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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN - 5 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
In-Flight Phone Corp.)
)
Application for a Pioneer's)
Preference to Operate a Live)
Audio News, Information, and)
Entertainment Service for Airline)
Passengers on the 901-902 MHz and)
940-941 MHz Bands)

ET Docket No. 92-100
PP- _____

MOTION TO ACCEPT ADDITIONAL PLEADING

Pursuant to Section 1.45(c) of the Commission's Rules, 47 C.F.R. § 1.45(c), Telocator, the Personal Communications Industry Association ("Telocator"), herewith respectfully requests that the Commission accept this additional pleading in the above captioned matter. In its Reply to Telocator's original Opposition, In-Flight Phone Corporation "clarified" for the first time that its proposed service does not constitute a broadcast service. Telocator therefore respectfully requests that the Commission provide Telocator with the opportunity to respond to this new information.

Respectfully submitted,

TELOCATOR, THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION

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REPLY OF TELOCATOR

Telocator, the Personal Communications Industry Association ("Telocator"), herewith submits its response to the Reply of In-Flight Phone Corporation ("In-Flight") to Telocator's *Formal Opposition* in the above captioned matter.¹ For the reasons expressed below, Telocator reiterates its position that the Commission should dismiss the In-Flight Pioneer's Preference Request ("Request") and its associated Petition for Acceptance of Application or Rule Waiver ("Petition").

In its *Formal Opposition*, Telocator observed that In-Flight's proposed service is a broadcast service and, as such, is inconsistent with the Commission's objective of promoting data and voice messaging services in the proposed 900 MHz narrowband PCS spectrum.² Telocator based this

¹ Reply of In-Flight Phone Corporation to Opposition of Telocator (Dec. 22, 1992).

² *Formal Opposition* at 4,5.

conclusion on In-Flight's previous explicit characterization of its proposal as a "broadcast retransmission service."³ Since the Commission specifically proposed to exclude broadcasting services from the definition of PCS, Telocator pointed out that the Commission should dismiss the In-Flight filings.

In its Reply to Telocator, In-Flight now attempts to "clarify" its Request to remove itself from the proscription against broadcast services. This clarification occurs only after the Commission proposed to prohibit broadcast services from PCS spectrum and after multiple references by In-Flight to its service as broadcasting. Specifically, In-Flight recasts its proposal to show that its service will only be offered on a subscription basis. In-Flight then states that its proposal does not constitute broadcasting because its programming can be received only with special reception equipment and is provided pursuant to a private contractual relationship.⁴ Consequently, In-Flight contends that its proposed service does not constitute broadcasting as defined by Section 3(o) of the Communications Act.⁵

³ See Amendment of the Commission's Rules to Allocate 500 kHz of the General Purpose Mobile Radio Service for a Live News, Weather, and Sports Network for Airline Travelers, Petition for Rulemaking (filed September 6, 1991, dismissed without prejudice October 1991).

⁴ In-Flight Reply at 2.

⁵ In-Flight Reply at 2.

Regardless of whether the In-Flight service is correctly characterized as broadcasting or subscription broadcasting, Telocator does not believe that the PCS NPRM intended to include such programming services among the contemplated PCS offerings. The reasons underlying the preclusion of broadcasting services have equal applicability to subscription broadcasting. PCS spectrum is intended for personal communications services to individuals, not pay programming for which other spectrum options exist. This point was well established in the Commission's Policy Statement and Order relating to PCS which stated that:⁶

While it seems certain that these new underlying technologies will offer an array of advanced voice and data services, such as improved wireless links for computers and medical equipment, **PCS will provide the more fundamental capability of communicating directly to individuals rather than locations.** (emphasis added)

In view of the foregoing, In-Flight's proposed use of the 900 MHz narrowband PCS frequencies for a subscription broadcast service is clearly inconsistent with the Commission's objective of promoting innovative data and voice messaging services in the 900 MHz band. The record in the PCS proceeding demonstrates a strong demand for the advanced messaging services for which this spectrum allocation was

⁶ Policy Statement and Order, Gen Docket No. 90-314, 6 FCC Rcd 6601 (1991).

intended. The Commission should not waste the opportunity to satisfy the demand for personal messaging services by allowing diversions of this spectrum for pay programming services that have other spectrum alternatives.

Respectfully submitted,

TELOCATOR, THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION

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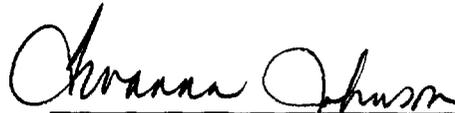
January 5, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 1993,
I caused copies of the foregoing "Motion to Accept Additional
Pleading" to be sent via hand-delivery to the following:

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