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

In the Matter of)
Amendment to the Commission's)
Rules to Establish New)
Narrowband Personal)
Communications Services)

GEN Docket No. [REDACTED]
ET Docket No. 92-100
RM-7617, RM-7760, RM-7782
RM-7860, RM-7977, RM-7978
RM-7979, RM-7980, PP-4,
PP-5, PP-11, PP-14, PP-35
through PP-40, PP-53,
PP-69, PP-79 through
PP-85

To: The Commission

PETITION FOR RECONSIDERATION OF
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SUMMARY

The Commission's recent decision on the rules and regulations governing narrowband personal communications services ("PCS") will shape the development of a broad range of new paging and messaging services. Because demand for these services is expected to be great, it is essential that the Commission's regulations allow for the most effective possible use of the available spectrum.

PageMart applauds the Commission's efforts to provide for the operation of new narrowband PCS services, but believes that some of the new regulations inadvertently may hamper the development of this industry. As a result, PageMart seeks reconsideration or clarification of certain critical elements of the Commission's rules. Specifically, PageMart seeks reconsideration of: (1) the channelization plan, which PageMart believes would limit the efficient use of spectrum, while encouraging warehousing and speculation; (2) the restrictions on multiple licenses, which PageMart believes may further restrict the ability of operators to utilize the spectrum in a fully efficient manner; and (3) the construction schedule and related requirements.

With regard to the Commission's decision to grant a pioneer's preference to the Mobile Telecommunication Technologies Corporation ("Mtel"), PageMart seeks reconsideration or clarification of the apparent absence of any safeguards to ensure that this pioneer's preference will actually be used to develop the new technology upon which

the grant was based. Finally, PageMart requests that the Commission modify the terms of Mtel's pioneer's preference grant to take into account the recently passed amendments to the Communications Act, which most likely will require competitive bidding for narrowband PCS licenses.

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

In the Matter of)	GEN Docket No. 90-314
Amendment to the Commission's)		ET Docket No. 92-100
Rules to Establish New)	RM-7617, RM-7760, RM-7782
Narrowband Personal)	RM-7860, RM-7977, RM-7978
Communications Services)	RM-7979, RM-7980, PP-4,
		PP-5, PP-11, PP-14, PP-35
		through PP-40, PP-53,
		PP-69, PP-79 through
		PP-85

To: The Commission

PETITION FOR RECONSIDERATION

PageMart, Inc. ("PageMart"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, hereby petitions for reconsideration of the Commission's First Report and Order in the above captioned proceeding.^{1/}

I. INTRODUCTION

In the First Report and Order (hereinafter the "Order"), the Commission established regulations for new narrowband personal communications services ("PCS") on spectrum in the 900 MHz band. The Commission also ruled on a number of requests for pioneer's preferences relating to narrowband PCS.

^{1/} FCC 93-329, released July 23, 1993; 58 Fed. Reg. 42681 (August 11, 1993).

The Commission's decision on the various issues addressed in the Order will shape the development of a range of new services, including advanced voice paging, two-way acknowledgement paging, data messaging, and both one-way and two-way messaging and facsimile. Because demand for these services is expected to be great, it is essential that the Commission's regulations allow for the most effective possible use of the available spectrum.

With regard to the new regulations governing narrowband PCS services, PageMart seeks reconsideration or clarification of the following matters: (1) the channelization plan, which PageMart believes would limit the efficient use of spectrum, while encouraging warehousing and speculation; (2) the channel capacity/multiple licensing restrictions, which PageMart finds ambiguous and which may further restrict the ability of operators to utilize the spectrum in a fully efficient manner; and (3) the construction schedule and related requirements.

With regard to the portion of the Order addressed to matters involving the grant of a pioneer's preference to the Mobile Telecommunications Technologies Corporation ("Mtel"), PageMart seeks reconsideration or clarification of the apparent absence in the Order of any safeguards to ensure that the pioneer's preference granted to Mtel will actually be used to develop the new technology upon which

the grant of that preference was based. In addition, PageMart requests that the Commission modify the terms of its grant of Mtel's pioneer's preference, to take into account the recently passed amendments to the Communications Act, which most likely will require competitive bidding for narrowband PCS licenses.^{2/}

II. GENERAL REGULATORY ISSUES

A. The Commission's Channelization Plan Imposes No Restrictions On Spectrum Use, And Could Undermine The Development Of New Technologies.

