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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of)
)
Revision of Part 22 and Part 90)
of the Commission's Rules to)
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

PETITION FOR RECONSIDERATION

Teletouch Licenses, Inc. (TLI), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby requests reconsideration of the Commission's Second Report and Order and Further Notice of Proposed Rulemaking ("the Order") in the above-captioned proceeding.¹ TLI applauds the Commission's decision not to convert the lower-band shared private carrier paging channels (shared PCP channels) to exclusive use and to thereby subject these channels to geographic area licensing. Nonetheless, TLI is concerned that the Commission's interim application filing rules, which (i) permit any incumbent PCP licensee to file expansion applications for a particular frequency, without regard to distance, and (ii) allow any entity eligible in the Private Mobile Radio Service to apply for the shared PCP channels, will make these channels susceptible to abuses by unscrupulous carriers who will have an incentive to attempt to exact undue consideration from legitimate paging

¹ WT Docket No. 96-18 and PP Docket No. 93-253, ___ Fed. Reg. _____ (March 12, 1997).

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service providers as the price for not obstructing their paging service (i.e., greenmail). This may soon render these channels unusable for paging service and, at least will degrade the quality of their service to the public, if not destroy it entirely. Accordingly, TLI urges the Commission to adopt the following safeguards in order to preserve the quality of paging service that is now provided to the public on the shared PCP channels: (i) limit expansion applications to a 75-mile radius of an applicant's co-channel facility that is constructed and providing service to the public; (ii) limit the licensing of additional PMRS facilities on the shared PCP channels to incumbent co-channel licensees within a ten-mile radius of their co-channel facilities; (iii) require entities that are not currently licensed on the shared PCP channels to obtain their paging services from a CMRS provider; and (iv) permit public safety entities to license paging facilities on the shared PCP channels only upon a demonstration from the appropriate frequency coordinator that a public safety channel in either the Special Emergency Radio Service or the applicant's respective public safety radio service is not available for internal paging use.

In support thereof, the following is shown:

I. The Commission's Interim Rules Do Not Provide Sufficient Protections to Incumbent CMRS Carriers.

1. The Commission's interim rules, to permit unlimited expansion of incumbent CMRS paging facilities on the shared

channels, see Order at para. 43, will adversely affect incumbent paging systems. The licensing structure for the shared PCP channels has caused the incumbent carriers to create a delicate balance amongst themselves through measures such use of common equipment, mechanical arbitration and intercarrier agreements, in order to ensure that high quality paging service is provided to the public. TLI is concerned, with the conversion of the paging frequencies licensed under Part 22 of the Commission's Rules to geographic area licensing, that Part 22 carriers will turn to the Part 90 shared PCP channels for expansion in order to meet subscriber demand (even though they may not have a PCP channel licensed in the area), thereby disrupting this delicate balance. TLI is not suggesting that the Commission impose an absolute freeze; to the contrary, TLI is relieved that the Commission has relaxed the 40-mile expansion limitation that was imposed in the First Report and Order. However, as discussed below, TLI believes that the Commission's action requires some fine tuning in order to ensure that incumbent CMRS carriers will be able to maintain quality paging service to their subscribers.²

A. The Commission Should Limit CMRS Expansion Applications to a 75-Mile Radius of Existing Facilities.

2. In its Order, the Commission eliminated the requirement that expansion facilities be located within a 40-mile radius of a

² In this regard, TLI's paging subscribers include police departments and sheriff's offices, fire departments, ambulance services, hospitals, physicians, and other medical professionals, as well as, electric utility companies. All of these subscribers provide essential services which are necessary to protect life and property.

facility that was constructed and providing service to the public pursuant to a facilities application filed prior to October 1, 1995. See Order at para. 43. Instead, the Commission's revised its interim rules to allow any incumbent carrier to file an expansion application, provided the carrier has a co-channel facility operating at any location in the United States and providing service to the public. Id. Thus, under the rules established, a carrier with a local PCP system, on the frequency 157.74 MHz at Anchorage, Alaska, would be entitled to apply to establish a new co-channel base station at Tyler, Texas, or anywhere else in the country, as an "expansion" of his existing system in Alaska. This is permitted even though the incumbent PCP licensee is essentially a newcomer to any market in the lower 48 states. To prevent abuses that TLI believes would upset the delicate balance among incumbent licensees through potential extortionary conduct by newcomers³, TLI urges the Commission to place limitations on the filing of expansion applications. TLI further recommends that incumbent PCP licensees only be allowed

