JUL 21 1997

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

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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, Narrowband PCS	)	PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF CELPAGE, INC.

Celpage, Inc. ("Celpage"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby replies to the Comments in response to the Further Notice of Proposed Rule Making ("FNPRM")[1] in the above-referenced proceeding. In support hereof, the following is respectfully shown:

I. The Commission Should Rechannelize the Allocated NPCS Spectrum to Regional and MTA Licenses Only.

The majority of commenters support the elimination of BTA-based licenses, agreeing with the Commission's determination that BTAs are too small to allow for the development of commercially viable narrowband PCS systems. See, *e.g.*, Comments of Personal Communications Industry Association ("PCIA Comments") at 5-6; Comments of Paging Network, Inc. ("PageNet Comments") at 16-17; Comments of American Paging, Inc. ("API Comments") at 3; Comments of Benbow PCS Ventures, Inc. ("Benbow Comments") at 2-5.

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[1] The FNPRM was released as part of a Report and Order and Further Notice of Proposed Rule Making, FCC 97-140 (released April 23, 1997). By Order released June 23, 1997, the Commission extended the deadline for filing Reply Comments until July 21, 1997.

Nearly all parties oppose the creation of additional nationwide licenses. See, *e.g.*, PCIA Comments at 8; PageNet Comments at 17; Comments of Airtouch Paging ("Airtouch Comments") at 5-14; Comments of CONXUS Communications, Inc. ("CONXUS Comments") at 5-10.

The creation of additional MTA licenses garnered strong support in the record. Celpage concurs with those commenters who state that MTA-based licensing will allow for service areas that are large enough to provide some economies of scale, yet small enough to allow small businesses to participate in narrowband PCS services. See, *e.g.*, PageNet Comments at 17; Comments of PageMart, Inc. ("PageMart Comments") at 2; PCIA Comments at 5-6; API Comments at 3.

Moreover, as several commenters point out, small businesses have relied on the upcoming availability of smaller service areas. See Comments of Merlin Telecom, Inc. ("Merlin Comments") at 4; Comments of Rural Telecommunications Group ("RTG Comments") at 9-10. The Commission's proposed channel plan would frustrate the good faith business plans of those smaller entities by leaving only one channel pair available for licensing on an MTA basis. See FNPRM at ¶ 31; see also, API Comments at 4. The Commission should not adopt a channelization plan that so severely limits the entry opportunities for small businesses. Rather, the Commission should forego creating new nationwide licenses, and channelize more of the remaining allocated narrowband PCS spectrum on an MTA basis.

As PCIA notes, there is no industry consensus on the advisability of licensing some of the remaining allocated spectrum on a regional basis. See PCIA Comments at 5. Celpage continues to believe that some additional regional licensing is warranted. Regional license areas

have not proven so large as to foreclose small business participation in narrowband PCS. See Benbow Comments at 3-4. Regions are, however, large enough to accommodate public demand for wide-area services. As Arch Communications Group notes, a substantial number of paging companies have built out regional systems comprising several states; this suggests a strong consumer demand for region-wide narrowband services. See Comments of Arch Communications Group ("Arch Comments") at 8. The Commission itself has noted the trend toward larger service areas for mobile services. See, e.g., *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Notice of Proposed Rule Making in WT Docket No. 96-18 and PP Docket No. 93-253, 11 FCC Rcd. 3108, ¶ 21 (1996); *Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Carrier Paging Systems at 929-930 MHz*, Report and Order in PR Docket No. 93-35, 8 FCC Rcd. 8318, ¶ 2 (1993). Celpage therefore submits that the creation of some additional regional licenses in addition to MTA licenses will provide licensees with sufficient coverage areas to meet consumer demands, but that are not so large as to preclude entry by smaller businesses.

II. The Reserved Spectrum Should Not be Opened for Licensing at this Time.

The vast majority of commenters concur that the Commission's proposal to channelize and license the 1 MHz of NPCS spectrum that is currently being held in reserve ("the Reserved Spectrum") is premature. See, e.g., PCIA Comments at 8-11; PageNet Comments at 3-12; Comments of Motorola, Inc. ("Motorola Comments") at 7; Comments of Morgan Stanley Partnership ("Morgan Stanley Comments") at 4; Benbow Comments at 5-8; API Comments at 5; PageMart Comments at 4-6; Arch Comments at 9-10; Airtouch Comments at 14-20; Comments

of Ameritech Mobile Services, Inc. ("Ameritech Comments") at 7. As the commenters note, the NPCS industry is still in its infancy, and the demand for NPCS services is still uncertain. See PCIA Comments at 9; Motorola Comments at 7; Benbow Comments at 6. Several commenters point out that NPCS technology is still largely developmental. See, *e.g.*, Benbow Comments at 6; CONXUS Comments at 16. Motorola also notes that the types of service offerings that will ultimately comprise NPCS are yet uncertain. See Motorola Comments at 7. Due to the novelty of NPCS, the record strongly supports maintaining the Reserved Spectrum in reserve for the present time.

Moreover, as a number of commenters observe, licensing the Reserved Spectrum at this time is likely to devalue this spectrum. See, *e.g.*, Morgan Stanley Comments at 4; Benbow Comments at 7. Flooding the market with additional NPCS spectrum, before the already-allocated channels have been licensed, will have strong adverse effects on NPCS licensees' ability to raise sufficient capital to obtain licenses and build out commercially viable systems. See, *e.g.*, Morgan Stanley Comments at 3; Ameritech Comments at 7. Other commenters shared Celpage's concern over the difficulty that broadband PCS licensees are encountering in obtaining financing. See Ameritech Comments at 6-7; Comments of Metrocall, Inc. ("Metrocall Comments") at 5, 7. The Commission should not place existing and prospective NPCS licensees in similar straits by creating an artificial spectrum "glut."