PageMart applauds the Commission's efforts to provide for the operation of new narrowband PCS services in the 900 MHz band. As the Commission notes, such services are expected to increase business productivity, and to make available to the public and to U.S. industry new services to enhance their communications and competitiveness in the world economy.^{3/} PageMart is concerned, however, that the Commission, by declining to adopt limits on the ranges of services that will fit within the definition of PCS, will encourage the use of this scarce spectrum for existing

^{2/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-_____, Stat _____ (1993), hereinafter the "Budget Act."

^{3/} Order at ¶ 1.

paging services, rather than for new, technologically advanced PCS services.

Although the Commission notes that it expects that advanced messaging and paging services will be one of the "predominant narrowband PCS services to be provided,"^{4/} it offers no safeguards to ensure that this expectation will be realized. In fact, the scarcity of existing spectrum for traditional paging services in many regions, especially in major metropolitan areas, makes it all but inevitable that large, financially powerful paging operators will seek to utilize this new spectrum in order to supply existing services, with the result that spectrum will not be available for innovative PCS uses.

PageMart urges the Commission to avoid this result by adopting at least minimal parameters for eligible narrowband PCS services, e.g., that the service in question represent a substantial advancement or improvement over paging services, and not merely a refinement or enhancement of existing services.^{5/}

While the channelization plan is not restrictive enough to prevent use of the spectrum for existing paging

^{4/} Id. at ¶ 13.

^{5/} This standard, while less than precise, is analogous (but necessarily less onerous) to that developed and applied in this case for awarding pioneer's preferences.

services, in another sense it is too restrictive. The Commission's decision to adopt 50 kHz channel blocks as the standard for PCS operations may inhibit the development of other services that require either smaller or larger configurations. Indeed, the channelization plan appears to have been specifically tailored with Mtel's PCS proposal in mind, without regard for the myriad other potential services, many of which appear to possess at least as much marketplace potential. As PageMart described in its reply comments in this proceeding (filed January 8, 1993) at 1-2, a variable spectrum allocation, with differently sized spectrum blocks, best accomplishes the objective of accommodating substantial numbers of different narrowband PCS providers. PageMart urges the Commission to reconsider its channelization plan, and to provide for the sort of variable spectrum allocation previously described by PageMart and others.^{6/}

B. The Order Leaves Unclear The Total Amount Of Capacity For Which A Licensee Is Eligible And Could Encourage Warehousing And Speculation.

The Order leaves unclear the total number of channels for which a licensee is eligible. For example, the Commission states that it "will permit a single licensee to

^{6/} See e.g., Reply Comments of PageMart at 3-7; Comments of Paging Network, Inc. at 12; Comments of Pactel Paging on Notice of Proposed Rulemaking at 24.

hold licenses for up to three 50 kHz channels, paired or unpaired (i.e., no more than 150 kHz paired with 150 kHz)."^{2/} This language seems to imply that a licensee is eligible to hold up to a total of 300 kHz.

The Commission's limit of three licenses that can be held by any licensee, however, appears to restrict the total amount of capacity that can be held by some licensees to well below 300 kHz. In footnote 21 of the Order, for example, the Commission suggests that a licensee holding any combination of 50 kHz channels would be ineligible for another channel in the same region, effectively limiting licensees who apply for unpaired 50 kHz blocks to a total of 150 kHz of capacity.^{3/}

PageMart is concerned that the ambiguity regarding the amount of available capacity, rather than providing a means to "ensure that narrowband PCS is offered on a competitive basis,"^{2/} will instead result in rampant warehousing and speculation. Because of the suggestion in the Order that a licensee could potentially hold up to 300 kHz of capacity, all operators, regardless of existing or

^{2/} Order at ¶ 34.

^{3/} Footnote 21 uses the following example: "a licensee could have one nationwide 50/50 kHz channel and two 50/12.5 kHz channels in the Atlanta MTA. The licensee would then be ineligible for another nationwide channel or a 50 kHz channel anywhere in the Atlanta MTA."

