

BRYAN CAVE

ORIGINAL

ST. LOUIS, MISSOURI
LOS ANGELES, CALIFORNIA
NEW YORK, NEW YORK
PHOENIX, ARIZONA
KANSAS CITY, MISSOURI

700 THIRTEENTH STREET, N.W.
WASHINGTON, D.C. 20005-3960
(202) 508-6000
FACSIMILE: (202) 508-6200

**ORIGINAL
FILE**

IRVINE, CALIFORNIA
SANTA MONICA, CALIFORNIA
OVERLAND PARK, KANSAS
LONDON, ENGLAND
RIYADH, SAUDI ARABIA
FRANKFURT AM MAIN, GERMANY

CARL W. NORTHROP

(202) 508-6152

August 26, 1992

EX PARTE OR LATE FILED

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Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

AUG 26 1992

Federal Communications Commission
Office of the Secretary

Re: Ex Parte Presentation
CC Docket 92-115

Dear Ms. Searcy:

On August 21, 1992, the following representatives of PacTel Paging ("PacTel") met with John Cimko, Jr., Chief of the Mobile Services Division and James H. Bennett, Chief of the Public Mobile Radio Branch to discuss the revision of Part 22 of the Commission's rules: Mark Stachiw (Counsel), James Lawson (Technical Director) and Carl W. Northrop (Communications Counsel, Bryan Cave).

Pursuant to Section 1.1206 of the Commission's rules, copies of the materials distributed at these meetings are attached hereto.

Should any questions arise in connection with this matter, please contact the undersigned.

Very truly yours,

Carl W. Northrop
Carl W. Northrop

Enclosure

CWN/tcm DC01 0032381

cc: John Cimko, Jr.
Chief, Mobile Services Division
James Bennett
Chief, Public Mobile Radio Branch

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**PACTEL PAGING'S
COMMENTS ON THE PART 22 REWRITE**

AUGUST 21, 1992

PACTEL PAGING
Three Forest Plaza
12221 Merit Drive, Suite 800
Dallas, Texas 75251

Federal Communications Commission
Office of the Secretary

AUG 26 1992

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EXECUTIVE SUMMARY

- **PACTEL COMMENDS THE COMMISSION EFFORT IN PRODUCING THE PART 22 REWRITE BECAUSE IT ASSISTS COMMON CARRIER PAGING OPERATORS BY REDUCING REGULATION**
- **SEVERAL SUBSTANTIVE ISSUES WOULD SEVERELY IMPACT THE PAGING INDUSTRY IF NOT MODIFIED**
 - **ADOPTION OF A FIRST COME, FIRST SERVED RULE FOR APPLICATIONS FOR ADDITIONAL FREQUENCIES IN NEW MARKETS**
 - **PROHIBITION OF MULTIFREQUENCY TRANSMITTERS**
 - **ONE YEAR LIMITATION ON REFILING FOR AN EXPIRED CONSTRUCTION PERMIT**
 - **SELF CERTIFICATION OF ENGINEERING AND CONDITIONAL LICENSES**
 - **ADOPTION OF SPECTRUM FINDERS PREFERENCE**
 - **ELIMINATION OF FILL SITE FILINGS**
- **THE COMMISSION SHOULD ESTABLISH A REGULATORY COMPLIANCE GRACE PERIOD FOR 6 MONTHS AFTER THE NEW RULES BECOME EFFECTIVE**

