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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In The Matter of)
)
ECHO GROUP L.P.)
)
Request for Pioneer Preference)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GEN Docket 92-100
PP-36

**FORMAL OPPOSITION AND REPLY COMMENTS OF MOBILE
TELECOMMUNICATION TECHNOLOGIES CORPORATION**

Mobile Telecommunication Technologies Corporation ("Mtel"), by its attorneys, respectfully submits these comments in opposition to Echo Group L.P.'s ("Echo") Request for a Pioneer Preference for a Mobile Data Radio Service ("MDRS").¹ As discussed below, Echo's request does not meet the Commission's legal requirements for award of a pioneer preference.²

I. INTRODUCTION AND STATEMENT OF INTEREST

Mtel has long been an innovative and leading provider of messaging services. Through its SkyTel™ and Mtel International subsidiaries, Mtel provides nationwide paging

¹ *Echo Group L.P. Request for Pioneer's Preference*, ET Docket No. 92-100, PP-36 (filed July 30, 1991) [*"Echo Request"*]. At the same time, Echo filed a related Petition for Rulemaking, requesting the Commission to promulgate rules to establish three local and three nationwide licenses for MDRS. See *Petitions for Rulemaking Filed, Public Notice*, Rpt No. 1858 (August 26, 1991); *Echo Group, L.P. Petition for Rulemaking to Amend Section 2.106 of the Commission's Rules to Create a New Mobile Data Radio Service ("MDRS") in the 930-931 MHz Band*, ET Docket No. 92-100, RM-7782 [*"Echo Petition"*].

² By seeking dismissal of Echo's Pioneer Preference Request, Mtel does not take a position on whether the proposed service is in the public interest. It simply contends that Echo's request does not merit the extraordinary relief represented by grant of a pioneer's preference. In addition, by these comments, Mtel addresses only Echo's failure to propose a "substantial enhancement" over existing communications services, and does not address issues associated with the technical feasibility demonstration Echo tendered on June 1, 1992. Mtel reserves its right to address MDRS technical issues in a subsequent filing on June 19, 1992.

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service to more than 140,000 subscribers across the United States and overseas.³ In addition, Mtel has filed a Petition for Rulemaking and Request for Pioneer's Preference for a new Nationwide Wireless Network ("NWN") service in the 930-931 MHz band. NWN will use innovative enhanced modulation techniques and an innovative advanced dynamic frequency management scheme to provide highly efficient, two-way messaging capabilities for laptop, palmtop, and other portable computing devices.

Echo has requested an allocation of six 50 kHz channels in the 930-931 MHz band to provide a nationwide MDRS. According to Echo, "MDRS will enable small, mobile computers to communicate with larger home/business computers as well as other mobile computers through base stations that can be connected to the public switched telephone network ('PSTN') and/or to commercial packet switched networks."⁴ In addition to verifying inventories and effecting repairs, Echo suggests that MDRS would "enhance emergency radio location or tracking services," and provide services such as "burgler alarm monitoring, personal computer data transmission, credit card verification, point-of-sale information monitoring, delivery service monitoring and facility monitoring."⁵ Echo further notes that its proposal would achieve cost savings and spectrum efficiency as the new digital Time Division Multiple Access ("TDMA") technology would allow the system to utilize a

³ Mtel's recent accomplishments include the first 2400 bps simulcast messaging technology and providing nationwide one-way wireless electronic mailbox ("e-mail") service to AT&T Safari™ and HP95LX computers through the SkyTel™ network.

⁴ *Echo Request* at 9-10.

⁵ *Id.* at 10-11.

greater percentage of the allocated spectrum within each channel to transmit, rather than to manage, information.⁶

II. ECHO'S PIONEER PREFERENCE REQUEST FAILS TO PROPOSE A SUBSTANTIAL ENHANCEMENT OF A COMMUNICATIONS SERVICE

Mtel respectfully submits that Echo's Pioneer Preference Request is insufficient under Section 1.402(a) of the Commission's Rules.⁷ These rules were adopted to provide preferential treatment to parties demonstrating that they have "developed an innovative proposal that leads to the establishment of a communications service not currently provided or a substantial enhancement to an existing service."⁸ The Commission has emphasized that the determination of whether to grant a preference is discretionary,⁹ and that preferences will not be routinely granted.¹⁰

As discussed below, Echo appears to have developed MDRS in anticipation of receiving a license in the 220-222 MHz band and the service appears to fall squarely within the authorized uses of that band. Precluded from applying for a Pioneer Preference at 220 MHz, Echo now seeks to transplant its existing technology permitted in a lower band today to the Advanced Messaging Service frequencies. This second bite at the apple should not be permitted.

