

ORIGINAL

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

RECEIVED

MAR 1 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Revision of Part 22 and Part 90 of the )  
Commission's Rules to Facilitate Future )  
Development of Paging Systems )  
)  
Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

WT Docket No. 96-18

PP Docket No. 93-253

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF  
PREFERRED NETWORKS, INC.

PREFERRED NETWORKS, INC.

By: Terry J. Romine, Esq.

**Lukas McGowan Nace & Gutierrez, Chartered**  
1111 Nineteenth Street, N.W., Suite 1200  
Washington, D.C. 20036  
(202) 857-3500

Date: March 1, 1996

No. of Copies rec'd  
List ABCDE

079

## TABLE OF CONTENTS

<b>SUMMARY .....</b>	<b>ii</b>
<b>I. INTRODUCTION .....</b>	<b>2</b>
<b>II. COMMENTS .....</b>	<b>3</b>
<b>A. THE COMMISSION'S DECISION TO SUSPEND         THE ACCEPTANCE OF NON-EXCLUSIVE         PCP APPLICATIONS WHICH WERE SUBMITTED         TO THE FREQUENCY COORDINATOR PRIOR TO         FEBRUARY 8, 1996 IS FLAWED AND INCONSISTENT         WITH THE LANGUAGE OF THE ORDER .....</b>	<b>3</b>
<b>B. THE COMMISSION FAILED TO PROVIDE         NON-EXCLUSIVE PCP LICENSEES IN THE         LOWER BAND BELOW 929 MHZ AN OPPORTUNITY         TO MAKE MINOR MODIFICATION SIMILAR         TO CCP LICENSEES AND 929 MHZ LICENSEES .....</b>	<b>5</b>
<b>C. THE COMMISSION SHOULD IMMEDIATELY BEGIN         ACCEPTING APPLICATIONS FOR NON-EXCLUSIVE         PCP CHANNELS AND CONTINUE TO AUTHORIZE         SUCH FACILITIES AS PREVIOUSLY LICENSED .....</b>	<b>8</b>
<b>III. CONCLUSION .....</b>	<b>10</b>

## SUMMARY

Preferred Networks, Inc., a licensee of Common Carrier Paging ("CCP") channels in the 931 MHz band and the lower bands and non-exclusive Private Carrier Paging ("PCP") channels in the UHF/VHF bands, urges the Commission to **immediately** (1) accept applications for non-exclusive PCP channels which had been submitted to the frequency coordinator prior to February 8, 1996 and (2) permit applications for minor modifications of non-exclusive PCP systems to be accepted to the same extent that such such applications will be accepted from CCP channel licensees and 929 MHz PCP licensees. PNI also suggests that the Commission lift the suspension of all applications for non-exclusive PCP channels, and implement a licensing procedure for such applications in a manner similar to that used in the Emerging Technology proceeding for the fixed microwave frequencies in the 2 GHz band.

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

RECEIVED  
MAR - 1 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Revision of Part 22 and Part 90 of the )  
Commission's Rules to Facilitate Future ) WT Docket No. 96-18  
Development of Paging Systems )  
) PP Docket No. 93-253  
Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

To: The Commission

COMMENTS OF  
PREFERRED NETWORKS, INC.

Preferred Networks, Inc. ("PNI" or "Company"), pursuant to Section 1.415 of the Federal Communications Commission's ("Commission" or "FCC") rules and regulations and by counsel, respectfully submits its comments to the Commission's interim licensing proposal set forth in the Notice of Proposed Rule Making ("Notice") adopted by the Commission on February 8, 1996 in the above-styled proceeding.<sup>1</sup> PNI also urges the Commission to **immediately** order, prior to its decision on the interim licensing proposal, (1) the acceptance of applications for non-exclusive Private Carrier Paging ("PCP") channels which were submitted to the required frequency coordination committee prior to February 8, 1996 and (2) the acceptance of applications to for minor modifications of existing systems and sites for licensed non-exclusive PCP channels licensed in the lower bands below 929 MHz.

---

<sup>1</sup> Notice of Proposed Rule Making (FCC 96-52), WT Docket No. 96-18, PP Docket No. 93-253, 10 FCC Rcd \_\_ (1996).