**ADOPTION OF FIRST COME FIRST SERVED RULE FOR
APPLICATIONS FOR ADDITIONAL FREQUENCIES
IN NEW MARKETS**

- **ELIMINATION OF THE CURRENT 60 DAY ROLLING FILING WINDOW WILL NOT SERVE THE PUBLIC INTEREST**
- **LICENSEES WILL BE REQUIRED TO FILE AND BUILD SITES IN NEW MARKETS BEFORE THERE IS A MARKET FOR THE SERVICE IN ORDER TO PROTECT THE SYSTEM FOR FUTURE EXPANSION**
- **VHF CHANNELS P5 AND P6 ARE GOOD EXAMPLES OF WHAT WILL HAPPEN TO THE INDUSTRY IF THIS RULE IS ADOPTED**
 - **P5 AND P6 GENERALLY ARE NOT USED FOR WIDE AREA SYSTEMS BECAUSE THEIR EXPANSION IS BLOCKED FOR WIDE AREA – IT IS LICENSED IN MOST MARKETS TO DIFFERENT LICENSEES WHICH MAY BE COMPETITORS ON OTHER SYSTEMS**
 - **900 MHZ CHANNELS ARE USED ALMOST EXCLUSIVELY FOR WIDE AREA SYSTEMS BECAUSE THE CHANNELS ARE AVAILABLE THROUGHOUT LARGE GEOGRAPHIC AREAS (E.G., MULTISTATE, NATIONWIDE)**
 - **IF THIS RULE IS ADOPTED AND A LICENSEE FAILS ON DAY 1 TO FILE FOR A CHANNEL IN ALL POSSIBLE MARKETS, THAT LICENSEE WILL BE HEMMED IN JUST LIKE THE CURRENT P5 AND P6 LICENSEES**
- **THE COMMISSION SHOULD EXPECT AN INCREASE IN WORKLOAD AS A RESULT OF THIS RULE CHANGE BECAUSE ALL WIDE AREA LICENSEES WILL FILE IN EVERY POSSIBLE MARKET TO PROTECT THE FREQUENCY, INSTEAD OF WAITING UNTIL A MUTUALLY EXCLUSIVE APPLICATION IS FILED**

**ADOPTION OF FIRST COME FIRST SERVED RULE FOR
APPLICATIONS FOR ADDITIONAL FREQUENCIES
IN NEW MARKETS (CONT'D)**

- **PACTEL SUGGESTS THAT THE COMMISSION CONTINUE TO USE THE ROLLING WINDOW CONCEPT BUT SHORTEN THE TIMEFRAME**
 - **PACTEL PROPOSES THAT THE COMMISSION ADOPT A SHORTENED ROLLING WINDOW -- A 30 DAY ROLLING WINDOW**
 - **SHORTENING THE WINDOW WOULD SERVE THE PUBLIC INTEREST**
 - **THE COMMISSION WOULD NOT BE OVERBURDENED WITH APPLICATIONS**
 - **THERE WOULD BE LESS OPPORTUNITY FOR STRIKE APPLICATIONS**
 - **THE COMMISSION WOULD NOT BE FACED WITH A BARRAGE OF PETITIONS TO DENY BY CURRENT LICENSEES SEEKING TO DENY SPECULATORS LICENSES**

PROHIBITION OF MULTIFREQUENCY TRANSMITTERS

- **PACTEL ORIGINALLY SUPPORTED THE PROHIBITION OF MULTIFREQUENCY TRANSMITTERS**
- **PACTEL, HOWEVER, CHANGED ITS VIEW ONCE IT BECAME APPARENT THAT A SUBSTANTIAL NUMBER OF OPERATORS ARE USING MULTIFREQUENCY TRANSMITTERS AS A MEANS TO OPERATE WIDE AREA SYSTEMS**
- **THE PROHIBITION AGAINST MULTIFREQUENCY TRANSMITTERS AS PROPOSED BY THE COMMISSION WILL NOT SERVE THE PUBLIC INTEREST**
 - **THE CURRENT RULES DO NOT PROVIDE FOR ANY PERIOD DURING WHICH LICENSEES COULD BUILD THE ADDITIONAL FACILITIES TO ELIMINATE MULTIFREQUENCY TRANSMITTERS**
 - **THE CURRENT RULES WILL NOT SERVE THEIR STATED OBJECTIVE – DETERRENCE OF SPECULATION – BECAUSE THE RULES DO NOT HAVE A MINIMUM POWER REQUIREMENT**
 - **THE CURRENT RULES WOULD REQUIRE A LICENSEE TO BUILD OUT EVERY FREQUENCY IN EVERY AREA REGARDLESS OF DEMAND**
 - **THIS PROBLEM IS SIMILAR TO THE ONE PRESENTED BY THE FIRST COME FIRST SERVED RULE**
 - **THE CURRENT RULES WOULD APPLY THIS PROHIBITION EVEN IN MARKETS UNDER THE TOP 30 WHERE DUAL FREQUENCY TRANSMITTERS ALLOW SERVICE AT ECONOMICAL COSTS AND SPECULATION IS NOT A REAL ISSUE**

