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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 6, 1999

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

12th Street Lobby – TW-A325

RE: *Ex parte* notification
CC Docket No. 96-18

Personal
Communications
Industry
Association

Dear Ms. Salas:

Today, on behalf of the Personal Communications Industry Association ("PCIA"), I met with Dan Connors of Commissioner Ness' office to discuss the above referenced docket.

During the course of the meeting we specifically discussed the issues set forth in the attached position papers.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this letter and a copy of the materials given to Mr. Connors are hereby filed with the Secretary's office and a copy of this filing is being sent today to Mr. Connors.

Kindly refer questions in connection with this matter to me at 703-535-7482.

Sincerely yours,

Robert L. Hoggarth
Senior Vice President, Paging and Messaging

CC: Dan Connors

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FOUR CHANGES TO THE RULES FOR AUCTIONING MARKET AREA LICENSES FOR PAGING FREQUENCIES WILL ENSURE A FAIR AND EFFICIENT PROCESS[1] (WT DOCKET NO. 96-18)

PCIA supports the FCC's move to market area licensing for paging systems to reduce administrative burdens for both licensees and the Commission. The transition from single site to market area licenses must be made fairly, efficiently, and effectively.

PCIA

Personal Communications Industry Association

It is essential that the Commission make four changes to its market area paging auction rules to ensure a fair and efficient process that: 1) safeguards public reliance on existing, available services; 2) creates practical opportunities for new competitors; and 3) minimizes the filing of unscrupulous applications that do not reflect a serious intent to provide service to the public.[2]

1. The Commission should eliminate use of the "all" box on the FCC Form 175 application and instead require applicants to specify the particular frequency/market combinations for which they are seeking a license.

    a) The Commission has a public interest obligation under Section 309(j)(6)(E) of the Telecommunications Act to avoid "mutual exclusivity" in application and licensing proceedings.

    b) The easy ability simply to check the "all" box on FCC Form 175 would create mutually exclusive situations where they would not otherwise exist. This in turn creates unnecessary transaction costs that must be recouped from some source.

    c) The availability of the "all" box permits entities to sign up to bid without giving serious thought to the systems they are seeking authorization to construct and operate.

    d) Constraining the use of the "all" box on Form 175 does not stop anyone from applying for any and all markets in which they have any interest or from employing backup strategies during the auctions.

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[1] These suggestions reflect positions articulated by PCIA in its Petition for Reconsideration of the *Second Report & Order* and in *ex parte* communications during the fall of 1998.

[2] PCIA continues to believe that the public interest will best be served by adoption of its proposal to permit grant of a market area license to incumbents serving 70 percent or more of the subject license area without having to face any competing applications. That proposal has been extensively outlined in previous *ex parte* submissions in this proceeding.

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e) To implement PCIA's proposal, the Commission would not have to change the Form 175 itself, but could announce by Public Notice that the "all" box could not be used in applications for paging authorizations awarded by auction.

f) PCIA's concerns would be partially addressed if the paging auctions are divided up into smaller subsets, thus limiting somewhat the scope of mutually exclusive situations created by applicants checking the "all" box.

2. The Commission should modify its current "substantial service" alternative for market area licensees to meet applicable coverage requirements.

   a) The "substantial service" alternative, as now written, provides the incentive and opportunity for both speculators and fraudulent application mills to take advantage of the Commission's auction process.

   b) Service to the public may be delayed, or the holder of the market area license may simply use its license to block expansion by incumbent operators in the market as well as in adjacent service areas.

   c) While PCIA believes the public interest would best be served by requiring market area licenses to comply with the applicable buildout requirements already set forth in the rules – provide coverage to one-third of the population within three years and to two-thirds of the population with five years of license grant – the current "substantial service "option must, at a minimum, be reformulated to ensure serious applicants for viable systems.

3. Applicants should be required to post an upfront payment for every license on which they seek to bid.

   a) Requiring a per license upfront payment will help to ensure that auction participants are sincere in their participation and their intent to provide service to the public.

   b) This approach also would help to deter the activities of fraudulent application mills, by requiring a greater financial investment.

c) Serious applicants could still pursue legitimate backup strategies while the Commission ensures that existing subscribers relying on established paging services are not harmed by speculators or insincere applicants pursuing random backup strategies without regard for the particular market facts.

4. The Commission should provide complete bidding information, specifically including the identity of competing bidders, during the course of the auctions.

   a) The Commission's original decision to withhold significant identification information in the paging auctions is inconsistent with its usual approach to maximizing information flow related to auctions.

   b) The existing policy likely will place incumbents at a disadvantage vis-a-vis their competitors.

   c) While PCIA understands the Commission's desire to retain the authority to withhold bidding information, PCIA endorses proposals to re-examine the information policy for the paging auctions, either through outright reversal in these reconsideration proceedings or through soliciting further comment as part of the auction definition proceedings.

THE TRANSITION TO MARKET AREA LICENSING FOR PAGING (WT DOCKET NO. 96-18)

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1. PCIA supports the FCC's move to market area licensing for paging systems to reduce administrative burdens for both licensees and the Commission.

2. The transition from single site to market area licenses must be made fairly, efficiently, and effectively.

3. Auction rules must recognize public reliance on existing services provided by incumbent licensees who have built out their systems and serve significant customer bases.

4. Auction rules must also provide opportunities for new entrants to build and operate viable competitive networks.

In support of these principles, the paging industry seeks the following modifications to the existing paging market area auction rules:

1. The Commission should eliminate use of the "all" box on the FCC Form 175 application and instead require applicants to specify the particular frequency/market combinations for which they are seeking a license.

2. The Commission should modify its current "substantial service" alternative for market area licensees to meet applicable coverage requirements.

3. Applicants should be required to post an upfront payment for every license on which they seek to bid.

4. The Commission should provide complete bidding information, specifically including the identity of competing bidders, during the course of the auctions.

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