## **I. Introduction**

PNI, a Delaware corporation, is a paging company with its headquarters in Norcross, GA. PNI, unlike other paging companies, is a carrier's carrier of exclusively wholesale one-way paging network services. The Company's customers purchase and resell the Company's network services to their subscribers. As of December 31, 1995, PNI more than 240 customers (including four of the five larger paging service providers in the U.S.), which collectively resold paging services on the Company's networks to over 153,000 subscribers. Primarily, PNI is building its network for which it has licensed, or has applications pending, in 48 of the 50 larger U.S. metropolitan markets and adjacent areas, on the shared PCP frequency, 157.74 MHz. PNI also is licensed and operates on Common Carrier Paging ("CCP") frequencies, 931.2625 MHz, 158.10 MHz, and 152.84 MHz, and PCP frequencies, 462.85 MHz and 462.80 MHz.

Upon adoption of the Notice, the Commission suspended the acceptance of all paging applications, except for certain applications seeking minor modification of CCP channels and 929 PCP channels and applications for assignment or for approval of a transfer of control. The Commission's action, however, provided no exceptions for the acceptance of such modification applications for licensees authorized non-exclusive PCP channels in the bands below 929 MHz. Recognizing that the application "freeze" could work a hardship on the incumbent licensees operating in the vibrant, thriving, and extremely competitive paging industry, the Commission proposed an interim licensing procedure which would permit paging applications for new facilities and major modifications of existing authorizations to be filed during the pendency of the rule

making proceeding. This portion of the rule making is being conducted on an expedited basis.

Because of the adverse affect that the application freeze on non-exclusive PCP channels has on PNI and on the other carriers which it serves, PNI takes the opportunity to provide the Commission its input on the affects of the Commission's decision as it relates to the non-exclusive PCP channels. The suspension of applications for the exclusive paging channels also affects PNI, but the non-exclusive PCP licensing procedures are far more critical to PNI.

## **II. Comments**

### **A. The Commission's decision to suspend the acceptance of non-exclusive PCP applications which were submitted to the frequency coordinator prior to February 8, 1996 is flawed and inconsistent with the language of the Notice.**

The Commission's decision to suspend acceptance of all applications for the non-exclusive PCP frequencies, which includes 157.74 MHz, has an adverse affect on PNI's business and its needs to expand its network. On February 7, 1996, PNI submitted to the PCIA, thirty-two applications which filled-in adjacent areas within the 48 metropolitan area in which PNI already has licenses to operate. These applications were routinely prepared and submitted because of PNI's need to provide the necessary coverage and capacity to serve to its customers' ever-growing demand. PNI has been informed that these applications will not be accepted even though they were in the "pipeline" prior to the Commission's suspension of acceptance of applications.

Unlike CCP frequencies, PCP channels must be submitted through the frequency coordination process, even for the non-exclusive PCP frequencies. See 47 C.F.R. §

90.175. The shared nature of the PCP frequencies below the 800 MHz bands prevents applications from being considered mutually exclusive. Upon coordination of the applications by the coordinator and submission of the applications to the Commission, an applicant receives conditional authorization for 180 days for the construction and operation of the station during the pendency of the application. See 47 C.F.R. § 90.159. Accordingly, the coordinator, in effect, is a part of the Commission's processes and applications submitted to the coordinator under these circumstances must be considered "pending."

More importantly, in the text of the Notice, in which the Commission discusses the processing of pending applications, it states that

We will [sic] to process pending applications for non-exclusive PCP channels pending the outcome of this proceeding (footnote omitted). Applications will be processed through the frequency coordinator under existing procedures.

Notice, para. ¶ 149. It is clear that the "pending" in the first sentence of the paragraph encompasses applications which were at the frequency coordinator. There is no other interpretation which could provide a rational reason for the second sentence's existence.

Further, the Commission failed to order the suspension of the acceptance of paging applications. Paragraph 157 of the Notice states that

[A]pplications for paging licenses, requests for PCP exclusivity and waiver requests received after the adoption of this Notice will be held in abeyance and not processed until further notice, except as otherwise indicated in paragraph 139 through 148.

The plain meaning of this ordering clause permits the continued filing and acceptance of applications, but does not permit this processing unless such applications are set forth in paragraphs 139 through 148. The processing of pending non-exclusive PCP channels is set forth in paragraph 149. Thus, the Commission's ordering clause does not foreclose the non-exclusive PCP frequencies applications from being submitted, nor does it carry out the intent of paragraph 149.

Clearly, the Commission's decision as it relates to the non-exclusive PCP channels is flawed and places paging companies primarily operating on such frequencies at a disadvantage to their competitors using exclusive frequencies. The Commission, therefore, should accept applications for non-exclusive PCP channels and take no action "freezing" such application until such time as the Commission is able to provide a consistent decision as to such channels.