PROHIBITION OF MULTIFREQUENCY TRANSMITTERS (CONT'D)

- **PACTEL SUGGESTS THAT THE CURRENT RULES BE REVISED AS FOLLOWS:**
 - **DUAL FREQUENCY TRANSMITTERS BE PERMITTED IN ALL AREAS OUTSIDE THE TOP 30 METROPOLITAN AREAS WITHOUT LIMITATION**
 - **A LICENSEE IN A TOP 100 METROPOLITAN AREA BE PERMITTED TO PLACE A SECOND FREQUENCY IN A TRANSMITTER FOR UP TO 2 YEARS FROM THE FILING OF A 489 COVERING LICENSE STATING THAT IT IS A DUAL FREQUENCY BASE STATION**
 - **NO MORE THAN 3 FREQUENCIES MAY BE PLACED IN A TRANSMITTER**
 - **A LICENSEE MAY INSTALL BOTH PRIVATE AND COMMON CARRIER CHANNELS IN A BASE STATION**
 - **TRANSMITTERS ARE AVAILABLE 100% OF THE TIME FOR COMMON CARRIER TRAFFIC BECAUSE ALL PAGES ARE ACCEPTED IN THE TERMINAL AND BATCHED OUT**
 - **A LICENSEE MUST NOTIFY THE COMMISSION VIA A 489 COVERING LICENSE OF ALL PERMITTED PLACEMENT OF MULTIPLE FREQUENCIES IN A BASE STATION**
 - **CURRENT LICENSEES MUST BE GIVEN A GRANDFATHER PERIOD OF AT LEAST 2 YEARS IN ORDER TO BRING ANY CURRENT MULTIFREQUENCY SYSTEM INTO COMPLIANCE WITH THE NEW RULES**

ONE YEAR LIMITATION ON REFILEING FOR AN EXPIRED CONSTRUCTION PERMIT

- **PACTEL SUPPORTS THE COMMISSION'S GOALS TO REDUCE LICENSES BEING GRANTED TO AND HELD BY SPECULATORS**
- **PACTEL, HOWEVER, DISAGREES THAT THE CURRENT RULE WILL NOT INJURE CURRENT LEGITIMATE OPERATORS AS MUCH OR MORE THAN SPECULATORS**
- **THE RULE AS PROPOSED HAS SEVERAL FLAWS WHICH MAKE IT NOT SERVE THE PUBLIC INTEREST:**
 - **THE RULE APPLIES TO ALL CONSTRUCTION PERMITS WHICH LAPSE, NOT JUST THOSE WHICH ARE THE SOLE SITES**
 - **FOR EXAMPLE, A PAGING SYSTEM TYPICALLY CONSISTS OF 20-30 OR MORE TRANSMITTERS; IF ONE OF THE CONSTRUCTION PERMITS LAPSE, THE LICENSEE WOULD NOT BE ABLE TO ADD A SITE TO THE SYSTEM FOR ONE YEAR**
 - **LICENSEES ABOVE LINE "A" TYPICALLY ARE REQUIRED TO FILE MORE SITES THAN JUST THOSE EVENTUALLY BUILT, NOT FOR SPECULATIVE REASONS, BUT BECAUSE IT TAKES SO LONG TO GET COORDINATION THROUGH CANADA**
 - **THE RULE APPLIES IN ALL MARKETS, EVEN THOSE WHERE THERE IS A WEALTH OF FREQUENCIES AVAILABLE -- IT SHOULD ONLY BE APPLIED IN CONGESTED MARKETS SUCH AS THE TOP 30 METROPOLITAN AREAS**
 - **THE ONE YEAR TIMEFRAME IS INCONSISTENT WITH THE GOAL OF SPECULATION DETERRENCE -- THE TIME FRAME ONLY NEEDS TO BE LONG ENOUGH TO ALLOW OTHERS TO FILE FOR THE FREQUENCY**

