

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

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

**REPLY COMMENTS OF THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association (“PCIA”)¹ hereby submits its reply comments in response to the Second Further Notice of Proposed Rulemaking (“*Second FNPRM*”) in the above-captioned proceeding.² The comments in this docket demonstrate that the reserve

¹ PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA’s Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Association, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As an FCC-appointed frequency coordinator for the Industrial/Business Pool frequencies below 512 MHz, the 800 MHz 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 FCC licensees.

² 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, *Second Report and Order and Second Further Notice of Proposed Rule Making*, (rel. May 18, 2000) (“*Second R&O and Second FNPRM*”); 65 Fed. Reg. 35875 (June 6, (Continued...))

narrowband PCS spectrum should be channelized and licensed by the Commission. Additionally, there is substantial support for PCIA's proposed band plan for the remaining spectrum. PCIA urges the Commission to adopt its proposed band plan and to utilize sensible geographic licensing areas for the allocation of this remaining spectrum.

I. THE COMMISSION SHOULD LICENSE THE RESERVE SPECTRUM.

The commenters in this proceeding were unanimous in their support for channelizing and licensing the 1 MHz of reserve narrowband PCS spectrum.³ The record supports the Commission adopting its tentative proposal to release the reserve spectrum to enable existing narrowband PCS licensees as well as potential new entrants to provide innovative services to the public. As demonstrated by the commenters in this proceeding, the reserve spectrum will help to meet the present need of providers of wireless two-way messaging and data services for additional capacity.

II. PCIA'S PROPOSED BANDPLAN STRIKES AN APPROPRIATE BALANCE AND BEST SERVES THE PUBLIC INTEREST.

In its opening comments, PCIA proposed a consensus spectrum band plan that was created through extensive efforts of interested members of the messaging industry. As a reminder, PCIA's proposed consensus band plan can be summarized as follows:

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2000). The Commission extended the deadline for submission of comments from July 5, 2000 to July 19, 2000 and reply comments from July 19, 2000 to August 3, 2000. *See Order*, GEN Docket No. 90-314; ET Docket No. 92-100; PP Docket No. 93-253 (rel. June 26, 2000); 65 Fed. Reg. 41035 (July 3, 2000).

³ See Comments of WebLink Wireless ("WebLink") at 6; Comments of Space Data Corporation ("Space Data") at 1; Comments of FreeSpace Communications, LLC ("FreeSpace") at 3; Comments of Verizon Wireless Messaging Services, LLC ("Verizon Wireless") at 11; Comments of PCIA at 3.

Spectrum Band	Channelization	Geographic Area
901 to 902 MHz	One 12.5 kHz unpaired channel Two 50 kHz unpaired channels Four 50 kHz unpaired channels	MTA License Regional Licenses Nationwide Licenses
930 to 931 MHz paired with 901 to 902 MHz	Three 150 kHz/50 kHz paired channels One 100 kHz/50 kHz paired channel One 100 kHz unpaired channel	Nationwide Licenses Nationwide License Regional License
940 to 941 MHz paired with 901 to 902 MHz	One 150 kHz/50 kHz paired channel One 50 kHz/50 kHz paired channel Three 100 kHz unpaired channels One 100 kHz unpaired channel	Nationwide License MTA License Nationwide Licenses Regional License

This band plan provides opportunities for small businesses, while enabling the aggregation of spectrum and licensing areas desired by some entities. PCIA’s proposed band plan has drawn support from commenters,⁴ while others seek channelization plans that are fairly consistent with PCIA’s consensus band plan.⁵ Only two commenters ask that the Commission implement either different licensing areas or larger spectrum blocks.⁶ Neither proposal would as effectively serve the public interest as PCIA’s which balances the rights and requirements of the entire messaging industry while not favoring any particular entity over another.

In contrast, the FreeSpace proposal is clearly designed to favor certain classes of possible licensees. FreeSpace urges the Commission to rechannelize the existing narrowband PCS spectrum and the 1 MHz of reserve spectrum into the largest spectrum blocks possible.⁷ FreeSpace argues that allowing the market to determine the optimal channel size for the available

⁴ See Comments of Verizon Wireless at 12; Comments of Motorola at 2.

⁵ See Comments of Space Data at 1.

⁶ See Comments of FreeSpace at 5; Comments of WebLink at 2.

