RECEIVED

JUL 21 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

DOCKET FILE COPY ORIGINAL

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

To: The Commission

REPLY COMMENTS OF PAGEMART WIRELESS, INC.

PageMart Wireless, Inc. ("PageMart"),[1/] by its attorneys, filed Comments on June 18, 1997, in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceedings.[2/] PageMart hereby submits its Reply Comments.

1/ PageMart is an innovative paging company that provides low-cost, nationwide services. PageMart, through various subsidiaries 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.

2/ Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, FCC 97-140 (April 23, 1997).

PageMart's Comments addressed several significant aspects of the FNPRM. PageMart demonstrated that the Commission would be unwise to alter a spectrum allocation plan on which participants in the market have relied. In addition, PageMart explained why the Commission should refrain from licensing the one MHz of reserve spectrum until it has conducted at least a preliminary study, assessing the needs of the market. PageMart's views on these two issues appear to be supported by the vast majority of those filing comments in this proceeding. Commenters also generally agreed with PageMart in opposing the "substantial service" option and in supporting additional modifications to the Commission's rules for competitive bidding.

I. The Commission Should Refrain from Reallocating the Existing Channel Blocks into Nationwide and Regional Channel Blocks.

As PageMart made clear in its Comments, 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. Comments filed in this docket only strengthen this claim.[3] Only three of the parties filing comments in this proceeding supported the Commission's proposal

---

[3] See, e.g., Comments of Merlin Telecom, Inc. ("Merlin") at 3-4; Comments of the Rural Telecommunications Group ("Rural") at 5-12; Comments of Motorola, Inc. ("Motorola") at 5-6; Comments of AirTouch Paging ("AirTouch") at 5-14; Comments of Ameritech Mobile Services, Inc. ("Ameritech") at 5-7; Comments of CONXUS Communications, Inc. ("CONXUS") at 7-11; Comments of Paging Network, Inc. ("PageNet") at 16-19; Comments of Celpage, Inc. ("Celpage") at 5-7; Comments of Morgan Stanley Partnership ("Morgan Stanley") at 3; Comments of Personal Communications Industry Ass'n ("PCIA") at 5-8.

for reallocating spectrum services areas.[4] A number of comments elaborated on the utility of the MTA service category;[5] none of the comments contained any objection to the use of MTAs.

PageMart suggested that 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. Comments submitted by smaller entities confirm PageMart's view.[6] By eliminating smaller geographic service areas, the Commission would be acting contrary to its stated goal of fostering diversity in the provision of narrowband PCS services.[7]

Many of the commenters in this proceeding expressed concerns about the inequity of the Commission's altering its plans for spectrum allocation. In fact, one of the parties suggested that the Commission's approach created an artificial scarcity of regional and nationwide licenses in the auctions and led bidders to pay

---

[4] See Comments of Metrocall Inc. ("Metrocall") at 5-6; Comments of Benbow PCS Ventures ("Benbow") at 3-4; Comments of Arch Communications ("Arch") at 7-9.

[5] See, e.g., Comments of PageNet at 17; Comments of American Paging, Inc. at 3-5.

[6] See Comments of Merlin at 3-4; Comments of Rural at 8-11.

[7] See Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, 8 FCC Rcd 7162 at 7167, (1993), recon. in part, 9 FCC Rcd 1309 (1994).

more for nationwide and regional licenses than they would have paid with full knowledge of the Commission's plans, a result contrary to the public interest.[8/]

Comments in this proceeding suggest that the Commission's proposed reallocation of spectrum would be inequitable, not only because it would damage the expectations of license holders, but also because it would damage the expectations of other industry participants such as prospective bidders,[9/] investors,[10/] and equipment manufacturers.[11/] These comments emphasize the importance of regulatory consistency for all industry participants. When a regulatory framework is subject to dramatic alterations, business plans become meaningless and, thus, inadequate for the purpose of planning or attracting investment.[12/]

PageMart does not support an indefinite ban on the introduction of new nationwide and regional service areas in the narrowband PCS service. Rather, it opposes the alteration of an existing framework for the already-channelized two MHz of spectrum, a framework that has provided a basis for planning and development in the industry. PageMart encourages the Commission to allow the narrowband PCS service time to develop before the FCC makes a determination about future needs in the remaining unlicensed spectrum.

8/ See Comments of AirTouch at 5. See also, Comment of PageNet at 9.

9/ See Comments of Merlin at 3-4; Comments of Rural at 8-11.

10/ See Comments of Morgan Stanley.

11/ See Comments of Motorola at 7.

12/ See Comments of Morgan Stanley at 6.

II. Commenting Parties Support the Conclusion that Further Study of Market Demand is Necessary.

Commenters were nearly unanimous in stating that the Commission's proposal to channelize and license the remaining one MHz of reserve spectrum is premature.[13] As PageMart stated in its Comments, the Commission specified that retaining an additional one MHz of spectrum in reserve would allow it to "respond to growth and development of specific narrowband PCS services."[14] Commenters clearly supported PageMart's view that narrowband PCS service is a nascent industry.[15] It does not make sense for the Commission to thwart the development of new and innovative means of utilizing this spectrum by developing a plan for channelizing and licensing the entire block of spectrum before companies have begun providing service in earnest. As PageMart stated, 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.

