

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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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In-Flight Phone Corp. )  
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Application for a Pioneer's )  
Preference to Operate a Live )  
Audio News, Information, and )  
Entertainment Service for Airline )  
Passengers on the 901-902 MHz and )  
940-941 MHz Bands )

94-32  
ET Docket No. ~~92-100~~  
PP- \_\_\_\_\_

FORMAL OPPOSITION OF TELOCATOR

Telocator, the Personal Communications Industry Association ("Telocator"), herewith submits its formal opposition to the above captioned Pioneer's Preference Request ("Request") and accompanying Petition for Acceptance of Application or Rule Waiver ("Petition") submitted by In-Flight Phone Corporation ("In-Flight").<sup>1</sup> In its Petition, In-Flight contends that the public notice establishing the deadline for 900 MHz Narrowband PCS Pioneer's Preference Requests only related to "mobile data and paging services", while the Notice of Proposed Rule Making ("NPRM") ultimately adopted in the PCS proceeding purportedly expanded the scope of contemplated 900 MHz services to include its "live audio

<sup>1</sup> See Application of In-Flight Phone Corp. for Pioneer's Preference to Operate a Live Audio News, Information, and Entertainment Service for Airline Passengers on the 901-902 MHz and 940-941 MHz Bands, ET Docket No. 92-100, PP-\_\_\_\_\_ and accompanying Petition For Acceptance of Application or Rule Waiver (filed October 30, 1992).

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news, information, and entertainment service."<sup>2</sup> Thus, according to In-Flight, acceptance of its untimely Pioneer's Preference Request is warranted.

As detailed below, the In-Flight Petition should be denied and its Pioneer's Preference Request dismissed for one simple reason. Contrary to In-Flight's contentions, the NPRM does NOT expand the scope of proposed 900 MHz services to include its live news, sports and entertainment service. In fact, the NPRM specifically states that broadcasting services such as those planned by In-Flight will not be permitted in the new PCS allocations.<sup>3</sup> Accordingly, In-Flight's Pioneer's Preference Request is both untimely and inconsistent with the service for which 900 MHz spectrum will be licensed.

#### I. IN-FLIGHT'S PETITION AND PIONEER'S PREFERENCE REQUEST

On August 14, 1992, the FCC released its long-awaited NPRM in General Docket No. 90-314 concerning the provision of personal communications services in both the 900 MHz and 2 GHz portions of the radio spectrum.<sup>4</sup> Leading up to this much publicized event, the Commission released two Public Notices announcing deadlines for filing PCS pioneer's preference

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<sup>2</sup> Petition at 2-3.

<sup>3</sup> NPRM at ¶ 29.

<sup>4</sup> *Notice of Proposed Rule Making*, Gen Docket No. 90-314, FCC 92-333 (released August 14, 1992).

requests. The first established May 4, 1992, as the deadline for filing PCS pioneer preference requests under General Docket No. 90-314.<sup>5</sup> The second established June 1, 1992, as the deadline for filing preference requests for 900 MHz narrowband and data services.<sup>6</sup> Despite experimenting with a 900 MHz service that it now classifies as a personal communications service, In-Flight failed to respond to either of these notices.

In-Flight asserts that acceptance of its untimely Pioneer's Preference Request is warranted because prior to the adoption of the Notice of Proposed Rulemaking ("NPRM") concerning 900 MHz Narrowband PCS Services, there was "no reason to believe that the NPRM would propose to allocate spectrum for In-Flight's proposed service."<sup>7</sup> Specifically, In-Flight read the public notice establishing the 900 MHz cut-off as only relating to "mobile data and paging services", while the NPRM ultimately adopted purportedly expands the scope of contemplated services to include its "live audio news, information, and entertainment service."<sup>8</sup>

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<sup>5</sup> See "Deadline to File Pioneer's Preference Requests [for] Personal Communications Services," GEN Docket No. 90-314, Pub. Notice 22536 (April 3, 1992).

<sup>6</sup> See "Deadline to File Pioneer's Preference Requests [for] 900 Narrowband Data and Paging," (ET Docket No. 92-100), Pub. Notice 22922 (April 30, 1992).

<sup>7</sup> Petition at 5.

<sup>8</sup> Petition at 2-3.

Thus, In-flight contends that either no effective cut-off date was established for its proposed service or that good cause exists for waiver of the established filing deadline.

**II. IN-FLIGHT'S PETITION AND WAIVER REQUEST MUST BE DENIED**

In its Pioneer Preference Request, In-Flight proposes a live audio programming service offering news and entertainment to airline passengers using land-based transmitters operating in the 901-902 and 940-941 MHz unused General Mobile Radio Service bands. Telocator offers no comment on the technical merits of In-Flight's proposal. However, use of these 900 MHz frequencies for such entertainment services is clearly inconsistent with the Commission's objective of promoting innovative data and voice messaging services in that spectrum.

In its NPRM, the Commission expressed a clear intent to allocate spectrum for PCS, a new service it defined as "a family of mobile or portable radio communications services which could provide services to individuals and businesses and be integrated with a variety of competing networks."<sup>9</sup> Among the most innovative of the new PCS "family" of services are a variety of narrowband voice and messaging services that operate in the 900 MHz band.

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<sup>9</sup> NPRM at ¶ 29.

Recognizing the increasing demand for such services, which include advanced paging, messaging, data, and a variety of other applications, the Commission proposed to allocate three megahertz in the 900 MHz spectrum for narrowband PCS services: 901-902, 930-931, and 940-941 MHz.<sup>10</sup> These allocations are meant to promote the development of new mobile and portable communications to meet the personal communications needs of "people on the move."<sup>11</sup>

In this context, In-Flight's proposal simply does not fall within the scope of the contemplated narrowband PCS services. The Notice of Proposed Rule Making clearly stated that "spectrum allocated for PCS [should] not be used for broadcasting service."<sup>12</sup> Yet, In-Flight's service clearly involves such expressly excluded activities by broadcasting programming to the airline traveling public.<sup>13</sup> Indeed, In-Flight itself previously characterized the service as a "broadcast retransmission service" in an earlier petition for

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<sup>10</sup> Id. at ¶ 49.

<sup>11</sup> Id. at ¶ 30.

<sup>12</sup> Id.

<sup>13</sup> Broadcasting, as defined by the Communications Act of 1934, means the dissemination of radio communications intended to be received by the public, directly or by the intermediary of relay stations. 47 U.S.C. §153(o).

rulemaking.<sup>14</sup> Given the Commission's stated intentions of not allowing PCS spectrum to be used for such services, the In-Flight preference request must be summarily dismissed or denied.

V. CONCLUSION

In-Flight's request for a pioneer's preference for its audio programming service should be summarily rejected for the reasons discussed above. In-Flight's proposal is predicated upon an allocation of spectrum that is plainly inconsistent with the Commission's proposed allocations for narrowband voice and data services and, in any event, is untimely filed.

Respectfully submitted,

TELOCATOR, THE PERSONAL  
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<sup>14</sup> See Amendment of the Commission's Rules to Allocate 500 kHz of the General Purpose Mobile Radio Service for a Live News, Weather, and Sports Network for Airline Travelers, Petition for Rulemaking (filed September 6, 1991, dismissed without prejudice October 1991).