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July 12, 2000

Via Hand Delivery

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th St., S.W., Room TW-B204  
Washington, D.C. 20554

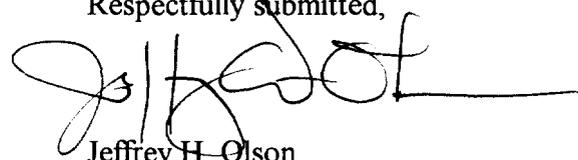
Re: Ex Parte File No. WT Docket No. 97-82

Dear Ms. Salas:

On July 11, 2000, John DeFeo, President and CEO of U.S. AirWaves, Inc.; John Scully, Managing Director of Incepta, LLC; and the undersigned of Paul, Weiss, Rifkind, Wharton & Garrison, counsel to U.S. AirWaves and Incepta, LLC, met in person with Adam Krinsky, Esq., Legal Advisor to Commissioner Gloria Tristani, and Katherine Arnold, also of Commissioner Tristani's staff, for the purpose of discussing issues relating to the above-referenced matters. At this meeting, the attached was discussed.

If there are any questions regarding this matter, please contact the undersigned.

Respectfully submitted,



Jeffrey H. Olson  
Attorney for U.S. AirWaves, Inc.  
and Incepta, LLC

Attachment

cc: Adam Krinsky, Esq.  
Katherine Arnold

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List A B C D E

## ***U.S. AirWaves' Positions on the Commission's Further Notice of Proposed Rulemaking, FCC 00-197, WT Docket 97-82***

- **At least 20 MHz of C-block spectrum must be set-aside for entrepreneurs in both small and large markets to provide meaningful economic opportunities for small businesses, as required by Section 309(j) of the Communications Act.**
  - At least 20 MHz of spectrum is required for a new entrant to provide Third Generation ("3G") wireless services.
  - Small businesses that lack sufficient spectrum to provide 3G-type services will not be competitive in markets for providing wireless services.
  - Capital markets will be wary of providing financing to small businesses seeking to compete in auctions unless small businesses have realistic opportunities for obtaining at least 20 MHz of spectrum in both small and large markets.
- **"Open" bidding would very substantially reduce economic opportunities for small businesses, and thus would fundamentally undermine the objectives of Section 309(j).**
  - The Commission's spectrum auction data demonstrates that "open" auctions, even with bidding credits for very small businesses as high as 35%, could nonetheless result in 60% fewer small business licensees as compared with "closed" auctions.
- **BTA tiering is arbitrary, irrational and would prevent entrepreneurs from acquiring 20 MHz of C-block spectrum in large markets.**
  - There is no basis -- regulatory or economic -- for tiering.
  - Small businesses are capable of competing to provide 3G-type services in large markets. Indeed, the business case for deploying services in large markets is even stronger than for small markets.
  - Tiering would consign new entrants to small markets, where adequate investment and financing will be more difficult to obtain, thereby increasing the likelihood of failure of such efforts.
- **Bidding credits must be substantially increased if "open" bidding is permitted to ensure that entrepreneurs will be able to compete for spectrum.**
  - Under the Commission's existing rules, large incumbent carriers must pay only a 25% premium to outbid very small businesses. This amounts to little more than a "nuisance fee" to the many well-financed, cash-rich companies that seek broadband PCS licenses.
- **The CMRS spectrum cap should be retained to prevent excessive concentration of ownership and to promote competitive markets as mandated by Section 309(j).**