³ TLI can speak from personal experience regarding such extortionary conduct. A typical situation is where an application is filed in a new market for the purpose of creating a situation where the incumbent carriers in the market will be induced to pay the newcomer a substantial sum of money as the price for withdrawing his application or refraining from construction of the newly authorized station, in order to maintain the quality and speed of service to their subscribers. If the newcomer's demands are not met, then the risk is that the newcomer will attempt to trash the shared channel with voice paging or other inefficient traffic, thereby making it impossible for the incumbent carriers to transmit their digital pages in a timely manner. This is especially true where the incumbent carriers have substantial traffic that utilizes virtually all of the available air-time during the busiest hours of the day.

to establish additional transmitters within a 75-mile radius of a co-channel transmitter which (i) has been regularly authorized by the Commission to the applicant, and (ii) is constructed and providing service to the public, as of the date the expansion application is filed.⁴

3. TLI submits that, if this simple procedure were to be adopted, the Commission would be able to meet its goals of ensuring that incumbent carriers have sufficient flexibility to meet the immediate need for expansion during the pendency of the Further Notice of Proposed Rulemaking, while preserving the opportunity to determine appropriate safeguards to prevent speculation on the shared PCP channels. While the 75-mile limit may have something of a negative impact on some carriers' expansion plans, TLI submits such impact on legitimate carriers should be minimal. Most carriers generally expand their paging incrementally -- that is, they plan a facility, file an application, construct the facility and, based upon customer needs, make further expansion plans, starting the cycle over again. This incremental growth, has long been how most CMRS

⁴ The Commission would be able to verify an applicant's eligibility by requiring a certification, under penalty of perjury, that the expansion or relocation application qualifies under the Commission's interim rules. To prevent abuse, and increase the likelihood of catching scofflaws, the applicant would be required to identify a co-channel base station which qualifies the applicant to file its expansion or relocation application. In the event that there is a dispute as to whether an applicant is eligible for an expansion site, the Commission would be in a position to promptly resolve the matter and, if necessary, take rapid enforcement action against the applicant to deter further abuses of the Commission's application processes.

carriers have expanded their paging systems, due to the high costs associated with adding infrastructure.

4. TLI accordingly submits that it is unreasonable to allow a paging carrier who is licensed in one area the right to expand without limitation to an area that is not reasonably related to the incumbent paging system, while still seeking to maintain the integrity of the shared-channel licensing process. For example, a paging carrier in Fairfax, Virginia should not be permitted to file an expansion application for New York City, which is 250 miles away. Thus, the expansion station in New York City would not be reasonably related to the co-channel facility in Fairfax, Virginia. As such, TLI submits the carrier should not be entitled to expansion rights outside its area (beyond the 75-mile radius discussed above).

5. TLI would not object, however, if the CMRS carrier in Fairfax, Virginia applied for a co-channel base station in Baltimore, Maryland (which is less than 75 miles away), constructed and commenced service to the public, and then filed expansion applications incrementally up the Delaware and New Jersey coasts to New York City, based upon the construction and commencement of service to subscribers for each station. Under this scenario, the stations would comprise an interrelated wide-area paging system. But, to allow an incumbent PCP licensee to file an application for any location in the United States would only serve to open the floodgates to the abuses associated with speculators and greenmail, as described above. Accordingly, TLI

submits that the public interest would best be served if the Commission limits expansion applications for PCP providers to a 75-mile radius of each of the applicant's co-channel base stations which are constructed and providing service to the public at the time the expansion application is filed.