**B. The Commission failed to provide non-exclusive PCP licensees in the lower bands below 929 MHz an opportunity to make minor modification similar to CCP licensees and PCP 929 MHz licensees.**

PNI believes that some sites for which it submitted application to PCIA on February 7, 1996, may fall within the interference contours as defined under rules governing the licensing of 931 MHz CCP frequencies.<sup>2</sup> Moreover, PNI requires that same flexibility as its competitors in the other bands to be able to add sites to its existing systems and modify existing sites to provide adequate coverage and sufficient capacity for provision of paging services to the general public. The Commission's action,

---

<sup>2</sup> See 47 C.F.R. § 22.537 (e),(f). See also Tables E-1 and E-2, 47 C.F.R. § 22.537.

however, does not provide for the acceptance of applications submitted by non-exclusive PCP licensees in the bands below 929 MHz to make such minor modifications to their systems as permitted CCP licensees and 929 MHz PCP licensees. The discussion in the text of the Notice providing the limited exception to the application "freeze"<sup>3</sup> applies only to CCP licensees and 929 MHz PCP licensees. There is no discussion to provide the same flexibility as Part 22 licensees to non-exclusive PCP channels as for 929 MHz PCP channels.<sup>4</sup> Consequently, the Commission has eliminated the opportunity for companies operating on non-exclusive PCP channels in the lower bands to continue to expand their businesses while providing their competitors on exclusive channels such opportunity.

Such a result appears to be inconsistent and provides an unfair advantage to companies which operate on the exclusive channels. Companies, like PNI, have achieved success using the shared PCP channels, even though such shared use places them at a distinct disadvantage to their competitors which operating on exclusive frequencies. The Commission now has placed PNI at an even greater disadvantage in a proceeding ostensibly designed to provide parity to all paging competitors.

Congress mandated the Commission to ensure all similar wireless telecommunications be comparably regulation.<sup>5</sup> The Commission found that common carrier paging and private carrier paging are substantially similar services that should be

---

<sup>3</sup> I.E., the suspension of the acceptance of all applications seeking authorization for both CCP and PCP paging frequencies.

<sup>4</sup> See Notice, ¶ 141.

<sup>5</sup> See Omnibus Budget Reconciliation Act of 1993, Publ L. No. 103-66, Title VI § 6002(b)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*)

subject to comparable regulation.<sup>6</sup> Further, Congress has mandated that the Commission provide regulatory treatment which will provide for diversification in the licensing process, requiring in the competitive bidding process that the Commission provide a mechanism to ensure that small businesses, minority/women owned businesses and rural telephone companies are not disadvantaged in entering into the telecommunications industry.<sup>7</sup> Certainly, Congress did not intend the Commission to take actions which might lessen the diversification of licenses currently held within the paging industry and place smaller companies at a competitive disadvantage to larger, more entrenched companies, such as PageNet.

Thus, the Commission's action, which does not provide the same symmetrical regulatory treatment of similarly-situated paging licensees and which places large paging companies at a competitive advantage to smaller paging businesses, appears contrary to Congressional mandate and the Commission's overall intent in initiating the instant rule making proceeding. Accordingly, at a minimum, PNI urges the Commission to immediately take action to permit the acceptance of applications for non-exclusive PCP channels in the lower bands which are considered minor modifications as the notice defines this such term for 929 PCP channel.

---

<sup>6</sup> Notice at ¶ 2. See also Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order, GN Docket No. 93-2525, 9 FCC Rcd 7988 (1994).

<sup>7</sup> See 47 U.S.C. § 309 (j)(4)(b).

**C. The Commission should immediately begin accepting applications for non-exclusive PCP channels and continue to authorize such facilities as previously licensed.**

PNI submits that an application freeze as it relates to the non-exclusive PCP channels should not be imposed because of the operational nature of the channels. Under the Commission's rules, an applicant receives authority to operate on these frequencies but is not provided the same type of interference protection as provided frequencies deemed exclusive. Further, in prior proceedings, the Commission has considered and rejected proposals to license the shared PCP channels on an exclusive basis. Consequently, unlike the exclusive frequencies, it is unclear whether exclusivity of the shared frequencies and geographic licensing is a viable licensing method.

Previously, the Commission determined that the operating conditions and greater congestion on these shared PCP frequencies would make it too difficult to implement an exclusivity plan in the lower bands<sup>8</sup> and decided that exclusivity for non-929 MHz PCP channels for 929 MHz PCP channels would be addressed independently. PNI, although a supporter of exclusivity for the both the UHF and VHF non-exclusive PCP channels, believes that the congestion on the non-exclusive PCP channels has increased since the Commission's rejection of exclusivity.