^{2/} Order at ¶ 34.

foreseeable needs, will seek to reserve spectrum for possible future use by obtaining licenses for three paired 50 kHz channels. There is no incentive for licensees who need less spectrum to refrain from seeking the maximum allowable capacity, since additional capacity may well become unavailable by the time their needs expand.^{10/}

Moreover, the Order does not appear to impose any multiple license limit on the eight unpaired 12.5 kHz return channels. While the Order states that these channels are being allocated specifically to "permit existing paging operations to be upgraded and provide some acknowledgement and messaging capability,"^{11/} the actual regulation governing these channels does not appear to impose any such restriction. Instead, Section 99.405(a), n.1, states only that these unpaired channels are restricted to entities licensed under Part 22 and Part 90. The regulations simply

^{10/} The Order's construction requirements are sufficiently flexible to permit such speculation. For example, MTA licensees have up to ten years to construct 50% of their licensed service area. See Order at ¶ 37. Moreover, while an applicant most likely will have to pay a premium at auction to acquire the more valuable paired channels, that is not an adequate disincentive to speculation, because the applicant will likely have only one real opportunity to acquire these channels. The manner in which the spectrum is to be auctioned off will play an important role in controlling the level of speculation. To the extent that the paired channels are auctioned off after the unpaired channels, speculative activity might be at least somewhat reduced.

^{11/} See Order at ¶ 20.

do not contain any safeguards that the channels will in fact be used by existing licensees to upgrade their systems. Moreover, in the absence of a limit on the number of these channels that an existing licensee can acquire, there does not appear to be any reason why an existing paging operator could not purchase more of these channels than legitimately are needed to upgrade its system, solely to prevent its competitors from pursuing similar upgrades.

PageMart suggests that the Commission modify its multiple licensing restrictions to reduce the maximum capacity per licensee for high-powered forward channels to a total of 150 kHz, rather than 300 kHz. PageMart also recommends that the Commission impose a regulatory requirement that licensees of the eight 12.5 kHz unpaired channels be existing licensees, and that the channels be paired with and used to upgrade existing paging operations. In addition, PageMart recommends that the Commission impose a limit of two unpaired 12.5 kHz channels per licensee, to prevent anti-competitive warehousing.

PageMart is also concerned that the broad language used by the Commission in footnote 21 -- referring to a limit "based on the total spectrum in the licensee's nationwide, regional, and local licenses at any geographic point" -- could be interpreted to mean the cumulative amount of spectrum held by licensees for all paging services.

PageMart requests that the Commission clarify this language to indicate that it is intended to include only narrowband PCS spectrum.

- C. The Commission's Construction Requirements Should Be Clarified In Order To Avoid Speculation and Inadvertent Forfeitures.

PageMart applauds the Commission's imposition of reasonable construction requirements for PCS licensees, which are essential to control speculative activities. PageMart believes, however, that the description of these requirements could create confusion, and requests clarification of certain terms used in the Order.

For example, in footnote 22, the Commission describes its requirement that licensees using "lower-powered base stations" aggregate their facilities to provide a service area equivalent to 3000 square kilometers. Because the Order does not define the term "lower-powered base station," however, it is not clear to whom this provision would apply. Similarly, the Commission does not make clear whether the 3000 square kilometers standard applies to all licensees, including those with nationwide licenses, or whether this requirement is limited to regional licensees (who have the option of demonstrating compliance with the construction requirements by using either base station or geographic coverage criteria).

In addition, as the Order points out, it will not be sufficient to rely solely on the number of transmitters to determine compliance with the construction requirements, since it is likely that some operators will use lower-powered base stations to allow for greater frequency re-use. Since the licensing of paging services operating under the Order will no longer be strictly site-based, paging operators need guidelines for the contours and parameters that will determine whether they have sufficient transmitters to meet the construction requirements. The Order, however, does not specify the propagation characteristics that would be required to meet the construction requirements. PageMart suggests that the Commission modify the construction requirements by adopting a formula of the sort utilized for cellular geographic service areas to provide model propagation contours for these lower powered transmitters. See 47 C.F.R. § 22.903 (1992).

Because a licensee's failure to comply with the Order's construction requirements could lead to forfeiture of a license (including for facilities already constructed), it is imperative that the Commission make these requirements readily understandable. PageMart therefore requests modification and clarification of the requirements as described in the Order to: (1) define those base stations

that would be considered "lower-powered" for purposes of determining when they must aggregate their facilities; (2) clarify that the 3000 square kilometers standard for compliance with the construction requirements applies only to regional licensees; and (3) establish a cellular-type contour formula to determine compliance with the lower-powered construction requirements.

