

comparative broadcast hearings, <sup>72/</sup> the Commission should refrain from opening the door to similar problems in PCS, and because the Commission is auctioning a new service, it is PCS which is most likely to involve any such abuse by speculators trying to take advantage of preferences. It is simply too difficult to police two-tiered arrangements such as limited partnerships and any preferences awarded, therefore, should be based on compliance with the preference criteria by the total ownership of the applicant, including any contingent or future interests such as convertible debt or options. <sup>73/</sup>

The Commission has also raised the question of whether tax certificates could be used to help minorities in PCS auctions. <sup>74/</sup> As we understand tax certificates, they are granted to a seller whose property is either being taken for governmental use or is being sold in a manner that promotes some expressly recognized governmental objective. In view of the Congressional mandate to favor participation by minorities, it would be appropriate to allow sellers to obtain tax certificate where a sale is made to one of these designated entities. The use of tax certificates has long been employed in the broadcast area and does not appear to have significantly distorted that market. PageNet does not, however, see a role for tax certificates in the auction process.

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<sup>72/</sup> See, for example, Rancho Mirage Radio, 7 FCC Rcd 480 (Rev. Bd. 1992); rev. denied, 7 FCC Rcd 4337 (1992).

<sup>73/</sup> We believe, however, that, if small businesses combine, the combination must be the entity which satisfies the test for a small business preference based on the combined assets and income of its members.

g. **Other Auction and Application  
Procedures for Broadband and Narrowband**

The Commission has proposed applying various Part 22 rules to PCS. <sup>75/</sup> We note the possibility that an applicant for PCS licenses may also be part of a group seeking some of the same facilities, particularly if combinatorial bidding is permitted. Because this is an auction procedure rather than a lottery, there would not appear to be any reason to prohibit such activity since each entity would be bidding in accordance with its own objectives. <sup>76/</sup> Section 22.21 dealing with inconsistent or conflicting applications could be construed to bar such behavior, and section 22.91 specifically prohibits parties from having an ownership interest in more than one application in the same market, and the Commission should make it clear that this is not its intent where these auction procedures are to be employed. <sup>77/</sup>

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74/ NPRM at ¶ 121.

75/ NPRM at ¶ 128.

76/ It is unclear how limitations on the amount of spectrum a single entity may hold in a particular geographic area would apply where part of the spectrum is held by a group one of whose members also owns some individually. First Report and Order, 8 FCC Rcd 7162, ¶ 34 (1993).

77/ We note that in narrowband no single licensee will be permitted to hold more than three 50 kHz channels, paired or unpaired, at a single geographic location. Id. The Commission should make it clear that this restriction does not apply at the application stage and a single entity may apply for more frequencies but will not be granted more. To maximize efficiency, all qualified, interested entities should have an opportunity to bid for all frequencies. If such entity is allowed to apply for and bid upon only three narrowband channels and is not successful in the auctions for those frequencies, its bid might still be higher than the winning bid in the auctions for which it could not apply.

The Commission proposes to utilize for PCS the financial qualifications criteria set forth in Section 22.917(f) of the rules. <sup>78/</sup> While those provisions are satisfactory in some respects, PageNet believes that the financial requirements used in cellular RSAs, Section 22.917(c) would be more desirable. There is no need to have a separate firm financial commitment for each specific market or frequency applied for, particularly if subsection 3(ii) is construed to require a lender to examine the financial viability of each individual market in which the applicant intends to use the borrowed funds. It is likely that many entities will apply for various combinations of frequencies, and while their plans will be disclosed in a general way to any parties providing financing, it may not be done on a specific market by market basis. For existing entities, that sort of detail may not be required by lenders and should not be required by the Commission. So long as a bona fide commitment is provided, applicants should be permitted to allocate the funds from that commitment to whatever applications they choose so long as the total for all post-auction applications does not exceed the amount of the commitment. <sup>79/</sup> If there is a genuine commitment from a responsible bank or group of banks, earmarked for particular purposes, nothing more could reasonably be required.

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<sup>78/</sup> NPRM at ¶ 128.

<sup>79/</sup> For the reasons stated above, we believe that PCS applicants should be allowed to apply for all available frequencies. They should not, however, be required to show financing for all, but only for those where they are the high bidder at the auction. Procedures paralleling those in 47 C.F.R. § 22.917(c) should be followed.

The proposal to also apply the rules contained in sections 22.918 - 22.945 of the rules requires clarification in that those rules contain different provisions relating to top 90 markets, RSAs and unserved areas. The Commission needs to clarify which of these it proposes to apply to PCS applicants. Moreover, contrary to those rules, as proposed above, we believe that the Commission should permit a liberal amendment policy to resolve questions raised during processing of applications. Similarly, if the proposal to defer filing of location specific information is adopted, as we assume the Commission proposes at least for nationwide authorizations, Section 22.923 would need to be revised to eliminate the site specific information therein requested.

## **2. Private Land Mobile Services**

PageNet generally agrees with the Commission's proposals relating to the use of auction in the Private Land Mobile Services. We believe that any future commercial nationwide services in the 220 MHz band should be handled by auction in the same general manner as narrowband nationwide PCS, described above. For the SMRs, we believe the Commission should discontinue the practice of using waitlisting and should rely on auction techniques in awarding these frequencies. The existing application procedures for SMRs seem appropriate for use with auctions. For the frequencies in the Private Land Mobile Services, we question whether a particular system of preferences is necessary since it appears that a reasonable amount of spectrum is available for local use which should be accessible to small businesses and minorities along with everyone else.

**CONCLUSION**

PageNet respectfully urges the Commission to modify its proposed auction implementation rules and procedures in accordance with the foregoing Comments.

Respectfully submitted,

**PAGING NETWORK, INC.**

By:   
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Judith St. Ledger-Roty  
James J. Freeman  
Michael Wack  
**REED SMITH SHAW & McCLAY**  
1200 18th Street, N.W.  
Washington, D.C. 20036  
(202) 457-6100

November 10, 1993

CERTIFICATE OF SERVICE

I, Jette Ward, hereby certify that a copy of the foregoing  
Comments were hand-delivered this 10th day of November 1993 to the  
following individuals:

Brian F. Fontes, Chief of Staff  
Office of Chairman James H. Quello  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C.

The Honorable Andrew C. Barrett, Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C.

The Honorable Ervin S. Duggan, Commissioner  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C.

Robert M. Pepper, Chief  
Office of Plans & Policy  
Federal Communications Commission  
1919 M Street, N.W., Room 822  
Washington, D.C.

Evan R. Kwerel  
Office of Plans & Policy  
Federal Communications Commission  
1919 M Street, N.W., Room 822  
Washington, D.C.

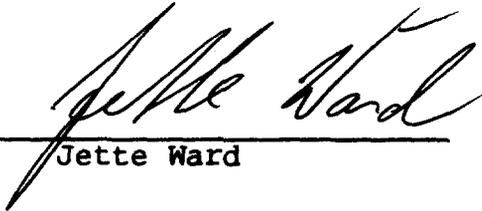
Ralph A. Haller, Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C.

Beverly G. Baker, Deputy Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 5002  
Washington, D.C.

Kathleen Levitz, Deputy Bureau Chief (Policy)  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C.

John Cimko, Jr., Chief  
Mobile Services Division  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 644  
Washington, D.C.

International Transcription Service  
2100 M Street, N.W., Suite 140  
Washington, D.C.

  
\_\_\_\_\_  
Jette Ward