**ONE YEAR LIMITATION ON REFILEING
FOR AN EXPIRED CONSTRUCTION PERMIT (CONT'D)**

- **THESE FLAWS CAN BE REMEDIES AS FOLLOWS:**
 - **THE RULE SHOULD ONLY APPLY IN THOSE INSTANCES WHERE THE LICENSEE DOES NOT HAVE ANY OTHER FACILITIES WITHIN 40 MILES**
 - **THE RULE SHOULD APPLY ONLY IN THOSE INSTANCES WHERE THERE ARE MORE APPLICATIONS ON FILE WITH THE COMMISSION THAN FREQUENCIES AVAILABLE**
 - **THE BLACKOUT PERIOD SHOULD BE REDUCED TO 120 DAYS FROM 1 YEAR**
 - **IN THOSE INSTANCES WHERE THE APPLICATIONS ARE MUTUALLY EXCLUSIVE, THE APPLICANT WHICH HAS NOT FILED A SITE MORE THAN ONCE SHOULD GET A PREFERENCE OVER THOSE APPLICANTS WHO HAVE FILED THE SAME SITE MORE THAN ONCE**

CONDITIONAL LICENSES

- **PACTEL SUPPORTS THE COMMISSION'S INITIATIVE IN ALLOWING LICENSEES TO START SELF CERTIFYING APPLICATIONS**
- **SELF CERTIFICATION SHOULD REDUCE THE COMMISSION'S WORKLOAD WHILE NOT CREATING SUBSTANTIAL PROBLEMS FOR THE APPLICANTS**
- **PACTEL IS CONCERNED HOWEVER THAT THE CONDITION PLACED ON THE LICENSES GRANTED PURSUANT TO SELF CERTIFICATION WILL LAST FOR THE ENTIRE PERIOD OF THE LICENSE (10 YEARS)**
 - **CO-CHANNEL LICENSEES SHOULD NOT BE PERMITTED TO IGNORE THEIR INTERFERENCE PROBLEMS AND BE ABLE TO BRING THEM UP AT A LATER DATE WITH THE POSSIBILITY OF STRIPPING A LICENSEE OF ITS LICENSE WITHOUT A HEARING**
 - **THIS COULD POTENTIALLY BE ABUSED BY COMPETING CO-CHANNEL LICENSEES - THEY COULD NOT PROTEST UNTIL THE NEW LICENSEE HAS INVESTED SUBSTANTIAL AMOUNTS OF MONEY IN THE NEW SYSTEM - THEN COMPLAIN SEEKING A GREENMAIL PAY OFF**
 - **IT WOULD NOT SERVE THE PUBLIC INTEREST TO SHUT DOWN A FACILITY OPERATING FOR YEARS WITHOUT A HEARING**
- **PACTEL SUGGESTS THAT THE CONDITION ON THE LICENSE REMAIN ONLY FOR 90 DAYS AFTER COMPLETION OF CONSTRUCTION -- AFTER THAT TIME, IF INTERFERENCE RESULTS, BOTH PARTIES WILL BE FORCED TO RESOLVE IT**
 - **THIS WOULD REQUIRE EXISTING LICENSEES TO ACT QUICKLY WHICH IS IN EVERYONE'S INTEREST**