Other than the Commission's ability to license by auction, PNI is unaware of any other factors which might change the Commission's determination not to make the shared PCP channels exclusive or make the implementation of such exclusivity less difficult or

---

<sup>8</sup> See Report and Order (FCC 93-479) PR Docket No. 93-35 8 FCC Rcd. 8318, pp. 36-39 (1993)

problematic. PNI is also aware that the Commission has only recently resolved Petitions for Reconsideration associated with the 929 PCP exclusivity rule making which were filed approximately two years ago. Thus, even in the 929 MHz band, which the Commission found more suitable to transition from shared use to exclusive use, there has been problems in such transition. Finally, PNI finds the proposal in the Notice relating to the non-exclusive PCP channels to be more akin to requests for comments in a Notice of Inquiry. The Commission, therefore, may bifurcate this proceeding, such as it has done in other services when addressing licensing changes based on a competitive bidding process, such as the 800 MHz Specialized Mobile Radio Service, and may delay taking final action on the non-exclusive PCP channels issue until after its decision on licensing of the exclusive CCP and 929 PCP channels.

The Commission's interim licensing procedures for the non-exclusive PCP channels must reflect the operational nature of existing service and the likelihood that the Commission will take no action to make these frequencies exclusive. Parties receiving licenses granted on a secondary basis licensing in a shared environment may create chaos in a spectrum band where most parties have been cooperatively working together. In the shared band, secondary licensing would be as if no authorization was ever received. PNI, therefore, urges the Commission to begin to re-accept non-exclusive PCP channel applications as it has in the past and grant primary status for such stations.

Should the Commission be concerned that applications mills might begin campaigns to license facilities on the non-exclusive PCP channels based on a possibility of exclusivity, PNI urges that the Commission implement a licensing procedure similar

to its procedures adopted in the Emerging Technology rule making.<sup>9</sup> Existing licensees would be permitted to file applications to expand or modify their existing systems. Each applicant would be required to provide a showing that the facilities sought are an expansion of the system or a modification of an existing site. Such applications would be processed and granted on a primary basis. New applicants which were not previously licensed on the non-exclusive PCP channel being requested, may submit applications. However, such applications would be granted on a secondary basis, subject to the outcome of the instant proceeding. In this manner, the current licensees are not disadvantaged in continuing expansion of their business and the Commission can ensure that additional spectrum is not licensed for purely speculative purposes.

### **III. Conclusion**

PNI recognizes that the Commission feels that it has provided greater flexibility in implementing its application "freeze" on the paging industry as compared to other "freezes" imposed on other wireless telecommunications services. Nevertheless, the Commission may be unaware that its decision in the instant proceeding is more detrimental to the smaller and medium size companies which depend on the non-exclusive PCP channels for their successful operations. These companies have been successful in a very competitive environment even though they have had to negotiate and share their spectrum. The Commission's decisions to eliminate the acceptance of all applications in

---

<sup>9</sup> See First Report and Order and Third Notice of Proposed Rule Making (FCC 92-437), ET Docket No. 92-9. 7 FCC Rcd 6886, ¶ 30-31 (1992); Public Notice (Mimeo No. 23115), 2 GHz Licensing Statement (May 14, 1992).

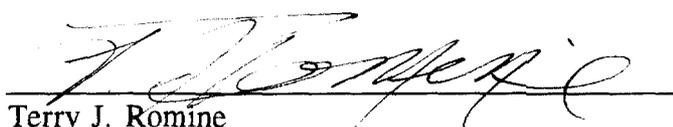
these services and to initiate licensing on a secondary, shared basis may result in these business being unable to serve their customers.

Finally, PNI cannot emphasize enough that the Commission must take **immediate** action to permit current licensees of the non-exclusive PCP channels in the lower bands to submit applications for minor modifications just as all other paging licensees are permitted under the current order. Waiting to resolve this inequity until a decision in the interim licensing proceeding is too late and may result in PNI and others similarly-situated licensees from providing service to existing customers to the economical detriment of both businesses. PNI, therefore, urges the Commission to take this action **expeditiously**.

Respectfully submitted,

**PREFERRED NETWORKS, INC.**

By:

  
Terry J. Romine

**Lukas McGowan Nace & Gutierrez, Chartered**  
1111 Nineteenth Street, N.W., Suite 1200  
Washington, D.C. 20036  
(202) 857-3500

Date: March 1, 1996