⁷ See Comments of FreeSpace at 5-7.

spectrum ensures that the spectrum can be put to its most highly valued use and proposes that the Commission license the reserve spectrum in a single 1 MHz block or in two 500 kHz blocks.

Additionally, without providing any further detail, FreeSpace supports the Commission's proposal to channelize the remaining narrowband PCS spectrum into larger blocks.

FreeSpace's comments lack understanding of the reserve spectrum and contain insufficient detail to warrant Commission consideration. Initially, it is difficult to understand how three non-contiguous spectrum blocks of 300 kHz, 400 kHz and 300 kHz are to be fashioned into two 500 kHz channel blocks. Moreover, FreeSpace provides no concrete band plan to further its proposals for larger blocks in the existing narrowband PCS spectrum, nor does FreeSpace discuss what harmful effects such channelization and novel operations might have on existing incumbents. In contrast, PCIA's consensus band plan completely considers the existing users and uses of the narrowband PCS spectrum, provides exact detail on how the spectrum should be channelized, and offers a variety of options for potential licensees to obtain spectrum licenses.

FreeSpace also argues that users who desire smaller channels can channelize the spectrum to meet their particular service needs, but does not address those users who may only require a small amount of spectrum in localized areas to provide niche or targeted service offerings. If, as FreeSpace argues, the aggregation of all reserve spectrum is most highly valued by an auction participant, that entity is permitted to participate and accumulate this spectrum in the auction itself under PCIA's proposal. However, adoption of any band plan based upon FreeSpace's comments would effectively preclude competition in the auction by entrepreneurial entities seeking smaller channel blocks and service areas for their innovative wireless service offerings. PCIA believes that the public would be better served to allow all entities to compete in an auction with a variety

of channel block sizes and service areas, providing a realistic opportunity for any potential entrant to obtain spectrum in keeping with its particular business plan.

If the Commission were to jettison the 50 kHz channel block sizes that are at the heart of PCIA's consensus band plan, it would inhibit participation by all but the very largest of companies without regard for the need for competitive, entrepreneurial players within the market. The use of 50 kHz spectrum blocks increases the likelihood that the upfront cost of entering the narrowband PCS market is not prohibitive. As the Commission recognizes, small businesses should be able to acquire licenses at auction and should not have to rely upon the secondary market.⁸ Moreover, FreeSpace offers no guarantee that smaller operators would be able to count on a licensee of a significant portion of the narrowband spectrum to disaggregate or partition its license on a broad scale. PCIA therefore strongly urges the Commission to reject FreeSpace's request for larger spectrum blocks as not being in the public interest.

WebLink supports the consensus band plan as it relates to spectrum block sizes and channel pairing, but objects to PCIA's proposed service areas.⁹ WebLink argues that PCIA's band plan, at least as far as service area sizes are concerned, should only be considered as part of the petition for reconsideration of the *Second Report and Order*, that the decision to use Major Trading Areas ("MTAs") was well-reasoned and equally applicable to the reserve spectrum, and that WebLink and hundreds of other paging companies have relied on the Commission's previous decision to license narrowband PCS spectrum primarily based on smaller areas.

⁸ 12.5 kHz unpaired licenses should be especially beneficial for small business entities.

⁹ See Comments of WebLink at 2-8.

PCIA disagrees that the issue of service area sizes can only be raised as part of the petition for reconsideration proceeding. It is by no means clear that the Commission included the reserve spectrum in its decision in the *Second Report and Order* to utilize MTAs for future narrowband PCS licenses. Moreover, it would be inconsistent with almost every other geographic area-based band plan proceeding that the Commission not to consider service area sizes along with channel block sizes.¹⁰ In the *Second FNPRM*, the Commission specifically requested additional comment on the channelization for the reserve spectrum and existing narrowband PCS spectrum. It is virtually impossible to engage in a rational discussion of spectrum block sizes without also considering the size of service areas.

