive licenses and a taking of certain of the rights previously enjoyed by those nationwide licensees. This degradation of nationwide licensees' rights also is not permissible.

L. The Commission Should Limit the Further Sharing of Shared Channels

33. AirTouch generally^{40/} supports the request of Preferred Networks, Inc. ("PNI") and Teletouch Licenses, Inc. ("Teletouch") to limit the further sharing of all shared frequencies.^{41/} AirTouch has pointed out that continued

^{40/} Those petitioners request that applicants be required to demonstrate that any proposed facilities are within 75 miles of constructed, operational facilities. While AirTouch believes that applicants should be required to demonstrate that the proposed facility is an extension of an existing system to which the proposed facility is operationally related, AirTouch does not believe that a 75 mile limitation is necessary.

^{41/} Petition for Reconsideration filed by PNI ("PNI Petition"); Petition for Reconsideration filed by Teletouch ("Teletouch Petition"). TSR Paging, Inc. ("TSR") supports limitations on the number of entities sharing 929 MHz shared frequencies only. Petition for Reconsideration filed by TSR ("TSR Petition"). AirTouch agrees with TSR that shared channels will be at risk of significant congestion by applicants
(continued...)

sharing of shared spectrum hinders the provision of high quality service to subscribers, devalues the spectrum used by incumbent operators, and provides another vehicle pursuant to which application mills can practice fraud on unsuspecting consumers.^{42/}

M. AirTouch Opposes Requests for Retention of Site-by-Site Licensing for BETRS or Mandatory Partitioning of Rural Areas

34. AirTouch strenuously opposes the petitions filed by Nuclaturita Telephone Company ("NNTC"), Century Telephone Enterprises, Inc. ("CTE"), Lincoln County Telephone System, Inc. ("LCTS"), Mid-Rivers Telephone Cooperative, Inc. ("MRTC"), and Big Bend Telephone Company, Inc. ("BBTC") urging the Commission to retain site-by-site licensing for BETRS licenses or, in the alternative, to require the partitioning of rural areas, presumably at the expense of the geographic area paging licensee.^{43/} These proposals are contrary to the law and to the public interest. Adoption of the proposals would prevent potential auction participants from associating a value to the license to be purchased, and would cause uncertainty in the paging auctions, since geographic area license winners would be

^{41/}(...continued)

who are unsuccessful at auction and require additional spectrum on which to provide service. AirTouch does not agree with TSR, however, that such concerns are limited to the 929 MHz band. Certainly, all shared channels, for which eligibility is not limited to incumbents, are at risk of becoming so congested that high quality service is difficult to provide.

^{42/} Comments on Further Notice of Proposed Rulemaking in WT Docket No. 96-18 filed by AirTouch Paging and PowerPage, Inc. on April 17, 1997; Reply Comments on Further Notice of Proposed Rulemaking filed by AirTouch Paging and PowerPage, Inc. on May 1, 1997.

^{43/} Petitions for Reconsideration filed by NNTC, CTE, LCTS, MRTC and BBTC.

unable to protect their investments from additional incumbent operations by BETRS licensees. Also, the unfettered ability of BETRS licensees to continue to expand without regard to the existing or planned operations of a geographic area licensee would interfere with the paging licensee's ability to achieve wide-area service within its market area. Finally, the proposal to require partitioning, at no expense to the BETRS licensee, presumably would place this financial burden upon the paging licensee. The petitioners, however, fail to provide adequate reasons supporting their proposition that paging licensees fund BETRS licensee expansion.

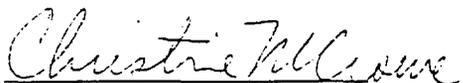
III. Conclusion

WHEREFORE, the foregoing premises having been duly considered, AirTouch respectfully requests that the Commission reconsider and/or clarify its Rules consistent with these comments.

Respectfully submitted,

AIRTOUCH PAGING

Mark A. Stachiw
Vice President, Senior Counsel
and Secretary
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Suite 800
Dallas, TX 75251

By: 
Carl W. Northrop
Christine M. Crowe
PAUL, HASTINGS, JANOFSKY
& WALKER LLP
1299 Penn. Avenue, N.W.
Tenth Floor
Washington, D.C. 20004

Its Attorneys

May 9, 1997

CERTIFICATE OF SERVICE

I, Christine M. Crowe, of Paul, Hastings, Janofsky & Walker LLP, hereby certify that a copy of the foregoing Comments of AirTouch Paging on Petitions for Reconsideration, was sent via first class U.S. mail, postage prepaid, or hand-delivered on this 9th day of May 1997, to the following:

- * Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554
- * Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554
- * Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554
- * Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554
- * Michele Farquhar, Chief
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554
- * Rosalind K. Allen, Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554
- * David Furth, Esquire
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Veronica M. Ahern, Esquire
J. Breck Blalock, Esquire
Nixon, Hargrave, Devans & Doyle
One Thomas Circle
Washington, D.C. 20005
Counsel for Consolidated Communications Mobile Services, Inc.

