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June 16, 1995

**COMMENT SOUGHT ON IN-FLIGHT PHONE CORP.
PIONEER'S PREFERENCE REQUEST
(ET Docket No. 94-32)**

On March 16, 1995, In-Flight Phone Corp. (In-Flight) filed a Petition for Declaratory Ruling (Petition) asking that its pioneer's preference (PP) Request filed in the Narrowband Personal Communications Services proceeding, ET Docket No. 92-100, now be considered in ET Docket No. 94-32, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use. The Petition was placed on Public Notice on April 28, 1994; see DA 95-967. No comments were filed on this Public Notice. On June 8, 1995, in response to the Commission's Third Report and Order in the pioneer's preference review proceeding (see ET Docket No. 93-266, FCC 95-218, released June 8, 1995), In-Flight filed a Supplement to its PP Request. In the Supplement, In-Flight asks that the Commission issue a public notice soliciting comment on the PP Request.

In-Flight filed its PP Request in ET Docket No. 92-100 on October 30, 1992, seeking a preference in the 901-902 MHz and 940-941 MHz bands for a live ground-to-air audio news, information, and entertainment service for airline passengers. However, because the rules adopted in ET Docket No. 92-100 were not related to In-Flight's proposal, its PP Request was not acted upon by the Commission.

In May 1994, the Commission released a Notice of Inquiry (NOI) in ET Docket No. 94-32, seeking information on potential applications of 50 megahertz of transferred Federal Government spectrum; see 9 FCC Rcd 2175. In November 1994, a Notice of Proposed Rulemaking was released proposing the allocation of the spectrum; see 9 FCC Rcd 6779. A First Report and Order and Second Notice of Proposed Rulemaking (Second NPRM) was released in February 1995; see 10 FCC Rcd 4769. The Second NPRM proposes that the 4660-4685 MHz band be allocated for a General Wireless Communications Service (GWCS).

In its Petition, In-Flight argued that its PP Request should be considered in ET Docket No. 94-32 because the proposed service rules would allow it to apply for a license to provide its service in the 4660-4685 MHz band. In-Flight claimed that the service for which the preference is sought is identical in all relevant respects to the service it would provide as a GWCS licensee. In-Flight also requested that the Commission issue the recommended ruling well in advance of the August 10, 1995 statutory deadline for issuing final rules in ET Docket

No. 94-32, so that the Commission would have sufficient time to decide whether to award a pioneer's preference to In-Flight.

In its Supplement, In-Flight notes that the Commission recently decided in ET Docket No. 93-266 that public notices would no longer be issued inviting comment on pioneer's preference requests -- rather, such comment would be solicited in the notices of proposed rule making that propose to establish rules governing the services for which the preferences are sought; see Second Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 4523 (1995). However, In-Flight states that because an NPRM has already been issued in Docket No. 94-32, the only way the Commission can give parties an opportunity to comment on its PP Request is to issue a public notice.

We concur with In-Flight that due to the special circumstances surrounding its PP Request, issuance of a public notice is appropriate in this case. Accordingly, we are assigning file number PP-88 to the Request and invite comment on it and the Supplement. Comments must reference both PP-88 and ET Docket No. 94-32 on the cover page. Comments are due July 3, 1995, and reply comments are due July 13, 1995. We note that In-Flight's PP Request has been formally opposed. Accordingly, the PP Request constitutes a restricted Commission proceeding in which ex parte presentations are prohibited; see 47 C.F.R. Section 1.1208(c).

In-Flight's PP Request, including the Supplement, is available for inspection in the FCC Reference Center, Room 239, 1919 M Street N.W., Washington, DC during regular business hours. This material may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20036, (202) 857-3800. For further information, contact Thomas Deringe or Rodney Small in the Office of Engineering and Technology, (202) 739-0703 or (202) 776-1622, respectively.

- By the Chief, Office of Engineering and Technology -