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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

To: The Commission

PARTIAL OPPOSITION OF PAGEMART, INC.
TO PETITIONS FOR RECONSIDERATION

I. INTRODUCTION.

PageMart, Inc. ("PageMart"), by its attorneys, and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.42(f), hereby opposes in part, and submits comments on, the petitions for reconsideration filed by AirTouch Paging ("AirTouch") and the Personal Communications Industry Association ("PCIA"). The two petitions were submitted with respect to the Commission's decision in the Second Memorandum Opinion and Order in the above-captioned proceeding.^{1/}

PageMart currently utilizes existing private carrier paging channels. It intends to pair such channels with narrowband personal communications service ("N-PCS") response channels in order to offer advanced paging services to the public. PageMart was the high bidder on a 50 kHz unpaired license at the auction of nationwide N-PCS licenses held in July 1994; this license was granted to PageMart on

^{1/} FCC 94-218 (Aug. 25, 1994).

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September 29, 1994. PageMart is also an active bidder in the auction for regional N-PCS licenses that is ongoing on the date of this filing.

PageMart strongly supports AirTouch's proposal to permit pairing of N-PCS response channels with other N-PCS frequencies, as well as traditional one-way paging channels. However, PageMart opposes AirTouch's proposal to remove all eligibility restrictions on bidders for these licenses. Instead, PageMart urges the Commission to adopt PCIA's less radical, existing-market-area licensee eligibility test for the N-PCS response channels. The combination of these two changes to the Commission's rules will ensure that adequate return-link spectrum is available for incumbent paging firms and that such spectrum is utilized efficiently.

II. EXISTING PAGING OPERATORS SHOULD BE ELIGIBLE FOR ANY RESPONSE CHANNEL LICENSE THAT OVERLAPS GEOGRAPHICALLY WITH THE MARKET OF ANY PAGING LICENSE THEY HOLD.

A. Eligibility Based On Market Area Licensing Is Efficient And Easily Administered.

As AirTouch correctly points out, local presence eligibility rules are unduly cumbersome to administer.^{2/} The chief difficulty is determining how to treat those carriers that technically do not meet the eligibility test but that, in fairness, should nonetheless be permitted to bid. For example, a carrier licensed in a particular area may be in the process of constructing the required facilities or have firm plans to build them; under the

^{2/} See AirTouch Petition at 6.

current local presence eligibility test, this carrier would not be eligible to bid on response channel spectrum. Likewise, a carrier may possess the necessary facilities, but only at a location just outside of the geographic perimeter required for eligibility. In both cases, the ineligible carriers would likely seek waivers on the grounds that their noncompliance with the eligibility rule is de minimis and that exclusion on such grounds would be unfair.^{3/} Whatever the merits of such requests, evaluating them would be time-consuming, and unnecessarily occupy valuable Commission resources that could be better deployed elsewhere.

By contrast, PCIA's market-area license eligibility test would not encourage waiver requests by marginally noncompliant companies, nor would it encourage haphazard construction of facilities. At the same time, this eligibility test would ensure that return-link licenses are available to those firms that have already shown their commitment to serving the relevant geographic area. Finally, the proposed PCIA eligibility test would also be

^{3/} Alternatively, rather than seeking a waiver to achieve eligibility in certain key markets, some carriers might attempt to construct haphazardly skeleton facilities. Such frenzied network deployment likely would be riddled with technical problems that would ultimately reduce the quality of service provided to the public. The Commission's regulatory framework should not encourage such inefficient, uneconomical deployment of networks.

more in line with the trend in the Commission's regulations to market area (rather than local presence) regulation.^{4/}

B. Removal Of All Eligibility Restrictions Would Unfairly Disadvantage Existing Paging Firms And Harm The Quality And Speed Of Delivery Of Service To The Public.

Notwithstanding the need to depart from the current local presence eligibility test, the Commission should reject AirTouch's blanket request for a removal of all eligibility restrictions on bidding for the N-PCS response channels. AirTouch contends that the eligibility limit was solely a product of spectrum lotteries, and that, because lotteries have been replaced with competitive bidding, the restriction is no longer required.^{5/}

The decision to reserve some response spectrum for incumbent paging companies was not, however, premised solely on the idea that such companies needed shielding from the distributive economic distortions created by lotteries. Rather, the eligibility requirement also recognized the significant network experience and expertise that existing paging providers bring to the table. These assets help to assure rapid and high-quality service deployment, goals the Commission seeks to serve. Conversely, opening bidding to all parties risks speculation, raises the specter of strategic bidding to deny incumbent paging companies vital

^{4/} See PCIA Petition at 3.

^{5/} See AirTouch Petition at 4-5.

return-link spectrum, and could result in anticompetitive bidding by would-be narrowband competitors.^{6/}

III. THE COMMISSION SHOULD RECONSIDER ITS RULE THAT N-PCS RESPONSE CHANNELS MAY BE PAIRED ONLY WITH TRADITIONAL PAGING FREQUENCIES.

