DOCKET FILE COPY ORIGINAL

ORIGINAL
RECEIVED

NOV - 4 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of:	)	
	)	GEN Docket No. 90-314
Amendment of the Commission's	)	ET Docket No. 92-100
Rules to Establish New Narrowband	)	
Personal Communications Services	)	

REPLY COMMENTS OF MOBILE TELECOMMUNICATION TECHNOLOGIES CORPORATION

Mobile Telecommunication Technologies Corporation ("Mtel"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding. As detailed below, the Commission should revise its 900 MHz Narrowband PCS ("900 MHz PCS") rules to replace geographic coverage requirements with population benchmarks for meeting construction deadlines. In addition, the Commission should promptly dismiss petitions and comments seeking retroactive modifications of the final pioneer preference awarded to Mtel last summer for its Nationwide Wireless Network Service ("NWN").

I. PARTIES PARTICIPATING IN THE RECONSIDERATION PROCEEDING SUPPORT MTEL'S PROPOSED MODIFICATION OF THE 900 MHz PCS RULES TO RELY ON POPULATION BENCHMARKS.

In its Petition for Clarification or Partial Reconsideration, Mtel showed that the public interest would be better served by construction benchmarks emphasizing service to the public rather than simply mandating coverage of geographic areas.[1] While Mtel wholeheartedly supports the need for

[1] Mobile Telecommunications Technologies, Inc. Petition for Clarification or Partial Reconsideration, GEN Docket No. 90-314, ET Docket No. 92-100, at 3(filed September 10, 1993).

No. of Copies rec'd 0+11
List ABCDE

construction benchmarks to assure prompt service to the public, Section 99.103 of the Commission's rules,[2] as currently drafted, appears to require constructing base transmitters that cover vast tracts of sparsely populated area where service may not be economically justifiable. In particular, while the construction rule is phrased as a requirement to build at least 500 transmitters for a nationwide system--which is not unreasonable--the method of counting transmitters relies on an unrealistic geographic equivalency standard that effectively increases this number by an order of magnitude or more for even high power systems.

Because, ultimately, service to the public is the linchpin of any build-out requirement, Mtel believes the Commission's policy goals would be served by providing an alternate formulation of Section 99.103. In particular, Mtel suggested that carriers should be allowed to satisfy construction benchmarks by covering a specified percentage of the market population. Under such a rule, the benchmarks for the number of transmitters be retained, but licensees would be able to meet applicable coverage requirements for their license areas by covering 37.5 percent of the population in the market in five years and 75 percent of the population in the market in ten

---

[2] While Mtel's Petition originally referenced Section 99.17 of the Commission's rules, the rules were renumbered in the Second Report and Order on Personal Communications Services. What was Section 99.17 of the Commission's rules is now found at Section 99.103.

years. In this manner, the FCC would be able to "assure . . . that a minimal level of service to the public is provided."[3]

Mtel is pleased to note that PageMart "agrees with Mtel's assessment that utilizing only geographic criteria could lead to coverage in sparsely populated areas where service is not needed."[4] American Paging, Inc. ("American Paging") expresses similar support, adding that Mtel's proposed benchmarks are both "realistic and substantial."[5] In contrast, no comments have been filed opposing Mtel's proposed changes. Mtel therefore respectfully requests that the Commission modify section 99.103 of its rules in accordance with the proposal Mtel attached as Exhibit 1 to its Petition for Clarification or Partial Reconsideration.

II. THE COMMISSION SHOULD SUMMARILY DISMISS PETITIONS AND COMMENTS SEEKING TO MODIFY MTEL'S FINAL PIONEER PREFERENCE FOR NWN RETROACTIVELY.

As the Commission properly recognized in its Notice of Proposed Rulemaking, "as a matter of equity" Mtel's pioneer

---

[3] Mobile Telecommunications Technologies Corp. Petition for Clarification or Partial Reconsideration, GEN Docket No. 90-314, ET Docket No. 92-100, at 4(filed September 10, 1993).

