

JUL 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)	
)	
Revision of Part 22 and Part 90)	WT Docket No. 96-18
of the Commission's Rules to)	
Facilitate Future Development of)	
Paging Systems)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act --)	
Competitive Bidding)	

To: The Commission

**MORRIS COMMUNICATIONS PETITION
FOR PARTIAL RECONSIDERATION**

Morris Communications, Inc. ("Morris"), by its attorneys and pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405 (a), and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby submits this Petition for Partial Reconsideration of the FCC's Memorandum Opinion and Order on Reconsideration and Third Report and Order ("Third R&O") in the above-captioned rule making proceeding.¹

I. Statement of Interest

Morris is a small, independent paging company operating in the Southeastern U.S. Morris previously filed Comments in this radio-paging rule making proceeding with respect to the FCC's "Interim Licensing" proposal, and a petition for partial reconsideration of the Second Report and

¹ The Third R&O was published in the Federal Register on June 24, 1999. See 64 Fed. Reg. 33762. The thirtieth day from Federal Register publication, July 24, 1999, was a Saturday; this Petition is therefore being timely filed on the next business day. See 47 C.F.R. § 1.4(j).

Order² in this proceeding. Consequently, Morris is an "interested party" in these proceedings.

II. Additional Provisions Should be Made for Small Businesses

In the Third R&O, the Commission revised the treatment of small businesses to eliminate installment payments, and adopted higher, two-tiered bidding credits. See Third R&O at ¶ 113. Under the revised rules, entities with average gross revenues not exceeding \$3 million for the preceding three years (*i.e.*, very small businesses) will qualify for a 35% bidding credit; entities whose average gross revenues for the preceding three years do not exceed \$15 million (*i.e.*, small businesses) will qualify for a 25% bidding credit.

While Morris applauds the Commission's decision to increase the bidding credits for very small businesses and for small businesses with average gross revenues of \$15 million or less, Morris believes that additional measures for small paging companies are necessary. Morris therefore respectfully submits that the Commission should establish an additional tier of "small businesses" entitled to bidding credits; for example, an entity whose average gross revenues for the preceding three years does not exceed \$40 million should be entitled to a 15% bidding credit. Alternatively, Morris respectfully submits that the current \$15 million revenue threshold for "small business" status be raised to \$40 million.

An additional "small business" tier would be consistent with the Commission's treatment of other auctionable services. The Commission's general auction rules currently provide for the \$40 million gross revenues/15% bidding credit requested herein. See 47 C.F.R. § 1.2110(e)(2)(iii). The suggested \$40 million revenue threshold for small business status has also been used in

² *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd. 2732 (1997) (the "Second R&O")

previous spectrum auctions. For example, in the regional Narrowband Personal Communications Service auction, the Commission established average gross revenues of \$40 million as the "small business" benchmark. See Amendment of the Commission's Rules to Establish New Narrowband Personal Communication Services, Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making, GEN Docket No. 90-314 and ET Docket No. 92-100, FCC 94-219, ¶ 46 (rel. August 17, 1994). The same threshold amount was used for the "small business" tier in the recent broadband PCS auction. See 47 C.F.R. § 24.720(b)(1). Similar treatment of paging carriers would further the Commission's goal of regulatory parity among CMRS services.

Moreover, additional small business benefits are particularly appropriate in the paging industry. Paging is the most competitive of all CMRS services, with more than 600 licensed carriers. See, e.g., Third R&Q at Appendix D, Final Regulatory Flexibility Analysis, Section III. The paging industry has very low profit margins, and many existing carriers have earned no profits, or even suffered net losses. See, e.g., Fourth Annual Report and Analysis of Competitive Conditions with Respect to Commercial Mobile Services, FCC 99-136, 46-47 (1999) (paging churn is on the rise; average revenue per unit was at a low point in 1997); "The Non-Winners: Paging Industry's Stingy 1998," Wireless Week, <<http://www.wirelessweek.com/industry/page98.htm>> (noting paging carriers' difficulties in attracting investors, in part due to low earnings); "Two-Way Paging Might Rescue Ailing Industry," Dallas Business Journal (September 28, 1998), <<http://www.amcity.com/dallas/stories/1998/09/28/story4.html> (noting intense competition and monetary losses in the paging industry). Yet, because the Commission's small business definitions consider gross revenues rather than net revenues, many struggling competitive carriers may not qualify for "small business" treatment. For example, Morris is unsure whether it

will qualify under the existing gross revenue benchmarks; yet, Morris is a small family-held company with significant operating expenses in maintaining its networks. Like many similarly-situated paging companies, Morris' gross revenues bear little relation to its profitability and access to liquid capital.

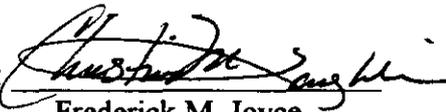
An additional tier of bidding credits, or raising the revenue threshold for the "small business" definition, would assist smaller, competitive companies in participating in the upcoming paging auctions, without providing a windfall to larger, more profitable firms. Morris therefore respectfully submits that the addition of a third "small business" tier, or raising the existing \$15 million threshold, would further the statutory goals of "promoting economic opportunity and competition" and "disseminating licenses among a wide variety of applicants[.]" See 47 C.F.R. § 309(j).

CONCLUSION

For all the foregoing reasons, Morris respectfully requests that the FCC reconsider its Third R&Q in this rule making proceeding consistent with the foregoing recommendations.

Respectfully submitted,

MORRIS COMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I, Taisha Howard, a legal secretary in the law firm of Joyce & Jacobs, Attys. at Law, LLP, do hereby certify that on this 26th day of July, 1999, copies of the foregoing Petition for Partial Reconsideration were delivered by hand to the following:

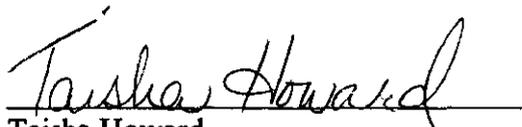
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