A. Two-Way Capability Represents The Future Of The Paging Industry.

There is a broad consensus both within and outside the industry that paging is undergoing a radical transformation. Since their introduction, pagers have evolved from plain-vanilla, one-way beepers with local coverage, to wide-area-capable, alphanumeric receivers with numerous, advanced messaging features. But while changes in the industry have been significant to date, as a direct result of the allocation of N-PCS spectrum, the industry stands on the precipice of its most important evolutionary development yet: the advent of two-way, advanced messaging services.^{7/} The next generation of pagers will "no longer

^{6/} This latter concern is particularly acute given that the three-license aggregation limit for N-PCS spectrum does not include response channel licenses, which carry their own, separate aggregation limit (two licenses per geographic region).

^{7/} Lest there be any doubt regarding the importance or likelihood of this transformation, the evidence abounds. In a report on the U.S. industry, the Financial Times of London wrote that "[t]wo-way is the way ahead for U.S. paging operators." See Financial Times Business Reports, Aug. 11, 1994 at 3. Consumers' demand will drive the introduction of this capability; in a survey cited by the Commission in its recently released Third Report and Order on the regulatory treatment of mobile services, nearly three-quarters of the participants identified "full two-way capability" as desirable. See Implementation of Section 3(n) and
(continued...)

[be] just compact receivers",^{8/} but will include two-way capabilities that open up whole new areas of applications and widen the competitive rigor of the paging industry.

The simplest and most immediate use for two-way capability will be basic acknowledgement paging. Users of current one-way paging systems can never be certain -- despite these systems' ubiquitous coverage -- that pages have been, in fact, received. However, "pagers of the future will [be] equipped with . . . 'real time' " or immediate acknowledgement for the paging party based on two-way technology.^{9/} This will allow the paging party to know whether its page was received by the intended recipient. More complex applications will follow, such as wireless data^{10/} and limited voice-type services.^{11/}

^{2/} (...continued)

332 of the Communications, Act, Regulatory Treatment of Mobile Services, FCC 94-212, ¶ 74 n.148 (Sept. 23, 1994) (citations and quotations omitted). The Commission has also explicitly acknowledged that, because of emerging two-way capabilities, paging will eventually compete with cellular. Id. ¶ 60 n.108.

^{8/} Tom Steinert-Threlkeld, "Messaging Tomorrow", The Dallas Morning News, at 1H.

^{9/} Alison Boyce, "Pager Power: Technology Brings New Uses to an Old Product", Washington Business Journal, at 28.

^{10/} One recent study of the wireless market concluded that, "[i]n the coming decade, data will replace voice as the fastest-growing area of the wireless industry." Frost & Sullivan, World Mobile Data Communications Markets, cited in Mobile Satellite News, July 28, 1994, at 6.

^{11/} As spectrum utilization technologies mature, paging will increasingly compete with cellular for two-way traffic because of paging's significant cost advantage.

B. Restrictions On Pairing Of N-PCS Response Channels Will Unnecessarily And Unfairly Inhibit The Development Of A Competitive, Two-Way Market.

Notwithstanding the significant advances in technology and unmet consumer demand, a competitive market for two-way services will not develop absent the appropriate regulatory framework. To compete, marketplace participants must have access to return-link spectrum and the flexibility to use it efficiently.^{12/}

To hamstring firms that acquire response channels thus makes little sense. The results of the nationwide N-PCS auction and the composition of the regional auction bidder pool demonstrate that existing paging providers will ultimately be awarded a substantial amount of PCS spectrum (both paired and unpaired forward channels). As AirTouch claims, these firms should be permitted to decide the most efficient way to use any return-link spectrum they acquire, even if that means pairing response channels with other N-PCS spectrum.^{13/}

The importance of permitting the pairing of N-PCS response channels with other N-PCS spectrum cannot be overemphasized. By limiting eligibility for response channel bidding to incumbent, market-area-licensed paging firms, the Commission ensures that these firms will have

^{12/} As PageNet's Chief Financial Officer, Barry Fromberg, recently stated in an interview, "[bandwidth] dedicate[d] solely for return traffic will be key to paging's growth." Eby, "Auction Opens Markets Beyond the Beeper," America's Network, September 1, 1994.

^{13/} See AirTouch Petition at 7-8.

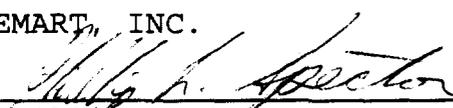
access to vital return-link spectrum. However, many of these same firms will also hold N-PCS licenses that they may wish to pair with N-PCS return link spectrum. To restrict these firms from using their paging and N-PCS licenses based on business considerations -- especially given that the services provided over each will be identical -- smacks of inefficient regulation. The Commission should avoid this regulatory trap and remove restrictions on the pairing of N-PCS response channels and other N-PCS spectrum.

IV. CONCLUSION

In the near future, the paging industry will be dominated by two-way applications. Return-link spectrum will play a vital role in ensuring that existing paging companies bring their significant expertise to the industry. AirTouch's proposed flexibility to integrate response channels into both N-PCS and traditional paging networks without restriction is therefore essential. The Commission should also adopt PCIA's proposed market area eligibility test, which is both more easily administrable and more consistent with the trend in Commission regulation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Partial Opposition of PageMart, Inc. to Petitions for Reconsideration was mailed this 3rd day of November, 1994, by first class United States mail, postage prepaid, to the following:

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