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

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Amendment of Parts 2 and 22 of the) ET Docket No. 92-100
 Commission's Rules to Establish an) PP-80
 Enhanced Narrowband Data and)
 Paging Service in the 930-931 MHz)
 Range)

To the Commission:

PETITION FOR RECONSIDERATION

Global Enhanced Messaging Venture (Global), a joint venture of Message Center Beepers, Inc. (Message Center) and RTS Electronics, Inc. (RTS),^{1/} by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby petitions for reconsideration of the denial of its request for a pioneer's preference in the 900 MHz band allocated by the Commission for narrowband PCS services in the First Report and Order in the above-captioned docket.^{2/}

1/ Global is owned one-half by Message Center and one-half by RTS. The venturers bring to this proposal many decades of experience in the paging industry. RTS is controlled by Real Time Strategies, Inc. (Real Time), with a minority interest held by Message Center. Real Time is based on Long Island, New York. The principals of Real Time are Jay Moskowitz, its president, and Spencer Kravitz, its executive vice president, both of whom are providing technical counsel to Global. The qualifications of Messrs. Moskowitz and Kravitz and of Message Center were set forth in Global's "Demonstration of Technical Feasibility and Request for Pioneer's Preference" (Request) at paras. 9, 10 and 11.

2/ FCC 93-329, released July 23, 1993. Global is not seeking reconsideration of the basic allocation decision, but only of the denial of a pioneers' preference for its GEM proposal. Accordingly, this Petition has been filed within 30 days of the release of the full text of the First Report and Order, as required by the computation rule in Section 1.4(b)(2) (non-

(continued.)

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1. The Commission has failed to consider adequately the technical demonstration submitted in support of the Global Enhanced Messaging (GEM) enhanced narrowband data and paging service developed by Global. The Commission has also erred in its overall treatment of the pioneer's preference requests submitted in response to the original Petition for Rulemaking filed by Telocator Network of America (Telocator) (RM-7617). In particular, the Commission's unequal treatment of the proposal of Mobile Telecommunications Technologies Corporation (Mtel) for its "Nationwide Wireless Network" (NWN) as compared to its treatment of GEM and other applicants requires reversal of the decision in this proceeding. Moreover, as Global and various others of the pioneers preference applicants have noted previously, the Commission is in a position to reward all of the innovators of advanced paging services without unduly blocking proposals by others. Even if all such preference requests were granted, and appropriate decisions made concerning which proposals merit nationwide licenses and which regional, substantial spectrum would be available for other applicants to apply also for narrowband PCS systems as envisioned by the Commission.

2/(...continued)
rulemaking documents), rather than the rule in Section
1.4(b)(3) (rulemaking documents).

I. The Innovative Technology to Be Utilized in GEM Has Been Acknowledged by the U.S. Patent and Trademark Office

2. Global has proposed to use a single device which integrates an advanced-design paging unit with a pocket-sized portable data terminal capable of interconnecting to the telephone network. The Commission has denied Global's pioneer preference request because the proposal supposedly "lacked innovation." The Commission also found that Global's proposal to increase the transmission speed of a standard 25 kHz paging channel through its proprietary paging format "lacked innovativeness." Moreover, the Commission stated that it could not determine the technical feasibility of Global's claimed improvement over the error control and interleaving capabilities of the European Radio Message Standard (ERMES) format. First Report and Order, paras. 115-122.

3. When Global filed its pioneer's preference request and its later comments, a patent application was pending at the U.S. Patent and Trademark Office (USPTO) for the Pagentry® device developed by Global partner RTS. That device will be utilized as part of the GEM system. Since then, RTS has received notice that all of the claims on its technology have been approved by the USPTO. However, the application remains pending until such time as the patent can be printed and a number assigned.

4. The Commission appeared in part to base its decision to award pioneer's preferences on the policies underlying the patent laws. Report and Order in General Docket No. 90-217, 6 FCC Rcd 3488, 3492 (1991). It is ironic that an innovation acknowledged by the USPTO has been ignored by the Commission in its decision on the Global proposal.

II. The Importance of the Device Used by the End User in a Communications System Has Been Overlooked by the Commission in its Denial of a Pioneer's Preference to Global

5. The Commission has stated its reasons for pioneer's preference rules as follows:

The Commission's pioneer's preference rules provide preferential treatment in its licensing processes to parties that develop new communications services and technologies. This fosters the development of new services and improvements to existing services by reducing for innovators the delays and risks associated with the Commission's licensing procedure. True innovators of substantial new communications services and technologies have an opportunity to participate either in the new services that they took a lead in developing or in existing services with regard to which they took a lead in promoting application of new technologies.

Report and Order in ET Docket No. 91-280, 8 FCC Rcd 1812, 1817 (1993). Global certainly merits award of a preference based on this rationale.

6. The Pagentry® receiver is an innovation which facilitates two-way communications of a type not now existing in the paging marketplace. The Pagentry device replaces two

pieces of equipment now required to accomplish the same communications task -- a pager and a data communication terminal. The Pagentry device permits something to be done easily which is now difficult, extending the usefulness of both the paging and telephone systems through a synergy not present in any existing device.

