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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
The Development of Operational, Technical, and)
Spectrum Requirements for Meeting Federal, State)
and Local Public Safety Agency Communication)
Requirements Through the Year 2010)
)
Establishment of Rules and Requirements)
for Priority Access Service)

WT Docket No. 96-86

**COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),¹ by its attorneys, hereby submits its comments on the Commission's *Second Notice of Proposed Rulemaking* in the above-captioned proceeding.² As discussed below, if the Commission adopts rules governing wireless priority access service, several significant issues must be resolved.

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, FCC 97-373 (Oct. 24, 1997) (Second Notice of Proposed Rulemaking) ("*Second NPRM*").

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The *Second NPRM* requests comment on a variety of items related to implementation of a wireless priority access system. The issues raised by the *Second NPRM* stem from a petition for rulemaking filed by the National Communications System (“NCS”) on October 19, 1995, regarding the establishment of a Cellular Priority Access Service (“CPAS”).³ PCIA focuses these comments on three primary sets of issues raised in the *Second NPRM*. Specifically, PCIA requests that the Commission: (1) permit carriers to offer CPAS on a voluntary/flexible basis; (2) provide CMRS carriers that offer wireless priority access service with important protections from liability; and (3) ensure efficient and affordable use of public safety spectrum.

Initially, PCIA notes that the Commission has “tentatively conclude[d] that all CMRS carriers, including cellular carriers, should be considered as potential providers of priority access service.”⁴ Subject to any carefully drawn and justified exceptions, PCIA concurs that policies governing any wireless priority access service should be applicable to a broader segment of CMRS operators than just cellular carriers. Indeed, the discussion in Part III of these comments indicates that SMR carriers likewise have made substantial contributions in meeting public safety communications needs. Such action will help to promote furtherance of the Commission’s wireless regulatory parity policies.

³ See, e.g., *Second NPRM*, ¶ 174.

⁴ *Id.*, ¶ 221.

I. The Commission Should Establish a Voluntary/Flexible Wireless Priority Access Service Regime

One of the central questions posed by the Commission in its *Second NPRM* is whether CMRS providers should be permitted to provide priority access service on a voluntary basis.⁵ PCIA believes that there is ample evidence supporting a regime based on voluntary participation in the provision of wireless priority access service.

First, a mandatory participation regime is unnecessary. Notably missing from the NCS petition is any intimation that the government needs a mandatory CPAS program. To the contrary, NCS proposed a flexible regime that would be voluntary on the part of cellular carriers. NCS visualized a regulatory environment that would permit carriers to make the ultimate determination, in consultation with public safety agencies, whether to provide the service. If, however, the carrier chose to participate, it would be subject to mandatory CPAS rules.

Second, a mandatory wireless priority access service plan is premature. A voluntary regime allows market forces to work. As the Commission concluded in the *Second NPRM*, “reliance on market forces ensures that customer demands are met efficiently and quickly through the provision of cost-based services.”⁶ This assessment mirrors the Telecommunications Act of 1996’s revamping of telecommunications law in order to promote “a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans.”⁷

⁵ *Id.*, ¶ 210.

⁶ *Id.*

⁷ H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 1 (1996).

There appears to be no reason not to expect market forces to work effectively in the offering of wireless priority access service, so long as potential users are willing to pay market price for the service. If, however, the market does not function to meet the needs of the national security and emergency preparedness (“NSEP”) community, the Commission at that time can reevaluate the appropriate regulatory structure for wireless priority access service.

Third, a mandatory scheme would be technically infeasible for many carriers. For example, many SMR systems do not have the technical ability to provide priority access. This situation argues in support of a voluntary scheme for the provisions of wireless priority access service. If, however, the Commission adopts a mandatory program, the rules must exclude those systems that are not technologically capable of implementing such standards.

