ORIGINAL

DOCKET FILE COPY ORIGINAL

RECEIVED

APR 1 7 1997

Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

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

COMMENTS BY SPACEMARK COMMUNICATIONS

TO THE COMMISSION:

SpaceMark Communications, Inc., licensee of a 931 Mhz paging system in Harrisburg and Carlisle, PA, hereby submits its comments on the Second Report and Order and Further Notice of Proposed Rulemaking.

1. Although the Commission is mandated by Congress to expedite the process of auctioning paging authorizations, it has proposed some rules which create confusion as to the rights and obligations of existing ("incumbent") carriers now providing service to the public.

2. In the proposed revision of Section 90.494 , the Commission states that this section applies only to stations on shared channels in the 929-930 Mhz band. However, the PCIA/NABER frequency coordinators have refused to accept an application by

No. of Copies rec'd 0+4
List ABCDE

SpaceMark for a new 462 Mhz PCP system. When challenged, they specifically cited that section, and further stated that Commission personnel had indicated to them that the proposed provisions of this section applied to **all other** PCP channels as well, which are in the 150-160 Mhz band and in the 462-463 Mhz band.

3. Nowhere in the Second Report and Order are the 150-160 and 462-463 Mhz PCP channels even mentioned. If the Commission did indeed seek to exclude future CMRS use of the PCP channels in this band, it has not done so in its currently proposed rules, at least for the 150-160 Mhz and 462-463 Mhz bands.

4. Section 90.494 (g) further creates confusion by not clarifying whether existing CMRS PCPs can file for frequencies other than those for which they are currently licensed. Since Part 90 licensees have in the past been granted multiple frequencies on a single license, and since Part 22 licensees have similarly been granted multiple frequencies under a single authorization, to now limit PCPs to only their currently authorized channels creates a great hardship for CMRS PCPs wishing to expand coverage into areas where their existing channel may be overly congested.

5. The proposed rules ignore the commercial reality of scanning and other multi-frequency pagers which have been available for a number of years; indeed Motorola's new FLEX standard permits scanning between different channels in the same range (929-

932 Mhz for instance, though the same holds true for the 150 and 450/460 Mhz bands) for just this purpose. Panasonic has had a scanning pager for at least five years. Therefore, it is likely that a PCP or RCC may want to build another facility on a different shared PCP channel in a different region, for purely business reasons. The proposed rules would inhibit such actions. If the Commission wants to maximize auction revenues it has to permit such cross-service (PCP to RCC, RCC to PCP) offerings. Under the proposed Rules, PCPs would be able to bid for RCC unserved areas, but RCCs would be precluded from applying for shared PCP channels. To block new shared PCP applications filed by RCCs is counterproductive to the Commission's mandate.

6. SpaceMark was advised by the frequency coordinator that, as a Part 22 licensee, it was not an incumbent PCP, and therefore could not file for PCP shared channels. This decision by the frequency coordinator was based on PCIA/NABER's dicussions with Commission staff, which interpreted the proposed regulatory changes for the frequency coordinators. Apparently Commission staff did not consider that "regulatory parity" was an intent of the proposed rules changes. Also, nowhere is the definition of incumbency redefined, which will be necessary in light of the apparent ability of a shared 929 Mhz PCP licensees to file **anywhere,** far beyond its existing system, while precluding RCCs from filing for the same channels.

7. The Commission has not allowed a mechanism for future resolution of these issues. In its paragraph **Further Notice of Proposed Rulemaking** (Part of the Executive Summary

of the Second Report and Order) it fails to even address these issues, except to the limited extent of proposing to "modifying the application process for shared channels". These are not issues to be addressed in the wording of an application; they must be addressed as regulatory changes and clarifications, now.

8. In these Comments, we have cited discussions with the frequency coordinator for the Part 90 paging services. We cite these because the coordinators are making decisions regarding applicant suitability based on Commission guidelines, both written and verbal. However, licensees have only the written word to go by, and if the written word is vague or subject to arbitrary interpretation by Commission staff, which then empowers the frequency coordinators to make decisions not in concert with the written rules, then the Commission has an obligation to clarify those rules so there can be no misinterpreatation

Respectfully submitted,

SPACEMARK COMMUNICATIONS, INC.

By:_____

President
P.O. Box 5098
Montauk, NY 11954