[4] PageMart Opposition and Comments on Petitions for Reconsideration and/or Clarification, GEN Docket No. 90-314, ET Docket No. 92-100, at 11 (filed October 25, 1993) ("PageMart Comments").

[5] Comments of American Paging, Inc.; GEN Docket No. 90-314, ET Docket No. 92-100, at 2 (filed October 25, 1993) ("American Paging Comments").

preference should remain undisturbed.[6] The FCC awarded Mtel a pioneer preference on June 24, 1993, in recognition of the original nature of Mtel's Nationwide Wireless Network.[7] The innovations Mtel has produced, at costs totalling in the millions of dollars for NWN development, related research, and contractual commitments, will benefit the public greatly. As the FCC noted, these innovations will "result in more efficient delivery of current paging services and permit the provision of new messaging and related services."[8]

Mtel's pioneer preference was granted only after extensive rulemaking and several rounds of public comment and Commission review. Mtel's pioneer preference request was originally placed on public notice on April 30, 1992.[9] Comments and reply comments were filed on June 1 and June 15th, respectively. Subsequently, Mtel's Technical Feasibility Demonstration in support of its preference request was placed on public notice on June 4, 1992, with comments and reply comments due on June 19 and June 29.[10] Finally, comments and reply comments were also received on the

---

[6] Review of the Pioneer's Preference Rules, Notice of Proposed RuleMaking, ET Docket No. 93-266, FCC 93-477, at para. 18 (rel. Oct. 21, 1993) ("NPRM").

[7] Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, First Report and Order, 8 FCC Rcd 7162 (1993) ("Order").

[8] Id. at ¶ 57.

[9] FCC Public Notice, Mimeo 22915 (April 30, 1992).

[10] FCC Public Notice, DA 92-712 (June 4, 1992).

Commission's tentative decision to award Mtel a pioneer preference.[11]

Now, however, long after Mtel's preference has been finalized, and after Mtel has entered into definitive contracts with other telecommunications firms for construction of NWN base transmitters and mobile devices, several losing pioneer preference applicants retroactively seek to eliminate or diminish the benefits of Mtel's award. PageMart, a disappointed applicant, and American Paging merely seek to deny to anyone else what the Commission has determined they do not deserve.[12] These petitioners advance three basic arguments. First, they contend that Mtel should be required to pay for the frequency awarded and licensed to it pursuant to its pioneer preference. Second, they demand that the award of Mtel's license be delayed until potential competitors are ready to apply for, and be granted, a license. Third, PageMart now maintains that the scope of Mtel's pioneer preference should be limited to the area where testing occurred, thus transforming a national service into one that serves only two or three cities.[13]

These requests for retroactive modifications to Mtel's final pioneer preference are without foundation either as a matter of

---

[11] See Notice of Proposed Rulemaking and Tentative Decision, 7 FCC Rcd 5676 (1992).

[12] See PageMart Petition at 7-11; American Paging Comments at 2-5.

[13] PageMart Comments at 9-10.

law or policy. As noted, the Commission has already determined that equity required that a final preference, such as Mtel's, should not be modified retroactively.[14] Mtel has invested millions of dollars in its proposal in reliance on the FCC's grant of a final preference, and investors have committed millions more.[15] For the Commission now to revoke or substantially modify Mtel's pioneer preference would be not only inequitable, but unlawful.[16]

Moreover, Mtel has already shown that there is no basis in law or policy for charging Mtel auction-level fees and that Mtel's license should not be delayed.[17] Neither American Paging nor PageMart have provided any new justifications for their contentions. Consequently, there is no need for Mtel to repeat its prior showing with respect to these points.[18]

---

[14] NPRM at ¶ 18.

[15] Opposition of Mobile Telecommunication Technologies Corporation to Petitions for Reconsideration of Paging Network, Inc. and Pacific Bell, GEN Docket No. 90-314, ET Docket No. 92-100, at 4 (filed October 25, 1993) (reporting that the grant of Mtel's preference enabled it to attract $6 million this year for use in deploying NWN, and that the final award enable it to raise $187 million in a recently concluded private offering).