⁶ *Id.* at 3, 11.

⁷ 47 C.F.R. §1.402(a) (1991).

⁸ *Establishment of Procedures To Provide a Preference to Applicants Proposing an Allocation for New Services*, 7 FCC Rcd 1808 (1992) ["*Preference Recon Order*"].

⁹ 47 C.F.R. § 1.402(a) (1991).

¹⁰ *Preference Recon Order*, 7 FCC Rcd at 1808.

Echo's MDRS filing proposes a narrowband packet data service utilizing ten 5 kHz channels arranged in five channel pairs. In the recent 220-222 MHz proceeding, the Commission authorized commercial and noncommercial use of the 220-222 MHz band, channelizing the band into paired 5 kHz channels.¹¹ These channel pairs have been made available for assignment in 10 pair nationwide blocks, 5 pair nationwide blocks, and as local channels for trunked and non-trunked use. Accordingly, Echo would appear to have designed and engineered its service to be able to offer MDRS on one of the existing nationwide commercial or noncommercial 5 or 10 channel pair blocks allocated in the 220-222 MHz band. In fact, Echo has noted no rule impediments that would prevent using these 5 kHz narrowband channels for MDRS, and none appear to exist.¹²

The Commission has already determined that Echo's technology does not warrant grant of a pioneer's preference at 220-222 MHz service. The Commission has held that pioneer's preferences will not be awarded to applicants in that band, because such proposals were not filed "in anticipation of receiving a pioneer's preference." The Commission, in the *Preference Recon Order* stated that the developmental work undertaken by 220-222 MHz applicants was at a stage where a pioneer's preference is "obviously unnecessary to encourage the new service or technology or to help with financing."¹³ The Commission's

¹¹ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Service*, 6 FCC Rcd 2356 (1991).

¹² Echo does argue that providing its MDRS service using the 930-931 MHz frequencies would permit different applications due to the "greater in-building penetration" of the 930-931 MHz band. *Echo Petition* at 10; *Echo Request* at 13. Nonetheless, this "enhancement" offered over the 220-222 MHz band version of MDRS is solely related to the physical characteristics of the higher band and is in no way related to any innovation on the part of Echo. In any event, greater building penetration does not appear to be the degree of enhancement necessary to warrant grant of a dispositive licensing preference.

¹³ *Preference Recon Order*, 7 FCC Rcd at 1811-1812.

goal is "not to reward past innovators, but to encourage future technological innovation and new services."¹⁴

Echo, for its part, filed an application for a nationwide MDRS license in the 220-222 MHz band well before its pioneer's preference request in the 930-931 MHz band.¹⁵

Because Echo seems to have merely adapted technology for its 220-222 MHz proposal to operate in the 930-931 MHz band, the developmental activity undertaken by Echo was in anticipation of receiving a license in the 220-222 MHz band, and not in order to develop a new service at 930-931 MHz. Thus, grant of Echo's request would not serve the Commissions stated objective of "encourag[ing] present and future innovators to submit proposals . . . that otherwise would not have been submitted."¹⁶

¹⁴ *Id.* at 1812.

¹⁵ *Echo Petition* at 10.

¹⁶ *Preference Recon Order*, 7 FCC Rcd at 1811.

III. CONCLUSION

As detailed above, Echo's request does not constitute an enhancement over existing services within the meaning of the Pioneer Preference policies. Accordingly, Echo's Pioneer Preference request should be dismissed.

Respectfully submitted,

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Dated: June 16, 1992

CERTIFICATE OF SERVICE

I, Kim Riddick, hereby affirm that on this 16th day of June, 1992, I have caused copies of the foregoing "Reply Comments" to be delivered, First Class Mail, postage pre-paid, to the following, except where service by hand is indicated:

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