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

DEC 3 - 1996

Federal Communications Commission
Washington, D.C.

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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REPLY COMMENTS

The Personal Communications Industry Association ("PCIA"), through its counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits its Reply Comments in response to the Comments filed in the above-captioned proceeding.

I. INITIAL COMMENTS

In its Comments, PCIA stated its support for the Commission's decision to eliminate the Finder's Preference program for geographically licensed services. PCIA stated that it does not, however, support the Commission's proposal to eliminate the program for site-licensed based services. PCIA also opposed any suggestion by the Commission that it should return pending Finder's Preference Requests for site-specific spectrum for which the Commission ultimately adopts geographic licensing.

Generally, most parties submitting Comments supported eliminating the Finder's Preference Program for those services for

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which the Commission adopts a geographic licensing system.¹ However, the Commission's proposal to eliminate the Finder's Preference Program for site-specifically licensed services was opposed.² More importantly, however, the Commission suggestion that it "retain" the authority to dismiss pending requests received extremely strong opposition.³ In fact, the only party filing Comments supporting dismissing pending requests was Nextel Communications, Inc. ("Nextel"). Nextel makes several representations in its Comments which PCIA believes should be addressed.

II. REPLY COMMENTS

On page 5 of its Comments, Nextel asserts that "[w]ide-area licensees who purchase their licenses at an auction should not be required to give up channels to which they have purchased rights." It is PCIA's view that the geographic licensing rules issued thus far by the Commission for 900 MHz SMR channels, 800 MHz "Upper Band" SMR channels, and the Commission's proposals for 220 MHz channels and 800 MHz "Lower Band" SMR channels dictate that the auction winner is not "purchasing" any channels which must be

¹See, for example, Comments of AirTouch Paging ("AirTouch") at 8; Incom Communications Corporation and Narrowband Network Systems ("Incom"); SMR Advisory Group, L.C.

²See, for example, Comments of Motorola, Inc.; Industrial Telecommunications Association.

³See, for example, Comments of Kelley Communications, Inc.; Gwyn J. Mitchell; Advanced Electronics, Inc.; Mobile Communications Service of Miami, Inc.; SMR Won; J & M Paging, Inc.; Kenneth Carlson, Rosemary Coyle and KJR Partnership; Bruce Bryant; Telacom Corporation; Edward S. Butler.

"given up" pursuant to a pending finder's preference.⁴ Rather, the auction winner purchases channels with the express understanding that there is an already licensed system on the frequency. In fact, at 900 MHz, the Commission discounted the "pops" on a particular frequency because of existing licenses.

Auction bidders can easily be aware of any pending Finder's Preference Requests before bidding, and can make their bid accordingly.⁵ What is "purchased" is a geographic area, minus a specifically defined interference contour around a set of coordinates, which will not change regardless of the licensee. There is nothing being "purchased", which must be "given up".

PCIA agrees with Nextel that many pending Finder's Preference Requests have become "stale" while awaiting Commission action. However, the Commission's failure to timely process the requests is not a reason for their dismissal. Further, PCIA recognized in its initial Comments that some of the Finder's Preference Requests were based upon little conclusive evidence. Such requests should be dismissed. However, legitimate pending requests should be processed.

PCIA strongly disagrees with Nextel's statement that applicants with pending Finder's Preference Requests are "free, if

⁴PCIA is only referring to pending Finder's Preference Requests, since the Commission has eliminated new requests for the 800/900 MHz SMR channels, and appears to have significant support for similar action for 220 MHz systems.

⁵Actually, PCIA would hope that the Commission could process all pending requests for a particular service prior to the auction. This would prevent any question from arising such as that raised by Nextel herein.

they seriously desire to provide service, to compete in an auction..." The auction is anything but free. Further, as pointed out in PCIA's initial Comments, 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 licenses and may be unable to utilize the remaining channels in the allocation because of other incumbent licensees. Thus, dismissal of the pending requests is very unfair to applicants with requests pending.

III. CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 3rd day of December, 1996 sent via first class mail, postage prepaid, a copy of the foregoing Reply Comments to the following:

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