Richard S. Becker & Associates
Eighth Floor
1915 Eye Street, N.W.
Washington, D.C. 20006
Counsel for TSR Paging

Caressa D. Bennet, Esquire
Michael R. Bennet, Esquire
Bennet & Bennet, PLLC
1831 Ontario Place, N.W., Suite 200
Washington, D.C. 20009
Counsel for Border to Border Communications, Inc.

Jerome K. Blask, Esquire.
Gurman, Blask & Freedman, Chartered
1400 Sixteenth Street, N.W., Suite 500
Washington, D.C. 20006
Counsel to Pronet, Inc.

Amelia L. Brown, Esquire
Henry A. Solomon, Esquire
Haley, Bader & Potts, P.L.C.
4350 North Fairfax Drive, Suite 900
Arlington, VA 22203-1633
Counsel for Pass Word, Inc. and its affiliate Coeur d'Alene Answering, and
Western Radio Services Co.

A. Thomas Carroccio, Esquire
Bell, Boyd & Lloyd
Suite 1200
1615 L Street, N.W.
Washington, D.C. 20036
Counsel for A+ Communications

William Ciuffo
John Sieber
Comp Comm, Inc.
One Echelon Plaza, Suite 100
227 Laurel Road
Voorhees, NJ 08043-2331

David Cosson, Esquire
L. Marie Guillory, Esquire
National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

John L. Crump
d/b/a ACE Communications
11403 Waples Mill Road
Post Office Box 3070
Oakton, VA 22124

Joe D. Edge, Esquire
Tina M. Pidgeon, Esquire
Drinker Biddle & Reath
901 15th Street, N.W.
Washington, D.C. 20005
Counsel for Puerto Rico Telephone Company

William L. Fishman, Esquire
Sullivan & Worcester LLP
Suite 1000
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Diamond Page Partnerships, AmericaOne and Affiliated Entities

William J. Franklin, Chartered
1200 G Street, N.W., Suite 800
Washington, D.C. 20005-3814
Counsel for Caraway Communications

Margaret E. Garber, Esquire
Pacific Telesis Group-Washington
1275 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20004-2496
Counsel for Pacific Bell

Louis Gurman, Esquire
Andrea S. Miano, Esquire
Gurman, Blask & Freedman, Chartered
1400 Sixteenth Street, N.W., Suite 500
Washington, D.C. 20036
Counsel for Western Paging I Corporation, Western Paging II Corporation and
Schuylkill Mobile Fone, Inc.

Thomas Gutierrez, Esquire
Lukas, McGowan, Nace & Gutierrez, Chartered
Suite 1200
1111 Nineteenth Street, N.W.
Washington, D.C. 20036
Counsel for Preferred Networks, John D. Word, Pioneer Telephone, Mobile
Telecomms. Techn., Libert Cellular, and PageMart

Kenneth E. Hardman, Esquire
Moir & Hardman
2000 L Street, N.W., Suite 512
Washington, D.C. 20036-4907
Counsel for United Paging Resources, Air Star Paging, Inc., Advance Paging,
Inc.

David L. Hill, Esquire
Audrey P. Rasmussen, Esquire
O'Connor & Hannan, L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006-3483
Counsel for PageMart II

Heather Hipsley, Esquire
Federal Trade Commission
Bureau of Consumer Protection
6th Street & Pennsylvania Avenue, Room 200
Washington, D.C. 20580

Katherine M. Holden, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for PCIA

Lloyd D. Huffman
Huffman Communicatioins
2929 W. 7th Avenue, Box 1753
Corsicana, TX 75151-1753

David C. Jatlow, Esquire
Young & Jatlow
2300 N Street, N.W., Suite 600
Washington, D.C. 20037
Counsel for AT&T Wireless Services

Frederick M. Joyce, Esquire
Christine McLaughlin, Esquire
Joyce & Jacobs
14th Floor, PH-2
1019 19th Street, N.W.
Washington, D.C. 20036
Counsel for Metrocall, Morris Communications, Inc., Nationwide Paging, Inc.