Indeed, at the very least, discussion of service area sizes are a “logical outgrowth” of this rule making proceeding, consistent with most every other band plan determination. The Administrative Procedure Act (“APA”) requires an agency to provide the public with “either the terms or the substance of a proposed rule or a description of the subject and issues involved.”¹¹ The APA, however, “does not require an agency to publish in advance every precise proposal

¹⁰ See, e.g., Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Notice of Proposed Rulemaking*, 14 FCC Rcd. 11006, ¶¶ 17-21 (1999) (seeking comment on both appropriate size of spectrum blocks and the type of service area or areas for licensing of 700 MHz spectrum); Rulemaking to Amend Part 1 and Part 21 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, *Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration*, 8 FCC Rcd. 557, ¶¶ 20-21, 30 (1993) (seeking comment on both channelization plan and appropriately-sized service areas for LMDS); Amendment to the Commission’s Rules to Establish New Personal Communications Services, *Notice of Proposed Rule Making and Tentative Decision*, 7 FCC Rcd 5676, ¶¶ 38-40, 56-62 (1992) (seeking comment on both channelization plan and appropriately-sized service areas for PCS).

¹¹ See 5 U.S.C. § 553(B)(3).

which it may ultimately adopt as a rule.”¹² Rather, the notice is sufficient if the final rule is a “logical outgrowth” of the underlying proposal.¹³ As service area sizes are key components to any channelization plan, PCIA believes that determination of service areas certainly must be part of the existing *Second FNPRM* as a logical outgrowth. Proper spectrum management policies dictate the consideration of service area sizes in conjunction with any spectrum channelization and band plan. Therefore, it appears that by seeking comment on the channelization and licensing of the reserve narrowband PCS spectrum, the Commission has provided affected parties the full opportunity to comment not only on channel block size but also on the appropriate geographic licensing area for this spectrum.

PCIA’s proposed band plan, including service area size, represents a true compromise that drew almost unanimous support in lengthy discussions among industry representatives. This proposal presents a level playing field for all potential participants. The band plan has MTA, regional and nationwide licenses, thus providing opportunities for any potential entrant to pursue its particular business plan. Fears of large carriers outbidding smaller carriers would not be eliminated by adoption of predominantly (or exclusively) MTA service areas; rather, large carriers with a desire for accumulating spectrum would still be in a position to outbid smaller players in such an auction. PCIA believes that its proposed band plan better provides incumbent licensees and potential market entrants—both small and large businesses alike—with maximum flexibility to construct optimal licensed areas that suit their particular needs and capabilities, including their assessments of consumer demand.

¹² See *California Citizens Band Association v. United States*, 375 F.2d 43, 48 (9th Cir. 1967); see also *Spartan Radiocasting Co. v. FCC*, 619 F.2d 314 (4th Cir. 1980).

PCIA supports the Commission's continued interest in structuring its rules and competitive bidding procedures to accommodate participation by a broad range of players, including small businesses and new entrants. In particular, the narrowband PCS industry has been a model of participation for small businesses, as a survey of PCIA's members can attest. The proposed consensus band plan's use of 50 kHz building blocks promotes the Commission's policy of encouraging market participation. The 50 kHz blocks are small enough to encourage and facilitate competition in the narrowband PCS industry by small businesses; at the same time, however, 50 kHz blocks are sufficiently large for licensees to develop a substantial consumer base with sufficient geographic coverage to offer viable, competitive services.

PCIA believes that there is a continued need for some licenses based on regional and MTA service areas. Accordingly, PCIA's proposed bandplan accommodates these interests and provides for some licenses that are based upon regional or MTA service areas, while also including some nationwide licenses. The flexibility built into PCIA's plan will ensure that a wide range of entities, including smaller businesses and existing paging licensees, will be capable of bidding in an upcoming narrowband PCS auction. PCIA believes that its proposed band plan most accurately reflects market demand and will foster the greatest amount of competition in narrowband PCS services.

III. CONCLUSION

PCIA agrees with commenters that channelization and licensing of reserve narrowband PCS spectrum would serve the public interest and the Commission should proceed with this proposed action. PCIA does not agree with commenters who seek larger channel block sizes than

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¹³ See *United Steelworkers v. Marshall*, 647 F.2d 1189, 1221 (D.C. Cir. 1980).

its proposed consensus band plan or smaller geographic service areas to the exclusion of effective nationwide licensing. PCIA's band plan fully considers the effect on incumbent operations, the migration path for such incumbents to more robust service offerings, and the impact on the panoply of messaging service providers. Adoption of PCIA's proposed channelization plan, which has the broad support of members of the messaging industry, not only will ensure the efficient licensing of the remaining narrowband PCS spectrum, but will accommodate the spectrum needs of participants ranging from small market entrants to large incumbent licensees, thus fostering continued competition among CMRS providers.

Respectfully submitted,

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