Additionally, the Commission should allow voluntary participants the flexibility to determine how best to meet the needs for wireless priority access service. To that end, the Commission should not adopt any requirement that carriers set aside spectrum for wireless priority access usage. A flexible approach that permits carriers independently to determine system needs will allow carriers to provide wireless priority access in the most spectrum-efficient and economic manner. Whether wireless priority access service can most effectively be provided through a set-aside of spectrum or through other means should be wholly within the business and technical judgment of a carrier, based on its assessment of factors unique to its service area.

Furthermore, setting aside spectrum could result in inefficient spectrum usage, as the block of reserved frequencies might only be rarely used. Due to the increased allocation of spectrum for public safety communications, there is some uncertainty concerning whether the government will increase its usage of commercial services during emergencies. The Commission's plans to allocate 24 MHz of spectrum to public safety agencies may help to rectify

the existing shortage and interoperability problems faced by the public safety community. Moreover, unless NSEP officials need constant access to carrier spectrum, the reserved frequencies might well lie fallow for extended periods, at a time when carriers are confronting ever-increasing subscriber demand. Accordingly, the Commission should not mandate the reservation of commercial spectrum.

II. The Commission Should Take Steps To Protect CMRS Operators From Liability Resulting From Providing Wireless Priority Access Service

In the *Second NPRM*, the Commission requests comment on whether it should explicitly limit liability under Section 202 of the Communications Act⁸ for carriers providing wireless priority access service.⁹ PCIA is concerned that carriers may be found liable under the Communications Act as a result of providing NSEP personnel with priority access during emergencies. The Commission tentatively concludes that, to the extent priority access service is a voluntary offering and to the extent the Commission declines to establish detailed priority access level rules, the agency should specifically limit liability under Section 202.¹⁰ PCIA agrees. As previously explained by BellSouth,¹¹ the wireless priority access rules require an explicit provision limiting liability because, unlike the Telecommunications Service Priority

⁸ Section 202(a) of the Communications Act makes it unlawful for any common carrier to “engage in any unlawful discrimination of preference in connection with the provision of communications services.” 47 U.S.C. § 202(a).

⁹ *Second NPRM*, ¶ 200.

¹⁰ *Id.*

¹¹ *See id.*, ¶ 199, citing Comments of BellSouth Corp. and BellSouth Cellular Corp., WT Dkt. No. 96-86, at 9 (filed Jun. 17, 1996).

System, participating carriers will voluntarily impose the wireless priority access service regime on customers.

As proposed by the Commission, a CMRS provider could shift the burden of proof to the complainant alleging unreasonable discrimination or undue preference under Section 202 by demonstrating that the service was exclusively designed to enable authorized priority users, in emergency situations when spectrum used by the carrier is congested, to gain access to the next available channel before subscribers not engaged in public safety or NSEP functions. This is the minimum protection that should be provided to CMRS carriers. The Commission, in fact, should hold any carrier operating in compliance with the wireless priority access service rules and policies free from any liability under Section 202(a). If the Commission provides such a liability shield, it will eliminate significant uncertainty for carriers and, in turn, encourage broader participation in CPAS.

Similarly, the Commission must resolve the interrelationship between the provision of wireless priority access service and CMRS carriers' obligations to provide service and access to 911 users. The *Second NPRM* does not address how 911 users would be accommodated when wireless priority access service has been invoked. As a result, CMRS operators have concerns about their potential liability risks should an NSEP call be handled in advance of a 911 call, which may be of an equally urgent nature. This liability exposure also must be settled if CMRS carriers are going to be willing to undertake the voluntary provision of wireless priority access service.

III. The Commission's Rules Should Promote Efficient and Affordable Use of Public Safety Spectrum

In the *Second NPRM*, the Commission discusses its desire to ensure that the new public safety spectrum is used efficiently, and that public safety agencies will have affordable communication available.¹² PCIA supports the Commission's goals in this area and suggests an expansion of the proposed rules to accomplish these goals. In particular, PCIA urges the Commission to adopt rules and policies that will facilitate and encourage public safety users to partner with commercial operators in order to ensure access to adequate spectrum on a cost-effective basis.

