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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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. <u>92-100</u>
Narrowband Personal)	
Communications Services)	

To: The Commission

REPLY OF PAGEMART, INC. TO OPPOSITION OF
PUERTO RICO TELEPHONE COMPANY

I. INTRODUCTION.

PageMart, Inc. ("PageMart"), by its attorneys, and pursuant to Section 1.429(g) of the Commission's Rules, 47 C.F.R. § 1.429(g), hereby replies to the opposition of Puerto Rico Telephone Company^{1/} ("PRTC") filed in response to the petitions for reconsideration of AirTouch Paging ("AirTouch") and the Personal Communications Industry Association ("PCIA").^{2/} PageMart filed a partial opposition to these petitions.^{3/}

^{1/} Filed Nov. 3, 1994 (hereinafter, "PRTC Opposition").

^{2/} The two petitions were submitted with respect to the Commission's decision in the Second Memorandum Opinion and Order in the above-captioned proceeding. FCC 94-218 (Aug. 25, 1994).

^{3/} Filed Nov. 3, 1994.

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PageMart agrees with PRTC that a complete removal of all eligibility restrictions on bidders for narrowband PCS ("N-PCS") response channel licenses is unwarranted. However, unlike PRTC, PageMart believes that PCIA's proposed alternative -- market area license eligibility -- is a prudent compromise that protects incumbent interests in an administratively efficient manner.

With respect to AirTouch's proposed removal of restrictions on the use of return-link spectrum, PageMart believes that PRTC's opposition is misplaced. Assuming that the Commission retains some eligibility requirement, the only firms able to bid for response channel licenses will be incumbent paging providers. Subjecting these firms to additional restrictions on the use of response channel licenses they acquire is therefore unnecessary. Instead, a combination of the market area license eligibility threshold, and free pairing of N-PCS response channel spectrum with N-PCS and traditional paging frequencies, would both protect incumbent interests and assure the most efficient utilization of spectrum.

II. MARKET-AREA LICENSE ELIGIBILITY RESTRICTIONS ARE SUPERIOR TO LOCAL PRESENCE REQUIREMENTS AND STILL PROTECT INCUMBENT PAGING COMPANIES.

The bulk of PRTC's argument in opposition to the AirTouch and PCIA petitions stems from a fear that the elimination of eligibility restrictions on bidders for N-PCS response channels will harm incumbent paging companies. For the reasons provided in its Partial Opposition, PageMart agrees that a wholesale removal of all eligibility restrictions would be unwise.^{4/} However, adoption of PCIA's less radical market area license eligibility test -- which PageMart strongly endorses -- would ensure that incumbent firms have access to return-link spectrum and would avoid the administrative inefficiencies of a local presence eligibility threshold.

Contrary to PRTC's suggestion,^{5/} a local presence eligibility test will exacerbate the Commission's already difficult and time-consuming task of addressing waiver requests. Would-be bidders will seek waivers where they have existing facilities that, because they are located marginally outside the required perimeter, cannot be used to supply two-way services -- the most important segment of the

^{4/} See Partial Opposition of PageMart at 4-5.

^{5/} See PRTC Opposition at 7 n.5.

future paging industry.^{6/} This arbitrary exclusion will not -- indeed, should not -- be easily upheld by the Commission, meaning that a careful (and resource-intensive) review of the many likely waiver requests will be required.

Alternatively, firms may attempt a haphazard and skeletal build-out of facilities simply to meet the eligibility requirements.^{7/} In either case, the regulation-inspired inefficiencies are unnecessary, and will doubtless result in a delay in the provision of service to the public.

By contrast, PCIA's market area license eligibility test would be easy to administer and would avoid the numerous waiver requests that a local presence requirement would prompt. This eligibility limit also ensures that return-link licenses are available to those firms that have already shown their commitment to serving the relevant geographic area.^{8/} Finally, eligibility based on market area licensing is most consistent with the clear

^{6/} See Partial Opposition of PageMart at 5-6.

^{7/} See Partial Opposition of PageMart at 3 n.3.

^{8/} The import of PRTC's claim that the Commission has already rejected the market-area license test is unclear. See PRTC Opposition at 8. As PRTC admits, the Commission has not referenced this specific proposal in any of its decisions. Id.

trend in the Commission's rules to market area (rather than local presence) regulation.^{9/}

III. RESTRICTIONS ON THE PAIRING OF N-PCS RESPONSE CHANNELS ARE INEFFICIENT AND UNNECESSARY IN LIGHT OF BIDDER ELIGIBILITY REQUIREMENTS

In opposition to AirTouch's proposed relaxation of the rules governing use of response channel spectrum, PRTC claims that, "[t]here is no reason to allow [new narrowband PCS licensees] to take away response channels from existing paging licensees."^{10/} What PRTC fails to appreciate, however, is that a significant number of successful N-PCS bidders are the very incumbent paging companies on whose behalf it claims to argue.^{11/} Thus, restricting the pairing of N-PCS response channels most affects existing paging companies that seek additional return-link spectrum, and

^{9/} See PCIA Petition at 3.

^{10/} PRTC Opposition at 4 n.3. PRTC also suggests that the AirTouch petition is untimely. *Id.* at 6. However, the Commission's reconsideration of the eligibility rules for response channel licenses has ramifications for the regulations governing how the licenses can be used. Thus, AirTouch's petition is timely.

^{11/} At the nationwide auction in July, roughly two-thirds of the licenses were awarded to existing paging firms. In the regional auction, incumbent paging firms (or consortia that include a significant incumbent paging presence) were the high bidders on all but a handful of the licenses available.

distorts the efficient operation of their businesses.^{12/} Incumbent paging firms are already "protected" by virtue of the eligibility threshold. Thus, the public interest is best served if winning bidders -- not the Commission -- decide on the most efficient way to use return-link spectrum, even if that means pairing response channels with other N-PCS spectrum.^{13/}

IV. CONCLUSION

To the extent possible, the Commission should ensure that existing paging companies have a meaningful opportunity to participate in the provision of the next generation of wireless messaging services. To this end, some limitations on eligibility for response channel licenses are necessary. However, these limitations must be easily administrable, to avoid delaying the provision of service to the public.

Thus, market area license eligibility is clearly superior to a cumbersome local presence requirement. Once

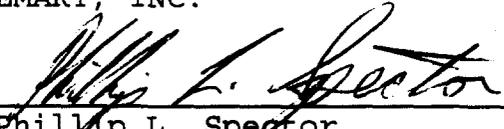
^{12/} As PageMart pointed out in its Partial Opposition, this rule is particularly troubling given that the services to be provided over N-PCS response channels paired with traditional paging spectrum are identical to those that would be provided over N-PCS-only systems. See Partial Opposition of PageMart at 8.

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

adequate eligibility restrictions are adopted, additional regulations limiting the pairing of N-PCS channels to traditional paging spectrum would be superfluous, and would only distort the efficient operation of the market. For these reasons, PageMart urges the Commission to adopt PCIA's proposed market area license eligibility test and to permit pairing of N-PCS return-link spectrum with other N-PCS frequency held by existing paging providers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

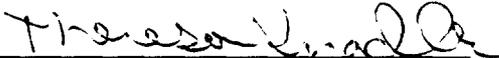
I hereby certify that a copy of the foregoing Reply of PageMart, Inc. to Opposition of Puerto Rico Telephone Company was mailed this 14th day of November, 1994, by first class United States mail, postage prepaid, to the following:

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