ADOPTION OF SPECTRUM FINDERS PREFERENCE

- **PACTEL SUPPORTS THE COMMISSION'S EFFORTS TO ELIMINATE SPECULATORS THROUGH THE USE OF PREFERENCES FOR THOSE APPLICANTS WHICH DISCOVER LICENSEES WHICH HAVE FAILED TO PROVIDE SERVICE TO THE PUBLIC**
- **THIS IS EXACTLY THE SITUATION PACTEL FOUND ITSELF IN WHEN IT WAS SEEKING A SECOND WIDE AREA 931 MHZ CHANNEL IN CALIFORNIA**
 - **PACTEL WAS TOLD THAT THERE WERE NOT ENOUGH 931 MHZ CHANNELS FOR ALL APPLICANTS**
 - **PACTEL WENT AND DISCOVERED SEVERAL LICENSEES WHICH HAD NOT CONSTRUCTED THEIR FACILITIES**
 - **PACTEL NOTIFIED THE COMMISSION BUT THE COMMISSION WAS UNABLE TO GRANT PACTEL ANY REWARD FOR HAVING BROUGHT THESE FREQUENCIES TO THE COMMISSION'S ATTENTION**

ADOPTION OF SPECTRUM FINDERS PREFERENCE (CONT'D)

- **PACTEL SUGGESTS HOWEVER THAT IT WOULD NOT SERVE THE PUBLIC INTEREST TO HAVE A RACE FOR THE FILING WINDOW WITH RESPECT TO CONSTRUCTION PERMIT EXPIRATIONS**
 - **THE RULE AS CURRENTLY WRITTEN ALLOWS APPLICANTS TO REQUEST PREFERENCES FOR MERELY TELLING THE COMMISSION THAT A CONSTRUCTION PERMIT HAD LAPSED WITHOUT CONSTRUCTION -- A FACT ALREADY IN THE COMMISSION'S DATABASE**
 - **IF THE RULE WAS ADOPTED AS PROPOSED, THE COMMISSION SHOULD EXPECT PROSPECTIVE APPLICANTS TO PREPARE APPLICATION FOR FREQUENCIES WHICH ARE THE SUBJECT TO A CONSTRUCTION PERMIT IN ANTICIPATION OF THE CP EXPIRING SO THEY CAN GET A PREFERENCE**
- **PACTEL, THEREFORE SUGGESTS THAT THE COMMISSION EXTEND PREFERENCES ONLY TO THOSE APPLICANTS WHICH HAVE DISCOVERED LICENSEES WHICH SAY THEY ARE PROVIDING SERVICE, BUT WHICH ARE NOT**
 - **THIS GROUP IS NOT READILY DISCERNABLE BY THE COMMISSION**
 - **BY REWARDING THESE APPLICANTS, THE COMMISSION WOULD BE REWARDING COMPANIES WHICH HAVE UNDERTAKEN SOME EFFORT TO DISCOVER UNUSED FREQUENCIES**
- **THE COMMISSION NEEDS TO DEFINE "IN SERVICE"**
 - **PACTEL SUGGESTS THAT THE DEFINITION REQUIRE THE CONNECTION OF A PAGING TERMINAL, INTERCONNECTION TO THE PSTN, AND, IF MULTIPLE TRANSMITTERS, THE ABILITY TO SIMULCAST A SIGNAL**

ELIMINATION OF FILL SITE FILINGS

- **PACTEL SUPPORTS THE COMMISSION'S EFFORTS TO REDUCE THE VOLUME OF PAPERWORK FILED BY LICENSEES BY ELIMINATING THE FILING OF FILL SITES**
- **PACTEL, HOWEVER, PROPOSES THAT THE COMMISSION GO FURTHER AND ELIMINATE SERVICE CONTOURS FOR 900 MHZ FREQUENCIES ENTIRELY AND USE ONLY INTERFERENCE CONTOURS**
- **PACTEL'S PROPOSAL WOULD SERVE THE PUBLIC INTEREST**
 - **AS ILLUSTRATED BY PACTEL'S CURRENT OPPORTUNITY, MARKET DEMAND MAY QUICKLY OUTSTRIP PROJECTIONS, REQUIRING QUICK ACTION ON THE PART OF LICENSEES**
 - **WHEN SITES ARE FILED WHICH EXPAND THE SERVICE AREA CONTOURS, BUT NOT THE INTERFERENCE CONTOURS, THESE APPLICATIONS NEVERTHELESS ARE SUBJECT TO THE 60 DAY ROLLING WINDOW EVEN THOUGH THERE CAN BE NO MUTUALLY EXCLUSIVE APPLICATIONS**
 - **THE COMMISSION'S WORKLOAD WOULD BE SUBSTANTIALLY DECREASED BECAUSE MOST APPLICATIONS WOULD BE UNNECESSARY**
 - **FOR INSTANCE, ALMOST ALL OF PACTEL'S CURRENT FILINGS WOULD BE UNNECESSARY, AND FOR A TYPICAL CALIFORNIA SYSTEM, APPLICATIONS FOR ONLY 20 SITES WOULD BE NECESSARY, AS OPPOSED TO APPLICATIONS FOR 120 SITES**