B. The Commission Should Limit Filings by PMRS Eligibles on the Shared PCP Channels.

6. Likewise, the Commission has not proposed to implement any restrictions on the filing of applications for internal-use PMRS systems on the shared PCP channels, except to prohibit the conversion of these systems to CMRS at a later date. See Order at para. 43. Because of the adverse impact a proliferation of internal-use PMRS systems could have on co-channel CMRS, TLI submits that the Commission should (i) limit the licensing of additional PMRS facilities on the shared PCP channels to those entities which currently hold a license for a co-channel internal-use facility, located within a ten-mile radius of the proposed site,⁵ and require any other entities not meeting this criterion to obtain their paging service from an incumbent CMRS provider; and (ii) permit public safety entities to apply for internal-use paging facilities on the shared PCP frequencies, upon certification by the appropriate frequency coordinators to the Personal Communications Industry Association (PCIA) that

⁵ Unlike CMRS providers with wide-area paging systems, most internal PMRS paging systems are localized single or dual site systems, with the transmitters located close together to provide service within a very limited geographic area.

there are no public safety channels available to meet the applicant's paging requirements.

7. As discussed above, CMRS providers have achieved a very delicate balance in order to ensure that quality paging service is provided to their subscribers on the shared PCP channels. In many instances, the larger CMRS providers are each serving tens of thousands of customers, many of whom include medical professionals and public safety officials charged with protecting life and property. TLI submits that the Commission's elimination of the restrictions for PMRS applications on the shared PCP channels, while well intentioned, is contrary to the public interest of preserving the high quality of essential paging services to vast numbers of paging users.

8. If the Commission proceeds with the licensing of new PMRS licensees on the shared PCP channels, valuable air-time will be lost. The new PMRS licensee, with a relatively small internal paging system, could force the larger CMRS paging operators in its area to suspend operations for what could be lengthy periods of time, if the PMRS licensee insists on using voice paging or some other inefficient protocol, rather than the more efficient digital alpha/numeric paging. Because the PMRS licensee could require substantial air time to transmit voice pages, TLI fears that it and other similarly situated CMRS carriers could be precluded from transmitting their pages in a timely manner, especially during the busiest hours of the day when thousands of customers are utilizing the system at any given moment. In order

to avoid this potential problem, TLI suggests that the Commission require new internal-users to obtain their paging service from a CMRS provider which service the Commission recognized could be provided more efficiently and at less cost than by establishing an independent, internal stand-alone paging system.⁶ See e.g. Private Land Mobile Radio Services: Staff White Paper, Wireless Telecommunications Bureau, Dec. 18, 1996, at p. 31. In this way, the private user would have its paging communications needs satisfied, while at the same time, preserving the efficient paging services already in place.⁷

9. TLI is cognizant of the special needs that public safety entities, e.g., hospitals, police departments and sheriff's offices, fire departments, etc., have in relation to their paging requirements. Because all CMRS providers may not be able to meet these special needs in certain circumstances, e.g., inadequate building penetration in restricted areas of buildings, etc., TLI believes that public safety entities should be free to establish their own internal-use paging systems. However, in

⁶ In the event that the Commission does not freeze the acceptance of PMRS applications for the shared PCP channels, TLI then urges the Commission to grant such licenses, conditioned upon the use of digital paging, and the licensee reaching an agreement with the incumbent CMRS providers regarding channel usage prior to commencing station operations.

⁷ TLI recognizes that for the other Part 90 communications services, there may be a need for customization which justifies the additional cost for establishing an internal-use system. However, TLI believes that paging service is essentially a generic service that can readily meet the needs of most internal use licensees since there are over 100 paging service providers in every market in the country.

order to reduce the likelihood of disrupting incumbent CMRS paging services, TLI urges the Commission to require public safety entities to apply for systems on the frequencies allocated in their own radio services, and to only license the shared PCP channels through interservice sharing if the appropriate public safety frequency coordinator determines that there is no usable spectrum available in the public safety services for paging. In this way, TLI submits that the Commission will be able to assure the public safety entities that their internal paging requirements will be met, while minimizing the risk of unnecessary degradation to existing CMRS paging services.

II. Conclusion.

10. In light of the foregoing, it is respectfully requested that the Commission modify its interim paging licensing rules in the manner described above.

Respectfully submitted,
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Filed: April 11, 1997

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