David J. Kaufman, Esquire
Scott C. Cinnamon, Esquire
Brown Nietert & Kaufman, Chtd.
1920 N Street, N.W., Suite 660
Washington, D.C. 20036
Counsel for PSWF Corporation

Robert J. Keller, Esquire
Law Office of Robert J. Keller P.C.
2000 L Street, N.W., Suite 200
Washington, D.C. 20036
Counsel for Western Maryland Wireless Co.

Brian G. Kiernan, Vice President
InterDigital Communications Corp.
781 Third Avenue
King of Prussia, PA 19406

Rhonda Lien, Esquire
Commercial Wireless Division
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Ellen S. Mandell, Esquire
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
Counsel for Priority Communications, Inc.

Lucille M. Mates, Esquire
140 New Montgomery Street, Room 1526
San Francisco, CA 94105
Counsel for Pacific Bell

Mary McDermott
U.S. Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Lawrence M. Miller, Esquire
Schwartz, Woods & Miller
1350 Connecticut Avenue, N.W., Suite 300
Washington, D.C. 20036
Counsel for Datafon II, Inc. and Zipcall Long Distance

Harold Mordkofsky, Esquire
John Prendergast, Esquire
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Washington, D.C. 20037
On behalf of Blooston, Mordkofsky, Jackson & Dickens and as counsel for the
Paging Licensees, Teletouch Licenses, Inc., The Paging Coalition, National
Telephone Cooperative, Radiofone, Nucla-Naturita, Big Bend Telephone
Company, Mid-Rivers Telephone Cooperative, Inc., Lincoln County
Telephone System, Inc., and Century Telephone Enterprises, Inc.

Dennis L. Myers, Esquire
Vice President/General Counsel
Ameritech Mobile Services, Inc.
Location 3H78
2000 West Ameritech Center Drive
Hoffman Estates, IL 60195

John D. Pellegrin, Esquire
Robert E. Kelly, Esquire
1140 Connecticut Avenue, N.W., Suite 606
Washington, D.C. 20036
On behalf of Robert Kester, et al.

Laura H. Phillips, Esquire
Christina H. Burrow, Esquire
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, N.W., Suite 800
Washington, D.C. 20036-6802
Counsel for Sunbelt Transmission Corp. and Snider Comms. Corp.

Richard O. Pullen, Esquire
Vice President and General Counsel
Communication Innovations Corporation
145 Huguenot Street, Suite 401
New Rochelle, NY 10801

James F. Rogers, Esquire
Kevin C. Boyle, Esquire
Latham & Watkins
Suite 1300
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for PageAmerica Group, Inc. and Mobilemedia Communications, Inc.

Robert R. Rule
Rule Radiophone Service, Inc. and
Robert R. Rule d/b/a/ Rule Communications
2232 Dell Range Boulevard
Cheyenne, WY 82009

Mika Savir, Esquire
Commercial Wireless Division
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Judith St. Ledger-Roty, Esquire
Paul G. Madison, Esquire
Kelley, Drye & Warren
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Counsel for Paging Network, Inc.

Robert H. Schwaninger, Jr., Esquire
Brown and Schwaninger
1835 K Street, N.W., Suite 650
Washington, D.C. 20006
Counsel for Small Business in Telecommunications

Larry Shaefer, President
SMR Systems, Inc.
4212 Mt. Vernon
Houston, TX 77006-5416

Dallas Vanderhoof
General Manager
TeleBEEPER of New Mexico, Inc.
P.O. Box 25161
Albuquerque, NM 87125

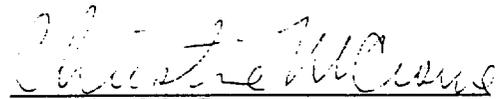
Timothy E. Welch, Esquire
Hill & Welch
Suite 113
1330 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Counsel for Mashell Tel, B&B, Wilkinson, PAI, Benkelman/Wauneta,
Supercom, Inc., Chequamegon, Baldwin/Amery, etc.

George Y. Wheeler, Esquire
Kotten & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for American Paging, Inc.

Kathryn A. Zachem, Esquire
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006
Counsel for Arch Communications Group, Inc.

Lisa M. Zaina, Esquire
OPASTCO
21 Dupont Circle, N.W., Suite 700
Washington, D.C. 20036

* By hand delivery


Christine M. Crowe