ELIMINATION OF FILL SITE FILINGS (CONT'D)

- **SWITCHING TO A "FIRST COME, FIRST SERVED" RULE WOULD NOT ALLEVIATE THESE PROBLEMS BECAUSE LICENSEES WOULD STILL NEED TO FILE FOR SERVICE AREA EXPANSIONS**
- **AS ANYONE IN THE INDUSTRY KNOWS, RELIABLE SERVICE AREA CONTOURS ARE ANYTHING BUT RELIABLE**
- **PACTEL ALSO SUPPORTS TELOCATOR'S ORIGINAL PROPOSAL THAT THE COMMISSION ADOPT ADDITIONAL CLASSES OF BASE STATIONS WITH INTERFERENCE CONTOURS SMALLER THAN CLASS L (I.E., LESS THAN 70 MILES) AND ALLOW HIGHER POWERS AT PERIMETER SITES**
 - **FOR EXAMPLE, THE LOWEST POWER SITE WOULD HAVE AN INTERFERENCE CONTOUR OF 55 MILES, AS OPPOSED TO 70 MILES**
 - **ALL PERIMETER SITES SHOULD ALSO BE CLASS L STATIONS, THUS REQUIRING ALL LICENSEES TO BUILD SUBSTANTIAL BASE STATIONS TO PROTECT THE FREQUENCY**
 - **UNDER THE COMMISSION'S CURRENT RULES, A FIVE WATT BASE STATION AT 20 FEET RECEIVES THE SAME INTERFERENCE PROTECTION AS A 1,000 WATT STATION AT 500 FEET**
- **ATTACHED IS A CHART THAT WOULD SUBSTITUTE FOR THE CURRENT INTERFERENCE CHART WHICH WOULD IMPLEMENT PACTEL'S PROPOSAL**
- **THE LICENSEE SHOULD BE REQUIRED TO MAINTAIN A COPY IN ITS STATION FILES OF THE ENGINEERING PROVING THE ADDITIONAL SITE TO NOT NEED TO BE FILED**

A REGULATORY COMPLIANCE GRACE PERIOD IS NEEDED

- **THE CURRENT RULES HAVE A GRACE PERIOD ONLY FOR ONE CHANGE -- AN AMNESTY PERIOD FOR THE RETURN OF UNUSED LICENSES**
- **A GRACE PERIOD IS NEEDED FOR ALL THE OTHER SUBSTANTIAL CHANGES BEING MADE IN THE RULES**
- **PACTEL SUGGESTS THAT A GRACE PERIOD OF 6 MONTHS FOR ALL NON-SUBSTANTIAL CHANGES AND A 2 YEAR GRACE PERIOD FOR ALL SUBSTANTIAL CHANGES WOULD BE APPROPRIATE**
 - **AN EXAMPLE OF A NON-SUBSTANTIAL CHANGE IS THE ADOPTION OF THE METRIC SYSTEM**
 - **AN EXAMPLE OF A SUBSTANTIAL CHANGE IS THE PROHIBITION OF MULTIPLE FREQUENCY BASE STATIONS**
- **GRACE PERIODS ARE THE NORM FOR THE COMMISSION WHEN SUBSTANTIAL RULE CHANGES ARE IMPLEMENTED**