7. In denying Global's preference, the Commission stated "We believe that connecting to the landline network to receive large messages and acknowledge pages essentially is what paging users do today, and therefore is not innovative", and further that "creating a device that easily connects to the existing landline network does not qualify as an innovation leading to a pioneer's preference for a radio communications license," First Report and Order at 120, 121. The Commission minimizes the benefits which the public would enjoy which they do not now were Global to be awarded its preference and the GEM system made operational.

8. The Commission also overlooks the fact that the design of the equipment used by the end user to receive and transmit is a critical component of the overall design of any communications system. Receiver design cannot be separated from the overall design of any communications system. The Commission has become more aware than ever of this factor as it contemplates the proper standards for AM radio and for High Definition Television, to name only two examples. While the

Commission correctly has determined it would not consider "non-communications developments" in granting pioneer's preferences, such as the launch technology proposed by a satellite system proponent,^{3/} that same logic cannot extend to end user equipment design. The equipment used by the public is a key component of a total communications system.

III. The Commission Has Failed to Properly Consider the Efficiencies of Global's Proposed Proprietary Protocol and Character Transmission System

9. The Commission also found that Global's proposal to increase the transmission speed of a standard 25 kHz paging channel through its proprietary paging format "lacked innovativeness." It further stated that it could not determine the technical feasibility of Global's claimed improvement over the error control and interleaving capabilities of the European Radio Message Standard (ERMES) format. First Report and Order, para. 120. The Commission faults Global for not submitting the confidential information from its patent application as part of its application and comments.

10. In order to protect RTS' patent application, Global did not submit full information concerning RTS's proprietary technology to be used in the GEM system. It did, however, submit very substantial information concerning that technology in its Demonstration of Technical Feasibility. It also offered to provide material from the patent application on

3/ Report and Order in ET Docket 91-280, 8 FCC Rcd 1812, 1818.

a confidential basis if the Commission believed it desirable in processing the pioneer's preference request. (Reply to Oppositions To and Comments On Global Enhanced Messaging Venture Proposal, p.6). The Commission failed to properly evaluate the documentation submitted by Global and it made its decision without requesting the patent application material. That material is still confidential to Global until such time as the formal patent is issued. The Commission staff, however, can still avail itself of Global's offer to make the materials available confidentially so that it can better evaluate the GEM system.

11. As shown by Global in its various filings, the GEM system in which the use of Pagentry will be incorporated includes a proprietary paging protocol and character transmission technique which will allow the efficient use of the Pagentry device. Absent complete dedication of a paging channel to this new system, significant efficiencies will be lost. While it is true that the GEM system will be capable of supporting other, simpler paging devices, the contrary is not true. Existing systems cannot adequately support Pagentry. In order for Pagentry to operate efficiently, a clear channel should be used.

12. Moreover, Global's proposed GEM system substantially increases the number of subscribers which can be supported on a single standard 25 kHz channel. By utilizing a

standard channel bandwidth, equipment for the GEM system can quickly be designed and implemented, in contrast to the problems inherent in designing and manufacturing equipment for a novel 50 kHz system design. As Global amply demonstrated in its earlier submissions, it has combined aspects of the ERMES system with Global partner RTS's proprietary Alpha-ToneSM system of representing alphanumeric paging data in order to achieve substantial improvements in the efficiency of channel use. In comparing MTEL's system to Global's system, the Commission failed to compare the effective throughput of the system in a meaningful way. Were Global to utilize two 25 kHz channels, it could increase its projected bit rate from 6.25 Kb/s to 12.5 Kb/s. However, with additional consideration of the efficiency achieved through the application of the Alpha-ToneSM system, the effective bit rate would be increased by an additional 30%.^{4/} Also, the Commission failed to take into account the loss in communications through-put which would result in Mtel's system during the times when the channel is utilized for return

4/ The comparison of the NWN 50 kHz system and GEM's 25 kHz system (First Report and Order, para. 58) is a comparison of unlike systems. The only way to meaningfully compare techniques is to look at the effective throughput of a system. The total throughput must be reduced by overhead bits used to address receivers, to maintain channel synchronization, send error correction codes and to account for system control procedures (such as pager location) which reduce the effective throughput for data. The data rate alone should not be utilized as a factor to determine which applicant should be awarded a preference. No applicant has reported the effective data rate for various types of services through their networks.

communications. Global's system does not utilize the same channel for two-way communications, and so does not suffer from this inefficiency. The Commission failed to take these various factors into consideration in its refusal to grant a pioneer's preference to Global. Were the Commission to consider these factors, it would conclude that the GEM system offers just as much innovation as that proposed by Mtel.

IV. Conclusion

13. The Commission's pioneer preference procedures should be applied in a fair and even-handed manner, and that has not been done in this proceeding. It appears that the Commission has arbitrarily limited itself to awarding only a single preference in this proceeding, when other substantial innovations not now available in the paging market have been presented to it. Global urges the Commission to reconsider the evidence already before it, and to study more carefully Global's proposed GEM system, prior to making final its determinations in this proceeding.

WHEREFORE, the premises considered, the Commission should reverse its tentative denial and grant the Joint Venture a pioneer's preference.

Respectfully submitted,

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August 23, 1993

CERTIFICATE OF SERVICE

I, Artie King, Secretary in the law offices of Schwartz, Woods & Miller, do hereby certify that I have on this 23rd day of August 1993 sent by First Class United States mail, postage prepaid, copies of the foregoing PETITION FOR RECONSIDERATION to the following:

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