Celpage concurs with PCIA's suggestion that the Commission defer action on the Reserved Spectrum until PCIA has had an opportunity to complete its study of NPCS development. See PCIA Comments at 10. By allowing additional time for the NPCS industry to grow, and for the completion of a study on the demand for and potential applications of NPCS,

the Commission will be in a far better position to assess the appropriate channelization plan for the Reserved Spectrum. Additionally, by allowing sufficient time for NPCS licensees to "prove themselves" in the marketplace, the Commission will help ensure that the Reserved Spectrum will be more realistically valued when it is eventually licensed, and that investors will be willing to provide financing to NPCS applicants.

III. The Attribution Rules and Ownership Disclosure Requirements Should be Simplified.

The comments addressing the issue generally support the Commission's proposal to simplify the NPCS attribution rules for small businesses, and to conform the rules to those used for broadband PCS. See, *e.g.*, CONXUS Comments at 19; Benbow Comments at 9-11; Arch Comments at 14-15. Celpage concurs with those commenters, and submits that the proposed changes in the attribution rules will provide applicants with greater flexibility, while making it simpler for the Commission to police "sham" business structures. Additionally, Celpage concurs with Merlin that the Commission should adopt rules defining *de jure* control for non-corporate entities, such as partnerships and limited liability companies. See Merlin Comments at 12-14.

IV. Coverage Requirements are Necessary.

The commenters overwhelmingly oppose the elimination of construction benchmarks for NPCS, or the weakening of the existing benchmarks by the adoption of a "substantial service" alternative. See PCIA Comments at 13-16; PageNet Comments at 12-16; CONXUS Comments at 11-13; Merlin Comments at 7; Arch Comments at 17; Benbow Comments at 13-14. Celpage agrees that construction benchmarks are necessary to prevent speculation and warehousing, and are required by Section 309(j)'s mandate that the Commission adopt performance standards for licenses obtained through auction. See 47 U.S.C. § 309(j)(4)(B). See also, Arch Comments at

17; PageNet Comments at 14.

Celpage also agrees with the majority of commenters that the proposed "substantial service" alternative will encourage speculation and lead to protracted litigation. See, *e.g.*, PCIA Comments at 13-14; PageNet Comments at 12-13; CONXUS Comments at 12-13. The "substantial service" alternative, as proposed in the FNPRM is so vague as to be unenforceable. The NPCS industry, and the public, are entitled to rules that clearly define a licensee's obligations, so that unscrupulous applicants cannot indefinitely keep spectrum fallow, or extract a premium from licensees who require additional channel capacity to provide legitimate services to the public. Cf., McElroy Electronics Corp. v. FCC, 990 F.2d 1351 (D.C. Cir. 1993) (noting the Commission's "primary obligation to state its directives in plain and comprehensible English"). Unless the Commission can devise a "substantial service" showing that provides licensees and the public with the requisite clarity, it should leave the current geographic and population benchmarks unaltered.

V. Eligibility Restrictions for the Response Channels Must be Maintained.

A number of commenters agree that the current eligibility and operational restrictions for the response channels should be maintained. See PCIA Comments at 11-13; PageNet Comments at 21-22; Arch Comments at 11-12; Motorola Comments at 8-10. The only commenters who support open eligibility for these channels claim that removing all eligibility and operating restrictions on these channels will promote competitive service offerings, but give no indication of what sort of services might be supported by a single, unpaired 12.5 kHz channel. See Merlin Comments at 6; RTG Comments at 20-21. Celpage submits that only paging companies are in a position to put those channels to immediate use, since they would be paired with constructed and

operational paging systems.

Moreover, as Celpage noted in its Comments, there are strong equities in favor of limiting eligibility for the response channels to paging licensees. Paging licensees have reliance interests in this spectrum: many paging operators "bowed out" of previous NPCS auctions, since the FCC had promised that these channels would be available to them. To ignore those good faith reliance interests, by the very parties who are most likely to utilize the response channels most expeditiously and efficiently, would be both unlawful and unwise.

VI. Provisions for Small Businesses.

Celpage concurs with the comments supporting the adoption of bidding credits and installment payments for small businesses. See PCIA Comments at 19; CONXUS Comments at 19-22; RTG Comments at 17-20; Merlin Comments at 16-20; Benbow Comments at 16-17. Celpage concurs with CONXUS' statement that the Commission should conform the bidding credits for NPCS with those offered in to broadband PCS licensees, by eliminating the additional interest rate percentage above the Treasury note rate and allowing for longer interest-only payments. See CONXUS Comments at 21-22. Celpage disagrees with the comments of Merlin and RTG that penalties for late payments are inappropriate. See Merlin Comments at 20; RTG Comments at 20. Some form of penalty for missed or late installment payments is required to deter abuse, but, it is certainly reasonable for the Commission to adopt a sanction less severe than license revocation for small businesses whose failure to make timely payments does not raise issues of misconduct.

Conclusion

WHEREFORE, the foregoing premises considered, Celpage respectfully requests that the Commission adopt modified rules for narrowband personal communications services in accordance with its Comments and the foregoing Reply Comments.

Respectfully submitted,

CELPAGE, INC.

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July 21, 1997

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CERTIFICATE OF SERVICE

I, Regina Wingfield, a secretary in the law firm of Joyce & Jacobs, Attys. at Law, L.L.P., certify that on this 21st day of July, 1997, copies of the foregoing Reply Comments of Celpage, Inc. were sent via first class U.S. mail, postage prepaid, to the following:

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