Through the years, the public safety community has developed an increasing need for mobile communications capacity and functionality. Unfortunately, the increasing needs of public safety users have been blunted by the reality of municipal budgets, which have become more limited. In response, many public safety users have sought to satisfy their high technology wireless needs, while maintaining a budget, through partnerships with other users as well as commercial providers. The experience of Racom Corp. ("Racom") is an example of one commercial provider that has entered into many such partnerships.

Racom is the largest independent provider of 800 MHz SMR service in the area of the United States that includes Iowa, the southern portion of Minnesota, eastern Nebraska and eastern South Dakota. It has embarked on a \$35 million project to implement Ericsson's EDACS equipment throughout its service area. The system is designed to meet the communications needs of "mission critical" users, including public safety users and utilities. The

¹² *Second NPRM*, ¶¶ 17-25.

system design will enable ALL public safety users in a five state region to utilize Racom's system to serve their mobile telecommunications needs.

The value of this system to the community is immense. Because Racom is building the system to an extremely high degree of reliability and with state-of-the-art features, numerous public safety users have begun operating on the system. Of over 2500 EDACS users, more than 1800 of the units are operated by public safety users. This includes Polk County, Iowa, Blackhawk County, Iowa, Sioux City, Iowa and Yankton, South Dakota. Six rural electric cooperatives and one rural water company are also using the system.

By utilizing the Racom system, these public safety agencies have saved their communities millions of dollars. For example, Polk County, Iowa was able to forego the implementation of a \$3.5 million communications system. Further, Polk County was able to save two-thirds of its annual operations and maintenance budget by using this commercial system instead of constructing its own system (in addition to the interest savings as Polk County would have had to obtain a loan to build a system). Similarly, Blackhawk County was able to save \$2.6 million and Sioux City \$1.3 million.

While the above discussion represents examples of public safety users fulfilling their needs entirely through the use of a commercial system, there are also examples of public safety users cooperatively working with commercial providers and other users. For example, Racom has reached a cooperative agreement with the County of Dubuque, Iowa. Dubuque is the licensee of its own nine channel 800 MHz trunked system. Under the terms of the agreement, Racom is constructing the system for Dubuque. Dubuque will take two of its nine channels and integrate the channels into Racom's SMR system. The system will be partitioned so that Dubuque will have access to its two channels *and* all of the SMR carrier's capacity, but other

users will not be able to access Dubuque's two channels. The system will have all of the priority access mechanisms discussed by the Commission in the *Second NRPM*, as well as provide Dubuque with access to more telecommunications capacity.

The ultimate impact of the Dubuque/Racom partnership is a savings of \$6.1 million for the Dubuque County taxpayers, plus access to additional capacity for Dubuque public safety users. This is a prime example of how a public safety/commercial partnership can bring high technology systems to public safety users while keeping within budgetary constraints.

Similar partnerships are currently being undertaken in various non-profit cooperative arrangements nationwide.¹³ PCIA believes that the Commission should specifically encourage such arrangements in this new band. One means to accomplish this result is for the Commission to adopt a rule that provides that a public safety licensee in this band may share its system with other users, provided that the public safety user is the licensee and is otherwise eligible for the number of channels requested. The rule should also provide that a public safety licensee in this band may combine its system with a commercial licensee that is utilizing commercial frequencies in the same band, to expand the number of channels for which the public safety licensee has access. In this manner, the Commission may enable and encourage public safety users to utilize spectrum efficiently and to have access to technologies that they otherwise might not be able to afford.

¹³ See, e.g., *Texas Utilities Services, Inc.*, DA 97-1404 (July 3, 1997); *East River Electric Power Cooperative*, DA 97-1910 (Sept. 3, 1997).

IV. Conclusion

PCIA urges the Commission to adopt a voluntary scheme for wireless priority access service that is sufficiently flexible to allow carriers to determine the spectrum needs of such a service. PCIA also requests that the Commission take affirmative steps to protect CMRS carriers from liability when providing wireless priority access service consistent with applicable rules and policies. Finally, PCIA urges the Commission to permit public safety licensees to share spectrum with commercial licensees in order to meet their wireless telecommunications needs on an efficient and economical basis.

Respectfully submitted,

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