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

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules Concerning)
the Commission's Finder's)
Preference Rules)
)

WT Docket No. 96-199

To: The Commission

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COMMENTS

The Personal Communications Industry Association ("PCIA"),¹ through its counsel and pursuant Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits its Comments on the Notice of Proposed Rule Making issued by the Commission in the above-captioned proceeding.²

I. BACKGROUND

In this proceeding, the Commission seeks to eliminate the Finder's Preference program for the 220-222 MHz band. In accordance with similar decisions in the 800 MHz and 900 MHz bands,

¹PCIA is the only international trade association representing the interests of both commercial mobile radio service ("CMRS") and private mobile radio service ("PMRS") users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

²61 FR 51877 (October 4, 1996).

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the Commission believes that the Finder's Preference program is incompatible with a system of geographic licensing.

The Commission also seeks comments on eliminating the Finder's Preference program for exclusive frequencies for which it has not adopted or proposed geographic licensing, i.e. the 470/512 MHz and 800/900 MHz Business and Industrial Pool channels. Further, the Commission proposes to "retain the discretion" to dismiss pending finder's preference requests for any services for which the Commission ultimately adopts geographic licensing.

II. COMMENTS

In general, PCIA supports the Commission's decision to eliminate the Finder's Preference program for geographically licensed services. Thus, PCIA supported the Commission's decision to eliminate the program for the 900 MHz SMR channels.³

PCIA does not, however, support the Commission's proposal to eliminate the program for site-licensed based services. Contrary to the Commission's view, existing oversight and compliance review programs do NOT adequately ensure that unused spectrum is returned for use by legitimate licensees. In fact, the original creation of the Finder's Preference program was based upon the Commission's inability to timely reassign unused but licensed spectrum, and to

³PCIA currently has pending a Petition for Reconsideration of the Commission's adoption of geographic licensing for the 800 MHz band. PCIA's support of the elimination of the Finder's Preference program for the 800 MHz SMR Pool and General Category channels is conditioned upon the Commission's adoption of the licensing proposals submitted by PCIA and, in a joint filing, the American Mobile Telecommunications Association ("AMTA"), SMR Won and Nextel Communications, Inc.

encourage the user public to assist the Commission in identifying such spectrum.⁴ Cutbacks in the Commission's Field Offices have diminished, not enhanced, the Commission's ability to identify unconstructed systems. Thus, for site-licensed frequencies, the Finder's Preference program has become more necessary than ever before.

Retaining the Finder's Preference program for site-licensed frequencies imposes no additional burden on the Commission, while being enormously beneficial to the public. As recognized by the Commission, the number of Finder's Preferences filed for 800/900 MHz Business and Industrial Pool channels is small. Nevertheless, since each Finder's Preference applicant must pay a fee on a per-frequency basis, there is no cost to the Commission to continue the program. For the public, the Finder's Preference program provides an incentive to locate unconstructed systems. Without the program, potential applicants have little reason to "aid" the Commission by identifying unconstructed systems, only to find the frequencies eventually licensed to another party.

Prior to the creation of the Finder's Preference program, potential users were forced to wait up to four years while an unconstructed system was eventually cancelled off the Commission's database when the license was not renewed. Increased license terms, which have been implemented for geographic licenses and may be implemented for site-specific licenses, raise to possibility of

⁴Notice of Proposed Rule Making, PR Docket No. 90-481, 5 FCC Rcd 6401 (1990).

even longer waits. The Finder's Preference program has enabled spectrum to be more rapidly returned to service. Therefore, PCIA requests that the Commission retain the Finder's Preference program for site-specific radio services.

PCIA also opposes any suggestion by the Commission that it may return pending Finder's Preference Requests for site-specific spectrum for which the Commission ultimately adopts geographic licensing. Some Finder's Preference Requests have been pending at the Commission for more than two (2) years.⁵ Most of these Requests have been pending at the Commission for no reason other than the Commission's decision to place a higher priority on other projects. It is patently unfair for the Commission to encourage the public to identify unconstructed systems, promising a preference for the effort, and then dismiss the request because of the Commission's own failure to timely process the paperwork.

It is certainly true that a number of the Finder's Preference Requests which were filed during 1994 and 1995 were frivolous, based on minor inconsistencies with transmitter coordinates through no fault of the licensee. However, many of these Requests were filed based upon the Commission's failure to give timely direction to applicants as to the standards under which Requests would be granted.⁶ Now that the Commission has issued enough Finder's

⁵See, for example, FCC File Nos. 94F152, 94F158, 94F155, 94F156, etc.

⁶In December of 1993 the Commission issued an Order in FCC File No. 93F571 ("Fred B. Lott"). The Commission made a dicta statement that "[a]s a rule of thumb, construction more than one second (60 feet) away from the licensed location is not in

Preference decisions to give the public guidance, Requests which are now filed are more likely to result in the award of spectrum to the Finder.⁷

On page 6 of the NPRM, the Commission states that:

[p]ersons with finder's preference requests on file would not be substantially harmed because there would be an opportunity to apply for the unused frequencies once they become available for licensing.

PCIA strongly disagrees with this assessment. Most Finders have spent a considerable amount of time and money to compile and document the information which has been supplied to the Commission, and would be forced to compete with other applicants if their Requests are dismissed. To opine that such applicants would not be harmed by the dismissal of their Requests is simply wrong.

Further, the Commission proposes to issue geographic licenses on a much larger geographic basis and in larger channel blocks in each service where Requests remain pending. Applicants with pending requests may not be able to economically compete for such

accordance with the station's authorization." This statement resulted in the filing of more than one hundred preferences based upon some minor discrepancy in transmitter coordinates. See, for example, FCC File 94F059, 94F186, 94F190, 94F117, 94F112 and 94F097. It was not until August of 1994 that the Commission clarified the Lott ruling. Lawrence E. Vaughn, Jr., 9 FCC Rcd 4438 (1994). However, the Commission did not issue its decision on a Petition for Reconsideration in the case for exactly one year (DA 95-1844, released August 22, 1995), and the decision remains under appeal with the Commission more than two years after the initial decision. Thus, many of the Requests which remain pending at the Commission can be easily disposed of through application of the standard discussed in the Vaughn case. The remaining cases should be processed as soon as possible.

⁷The Commission should also endeavor to expeditiously process any appeals of decisions on Finder's Preference cases.

licenses and may be unable to utilize the remaining channels in the allocation because of other incumbent licensees. Thus, the Commission's alternative is unacceptable to legitimate Finders.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to act consistent with the views expressed herein.

Respectfully submitted,

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