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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS	)	GEN Docket No. 90-314 ET Docket No. 92-100
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

COMMENTS OF PAGEMART, INC.

PageMart, Inc. ("PageMart"), by its attorneys, hereby submits its Comments in the above-referenced proceedings. PageMart is an innovative paging company that provides low-cost, nationwide services. PageMart holds CMRS licenses for paging services throughout the United States, including licenses for which it qualifies for nationwide exclusivity; it also holds a 50 KHz nationwide narrowband PCS license and an aggregation of 50 KHz regional licenses that constitute a nationwide footprint.

In the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceedings, FCC 97-140 (April 23, 1997), the Commission requested comment on a range of proposals regarding modifications to the existing spectrum allocation plan for narrowband PCS, and regarding the channelization and licensing of the one MHz of reserve narrowband PCS spectrum. As a narrowband

PCS licensee, PageMart is concerned about both sets of proposals. With respect to the former issue, in PageMart's view, participants in the market have relied on the Commission's spectrum allocation plan; to alter it now would be inefficient and unwise, as well as unfair. With respect to the one MHz of reserve spectrum, the Commission should not license this spectrum until it has conducted at least a preliminary study, assessing the needs of the market. PageMart's views with respect to these matters are explained in detail below.

I. In Order to Provide the Maximum Degree of Flexibility to Narrowband PCS Service Providers and to Promote Competition, the Commission Should Reallocate the Existing BTA Channel Blocks into MTA Channel Blocks.

PageMart agrees with the Commission's determination that BTA service areas are too small to provide a viable narrowband service, and that the service area size of the remaining narrowband PCS channels should be reconfigured. As PageMart repeatedly stressed in its earlier comments in this proceeding, the paging industry is rapidly moving away from locally-oriented operations toward wider-area service. The Commission's successful adoption of MTA-based licensing for the 929 MHz and 931 MHz paging band, and its successful MTA-based 900 MHz SMR auction, indicate that MTA service areas provide the ideal amount of flexibility for future public auctions.

The record does not support the Commission's proposal to redesignate the spectrum presently designated for BTA-based or MTA-based licenses and create additional nationwide and regional-based licenses. Although the Commission witnessed a significant demand for nationwide and regional service areas during the prior round of auctions, it determined that there remains an interest in providing

narrowband PCS services across a wide range of local, regional, and nationwide service areas.[1/] An increase in the number of regional and nationwide licenses would severely limit the amount of spectrum available for MTA-based licensing, thereby restricting the number of entities that could hold narrowband PCS licenses, and thus effectively precluding participation in the market by smaller entities with an interest in providing more focused local service.

The successful auctions of nationwide and regional licenses evidenced a strong demand for larger-area licenses. However, bidders' valuation of the nationwide and regional licenses that were auctioned must be viewed in the context of the Commission's plan to allocate the remaining spectrum in smaller service areas. Bidders paid what they did because they knew the remaining spectrum was allocated for local service areas and no new nationwide or regional licenses would be available immediately. These auctions do not mean that there is an unlimited demand for nationwide and regional spectrum; they merely demonstrate demand for the particular licenses that were being auctioned at the time. To change the service area allocation for existing spectrum would be inherently unfair to the parties that made large investments at the nationwide and regional auctions.

PageMart believes that the only reasonable and equitable position for the Commission is to reallocate the existing BTA-based licenses into MTA-based service areas and to refrain from creating new nationwide and regional service area licenses.

1/ FNPRM at ¶ 23.

II. The Commission Should Undertake Further Study to Determine the Needs of the Market Before Deciding to Channelize and License the Remaining One MHz of Narrowband PCS Spectrum.

The Commission's proposal to channelize and license the remaining one MHz of reserve spectrum is premature, especially under the standard it prescribed for itself in the First Report and Order in this proceeding.[2/] The Commission specifically stated that retaining an additional one MHz of spectrum in reserve would allow it to "respond to growth and development of specific narrowband PCS services,"[3/] and that it planned to channelize and license the remaining one megahertz "as this service develops."[4/]

The Commission seeks comment on whether it should auction the reserve spectrum in conjunction with other narrowband spectrum. To hold these auctions in conjunction with each other, however, would eliminate any possibility of a time period to respond to the growth and development of the narrowband PCS service. Such a plan would be in direct contravention of the Commission's stated goals in the First Report and Order, and would lead to inefficient bidding strategies as auction participants scramble to determine bidding strategies for licenses, potentially in a variety of different service areas.

Narrowband PCS service is still in its infancy; there is little evidence available as to the most efficient means of using this spectrum. The Commission

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2/ Amendment of the Commission's Rules to Establish New Personal Communications Services, 8 FCC Rcd 7162 (1993) (First Report and Order) ("PCS First Report and Order"), on recon., Memorandum Opinion and Order, 9 FCC Rcd 1309 (1993) ("PCS MO&O").

3/ 8 FCC Rcd at 7165.

4/ Id.

would be well-advised to refrain from allocating additional spectrum to a service that has yet to define its contours. The two MHz of spectrum that has already been channelized have not yet been fully licensed, and the existing license holders are in the first stages of meeting the Commission's construction and minimum coverage requirements.

PageMart urges the Commission to look to its own timetable for construction requirements as a reasonable frame of time for demonstrating that a service is viable.[5/] Until the existing license holders are providing service in their license areas, the most efficient means of utilizing this spectrum will not be clear.

The Commission's proposed rapid allocation of the reserved spectrum leaves no leeway for developing services that were not envisioned at the time that the original two MHz of spectrum were allocated. The manner and method of licensing the spectrum would be determined before the needs and realities of the narrowband PCS market are known to anyone. This approach seems contrary to the Commission's above-referenced intention to remain flexible and provide licensed spectrum in a manner that befits the needs of the market.