III. PIONEER PREFERENCE ISSUES

A. The Commission's Order Provides No Restrictions On Mtel's Use Of Its Pioneer's Preference.

The Commission's Order grants a pioneer's preference to Mtel, and denies the like requests of all other narrowband PCS proponents. Given the enormous advantage provided to Mtel through this grant, PageMart is concerned that there are no apparent safeguards to prevent its potential abuse.

As PageMart addressed more generally in Section II above, the Order imposes no restrictions or requirements that a licensee use its allocated spectrum for innovative services. The absence of such safeguards is particularly troubling with respect to Mtel's pioneer's preference award, which imposes no requirement that Mtel use its award to develop the system for which it was granted a preference. Because no safeguards exist, Mtel could use its pioneer's

preference to obtain scarce spectrum for its existing paging services or for some other alternative that would not have qualified for a preference under the Commission's policy. It is not clear from the Commission's Order, for example, that Mtel would be prohibited from subdividing the 50 kHz channels to 25 kHz, in order to provide traditional paging services. As the Commission is aware, once such services and subscribers are established, it would be extremely difficult, if not impossible, to convert that spectrum for new, innovative uses.

PageMart urges the Commission to impose a requirement that Mtel use its pioneer's preference solely for the development of the system it proposed in its request, or face forfeiture of its pioneer's preference. To do otherwise would encourage abuse of the pioneer's preference process, would be contrary to the Commission's stated objective of stimulating technological innovation, and would be inequitable to other paging operators who have sought pioneer's preference grants.

B. Mtel Should Be Required To Pay For The License That It Will Receive Under Its Pioneer's Preference.

The Commission's stated purpose for authorizing pioneer's preferences was to "foster the development of new services and improve existing services by reducing for

innovators the delays and risks associated with the Commission's allocation and licensing processes."^{12/} These preferences were to provide a regulatory head start and a certainty that a license would be forthcoming, in order to encourage investment in new technology.^{13/} Significantly, pioneer's preferences were not contemplated as grants designed to provide financial windfalls for successful applicants.

Under the Commission's Order, however, Mtel is not only provided with the benefit of a greatly reduced regulatory burden through its pioneer's preference, but is also apparently to receive an extremely valuable license at no cost. As a result of the recent amendments to the Communications Act which will require competitive bidding for mutually exclusive applications,^{14/} other applicants for narrowband PCS licenses will be financially disadvantaged if Mtel is not required to pay for its preference. The 1993 amendments to the Communications Act allow the Commission to avoid the use of competitive bidding only if the Commission has determined that the licensee will

^{12/} See In the Matter of Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 F.C.C. Rcd. 3488 at ¶ 1 (1991).

^{13/} Id. at 3490, 3492.

^{14/} The Budget Act, supra note 2.

not receive compensation from subscribers in return for the licensee's services. Mtel will clearly receive compensation from subscribers for its services, and should accordingly pay for its license grant along with all other similarly situated licensees.

PageMart urges the Commission to remedy this inherently inequitable situation by requiring Mtel to pay a minimum successful bid price for the license it will acquire by virtue of its pioneer's preference. The Commission could readily determine the amount of the payment to be made by Mtel by using as examples the actual winning bids for like licenses. A license to Mtel could be granted on condition of payment within a specified period of time after the price is established by reference to those winning bids.

CONCLUSION

The Commission's regulation of narrowband PCS will have a sweeping impact on the availability of innovative new technologies and new consumer services. PageMart urges the Commission to reconsider those elements of its Order which will impair the ability of paging operators to develop and provide these services. In particular, PageMart urges the Commission to reconsider its channelization plan and certain elements of its pioneer's preference grant, which PageMart believes are inherently flawed. In addition, PageMart asks

the Commission to clarify certain provisions of its regulations which could result in confusion and costly mistakes for paging operators.

Respectfully submitted,

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I, Dolores V. Moore, do hereby certify that copies of the foregoing Petition for Reconsideration of PageMart, Inc. were served via first-class, postage prepaid mail, or by hand delivery where indicated by an asertisk (*), on this 10th day of September, 1993, to the parties listed below.

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