13/ See Comments of Motorola. at 7; Comments of AirTouch at 14-20; Comments of Ameritech at 7; Comments of CONXUS at 15-17; Comments of PageNet at 9-12; Comments of Celpage at 7-9; Comments of PCIA at 8-11; Comments of Metrocall at 6-7; Comments of Benbow at 5-8; Comments of Arch at 9-10.

Only two parties supported the Commission's proposal to license the remaining one MHz of spectrum. See Comments of Merlin at 5; Rural at 21.

14/ 8 FCC Rcd at 7165.

15/ See, e.g., Comments of Celpage at 7; Comments of Motorola at 3; Comments of Arch at 6; Comments of Ameritech at 5.

III. The "Substantial Service" Option Is an Inappropriate Means for Determining That Licenses Are Held by the Most-Efficient Users of Spectrum.

A number of commenting parties agreed with PageMart that the "substantial service" auction and service rules that the Commission proposed in the NPRM do not constitute adequate safeguards and performance requirements for narrowband PCS licensing. As PCIA suggested in its comments, use of such an ambiguous standard would encourage speculation in narrowband PCS auctions, participation in application mills, and litigation between licensees and the Commission. Use of this standard would ultimately have the effect of delaying the provision of new narrowband PCS services.

Like PageMart, a number of parties cited Section 309(j)(4)(B)'s directive to the Commission to promote investment in and rapid deployment of new technologies and services.[16/] The Commission has yet to demonstrate by means of record evidence that the existing requirements have been unduly burdensome or that they have constrained new growth in competition.

V. Commenting Parties Agree that the Commission's Auction Design Should Encourage Bids from Dedicated Participants and Deter Speculators.

PageMart made a number of suggestions regarding the Commission's proposals for competitive bidding. Each of these suggested modifications -- up front payments, complete bidding information, safeguards for partitioning arrangements, a

---

16/ Comments of PageMart at 6-7. See also Comments of Arch Communications Group, Inc. ("Arch") at 6-7, 17; Comments of Benbow PCS Ventures, Inc. ("Benbow") at 13-14; Comments of Merlin Telecom, Inc. ("Merlin") at 6-7.

safe harbor from the anti-collusion rules, and no bidding credits or installment payments -- was motivated by similar objectives. These mechanisms would 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. In addition, these mechanisms would help to encourage participants to make bids that accurately reflect the value of the licenses they seek.

Comments that addressed this aspect of the FNPRM generally supported PageMart's view. Opposition surfaced only with respect to bidding credits.[17] PageMart respectfully suggests that the Commission note the limited opposition to the proposals in PageMart's Comments and strongly consider implementing these modifications.

---

[17] Two parties supported bidding credits. See Comments of Merlin at 16-17; Comments of Rural at 17-18.

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 comments filed in this proceeding.

Respectfully submitted,

PAGEMART WIRELESS, INC.

By: /s/Monica A. Leimone

Phillip L. Spector
Monica A. Leimone
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
1615 L Street, N.W.
Washington, D.C. 20036
(202) 223-7300

Its Attorneys

Date: July 21, 1997

CERTIFICATE OF SERVICE

I, G. Paul Smith, hereby certify that I have on this 21st day of July 1997, caused to be served a copy of the Comments of PageMart Wireless, Inc. by first-class U.S. Mail, postage prepaid, upon the following:

Kathleen O'Brien Ham, Chief
Auctions Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5326
Washington, D.C. 20554

Daniel Phythyon, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Rudolpho M. Baca
Office of Commissioner James Quello
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

James L. Casserly
Office of Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Suzanne Toller
Office of Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Jackie Chorney
Office of Chairman Reed Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Gerald S. McGowan
Terry J. Romine
Lukas McGowan Nace
& Gutierrez, Chartered
1111 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036

George Y. Wheeler
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Dennis L. Myers
Vice President and General Counsel
Ameritech Cellular Services
2000 West Ameritech Center Drive
Location 3H78
Hoffman Estates, IL 60195

John A. Prendergast
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

Frederick M. Joyce
Christine McLaughlin
Joyce & Jacobs, Attys. at Law, L.L.P.
1019 Nineteenth Street, N.W.
Fourteenth Floor -- PH2
Washington, D.C. 20036

Richard C. Barth
Director of Telecommunications
Strategy and Policy
Motorola, Inc.
1350 I Street, N.W.
Suite 400
Washington, D.C. 20005

Judith St. Ledger-Roty
Edward A. Yorkgitis, Jr.
Paul G. Madison
Kelley Drye & Warren, LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036

Kathryn A. Zachem
Kenneth D. Patrich
John B. Branscome
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Suite 600
Washington, D.C. 20006

David M. Wilson, Esq.
Young, Vogl, Harlick & Wilson
425 California Street
Suite 2500
San Francisco, CA 94104

Mark A. Stachiw
Vice President, Senior Counsel
& Secretary
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Suite 800
Dallas, TX 75251

Carl W. Northrop
E. Ashton Johnston
Paul, Hastings, Janofsky
& Walker LLP
1299 Pennsylvania Avenue, N.W.
Tenth Floor
Washington, D.C. 20004

Katherine M. Holden
Stephen J. Rosen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Robert L. Hoggarth
Senior Vice President,
Paging and Narrowband
Personal Communications
Industry Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

Caressa D. Bennet
Anne E. Linton
Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036

Caressa D. Bennet
Gregory W. Whiteaker
Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036

/s/ G. Paul Smith
G. Paul Smith