It is not only the paging operators who would be harmed, but also members of the public. The public would be denied the opportunity to discover new and innovative services as the paging industry scrambles to provide some form of service to a large number of newly-licensed service areas. The public would also be denied the additional revenue that would be raised from a carefully constructed, well-

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[5/] See 47 C.F.R. § 24.103. Nationwide and regional licensees must provide service to 37.5 percent of the U.S. population within five years; MTA licensees must provide service to 25 percent of the U.S. population within five years.

timed auction, where the bidders have been able to evaluate operating narrowband PCS services and are in a position to assess the relative value of different types of services and service areas.

The prudent course of action would be to allow the existing and soon-to-be license holders of the two MHz of already allocated spectrum to meet their Commission-mandated deadlines for the construction and provision of minimal service, and then to commission a study to examine industry demand before making a determination about the long-term development of narrowband PCS service.

III. The Commission's Existing Construction and Minimum Coverage Requirements for Both Previously-Licensed and As-Yet-Unlicensed Narrowband PCS Spectrum Provide the Best Means of Assuring That Licenses Are Held by the Most-Efficient Users of Spectrum.

The Commission sought comment on whether the "substantial service" auction and service rules that it has proposed constitute adequate safeguards and performance requirements for narrowband PCS licensing. PageMart believes that they do not.

Construction and minimum coverage requirements ensure that licenses are held by those entities that are adequately equipped to utilize spectrum for the public interest. Although Section 309(j)(4)(B) does not contain the term "build-out requirement," it is difficult to imagine a more adequate method of ensuring that the objectives of this section -- to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing, and to promote investment in and rapid deployment of new technologies and services -- are met. The Commission did not provide record evidence that these existing requirements have been unduly burdensome or that they have constrained new growth in competition.

In particular instances where extenuating circumstances (e.g., manufacturer delay) constrain the ability of a service provider to meet these requirements, the licensee may seek a waiver from the Commission. PageMart believes that this waiver process adequately safeguards the ability of a licensee to retain its license.

In addition, as was explained above, clearly defined requirements for construction and minimum service provide the Commission with a timetable for assessing the growth and development of the narrowband PCS service. Such a timetable, in turn, allows the Commission to respond to the highly dynamic growth in the service with appropriate designations of new spectrum.

"Substantial service," because it is not a clearly defined standard, will lead to uncertainties and leave the Commission vulnerable to conflicting viewpoints from competitors in the market. By establishing a clearly defined and easily understood standard of construction and minimum service requirements, the Commission will avoid putting itself in the position of referee to numerous industry squabbles.

IV. The Commission Should Eliminate the Narrowband PCS Aggregation Cap.

The Commission sought comment on whether the existing spectrum aggregation limit on narrowband PCS -- for one licensee, three 50 KHz channels, either paired or unpaired, at any one geographic point[6/] -- would continue to be appropriate in light of the FCC's proposal to license the narrowband PCS reserve

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6/ 47 C.F.R. § 24.101.

spectrum. PageMart believes the Commission should eliminate this limit, particularly if it moves forward with plans to channelize and license the remaining one MHz of reserve spectrum. With this additional spectrum available, the current limit would be unduly restrictive and unnecessary.

The purpose of auctions is to allocate spectrum to the parties that value the spectrum most highly. A narrow restriction on the amount of spectrum held by any one party could have a deleterious effect on this goal, and on the ability of the Commission to raise revenue through the auction process. A move to liberalize the aggregation limit would be consistent with the Commission's trend toward greater flexibility and would assist it in ensuring that narrowband PCS achieves parity with other services, such as broadband PCS.

V. The Commission's Auction Procedures Should Be Held in Such a Manner as to Maximize the Efficient Use of Spectrum.

Because it is concerned that some of the Commission's proposals may not sufficiently deter speculation or encourage bids from dedicated participants, PageMart requests that the Commission consider the following modifications to its proposals for competitive bidding. First, applicants should be required to post up front payments for each and every license on which they propose to bid. Second, during the auction, the Commission should provide complete bidding information, specifically including the identity of competing bidders. Third, although PageMart supports allowing licensees to partition their licenses, the Commission should include safeguards to ensure that partitioning arrangements are legitimate and not merely a device to avoid the Commission's deadlines for construction and the provision of service. Fourth, because the use of MTAs would facilitate market entry by different-

sized business entities, neither bidding credits nor installment payments is warranted. In fact, in the 1994 auction for regional licenses, some designated entities actually paid more than non-designated entities for each KHz of spectrum (net of bidding credits).[7] These mechanisms would likely inflate the prices paid for licenses without a concurrent beneficial effect for the parties that seek new licenses. As a final note, PageMart believes that the Commission could avoid deterring beneficial business combinations in the paging industry by developing a safe harbor from the anti-collusion rules for carriers engaged in acquisition negotiations or inter-carrier agreements.

The above modifications will help to ensure that only bidders fully committed to the provision of narrowband PCS services participate in the auctions and that these participants are guided by the most accurate information as to the value of the auctioned licenses -- there is no obvious rationale for obscuring information about bids or auction participants. In addition, the above modifications will encourage these committed auction participants to make bids that accurately reflect the value of the licenses they seek.

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[7] See FCC Public Notice, "FCC Announces Results of PCS Regional Narrowband License Auction," (November 8, 1994).

VI. Conclusion.

In order to promote the continued development of paging services, and to allow paging operators to continue to upgrade their services, meet the demands of existing and new customers, and compete effectively with other CMRS services, PageMart urges the Commission to reconsider the proposals in the FNPRM in light of the foregoing discussion.

Respectfully submitted,

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