[16] See Bowen v. Georgetown University Hospital, 488 U.S. 204, 208-9 (1988).

[17] Opposition of Mobile Telecommunication Technologies Corporation to Petitions for Reconsideration of Paging Network, Inc. and Pacific Bell, GEN Docket No. 90-314, ET Docket No. 92-100, at 5-12 (filed October 25, 1993).

[18] Given Mtel's previous demonstration that fees may not be charged that exceed the FCC's cost of regulation, PageMart's

(continued...)

Finally, PageMart's attempt to limit the scope of a pioneer preference grant to the area in which the preference was tested is untimely and ill-founded.[19] Mtel's proposed service, like the one for which PageMart requested a pioneer's preference, is "inherently nationwide."[20] Indeed, such coverage "is a fundamental benefit offered by [NWN] to consumers."[21] Moreover, NWN responds to documented consumer demand for such a nationwide service.[22] Accordingly, to restrict the scope of Mtel's preference to a few cities would deprive the public of a sought after and innovative service that Mtel can deliver.[23]

---

[18](...continued)
suggestion that Mtel should pay "at a minimum, the average of the winning bids for comparable markets" must be rejected. PageMart Comments at 10.

[19] PageMart's arguments are also ironic in light of its previous request for a nationwide preference. PageMart, in fact, previously stated that "nationwide coverage is a fundamental benefit offered by PIMS[, PageMart's 'Personal Information Messaging Service,']" yet PageMart now seeks to deny consumers this very benefit. PageMart Request for Pioneer's Preference at 15-16, GEN Docket No. 90-314, ET Docket No. 92-100 (filed March 19, 1992) (emphasis added). See also Order at ¶¶ 102-109.

[20] PageMart Request for Pioneer's Preference at 15.

[21] Id.

[22] Reply of Mobile Telecommunication Technologies Corporation to 900 MHz Narrowband PCS Rulemaking Comments, GEN Docket No. 90-314, ET Docket No. 92-100, at 7-8 (filed January 8, 1993).

[23] As PageMart well knows, arguments may not be raised for the first time in an opposition to a petition for reconsideration. Accordingly, this aspect of its "comments" cannot and should not be considered under well-established Commission rules. 47 C.F.R. § 1.415(c) (1992).

CONCLUSION

In view of the foregoing, all attempts to diminish retroactively the grant to Mtel of its pioneer's preference must be rejected. However, as supported by all participants in the reconsideration proceeding, the Commission should modify section 99.103 to create service benchmarks based on population.

Respectfully submitted,

MOBILE TELECOMMUNICATION
TECHNOLOGIES, INC.

By: R Michael Senkowski

R. Michael Senkowski
Daniel E. Troy
Eric W. DeSilva
WILEY REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

November 4, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 1993, I caused copies of the foregoing "Reply Comments of Mobile Telecommunication Technologies Corporation" to be mailed via first-class postage prepaid mail to the following:

James P. Tuthill
Betsy S. Granger
PACIFIC BELL
140 New Montgomery St., Rm. 1525
San Francisco, California 94105

James L. Wurtz
PACIFIC BELL
1275 Pennsylvania Ave., N.W.
Washington, D.c. 20004

Judith St. Ledger-Roty
Attorney for Paging Network, Inc.
REED, SMITH, SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036

Mark A. Stachiw
PACTEL PAGING
Suite 800
12221 Merit Drive
Dallas, Texas 75251

Carl W. Northrop
Attorney for Pactel Paging
BRYAN CAVE
Suite 700
700 13th Street, N.W.
Washington, D.C. 20005

George Y. Wheeler
Attorney for American Paging
KOTEEN & NAFTALIN
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Jeffrey Blumenfeld
Attorney for PageMart, Inc.
BLUMENFELD & COHEN
1615 M Street, N.W.
Suite 700
Washington, D.C. 20005

Sydna Jones