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

In the Matter of	)	
	)	
Dismissal of All Pending Pioneer's Preference Requests	)	CC Docket No. 92-297, RM-7872, PP-22
	)	ET Docket No. 94-124, RM-8784
	)	GEN Docket No. 90-314, PP-68
	)	GEN Docket No. 90-357, PP-25
	)	IB Docket No. 97-95, RM-8811
	)	RM-7784, PP-23
	)	RM-7912, PP-34 *et. al.*
	)	
Review of the Pioneer's Preference Rules	)	ET Docket No. 93-266
	)	(Docket Terminated)

ORDER

Adopted: August 29, 1997 Released: September 11, 1997

By the Commission:

I. INTRODUCTION

1. In response to recent Congressional legislation, this *Order* terminates the Commission's pioneer's preference program and dismisses all pending pioneer's preference requests.

II. BACKGROUND

2. Our pioneer's preference program was initiated in 1991.[1] The program provided preferential treatment in our licensing processes for parties that made significant contributions to the development of a new spectrum-using service or to the development of a new technology that

[1] *See* Establishment of Procedures to Provide a Preference, GEN Docket No. 90-217, *Report and Order*, 6 FCC Rcd 3488 (1991), *recon. granted in part, Memorandum Opinion and Order*, 7 FCC Rcd 1808 (1992), *further recon. denied, Memorandum Opinion and Order*, 8 FCC Rcd 1659 (1993).

substantially enhanced an existing spectrum-using service. Approximately 140 parties applied for pioneer's preferences in various services, and five preferences were granted.[2]

III. DISCUSSION

3. The Commission no longer has the authority to grant pioneer's preferences. On August 5, 1997, the President signed into law the Balanced Budget Act of 1997 (Budget Act).[3] The Budget Act amended the pioneer's preference program's expiration date, which is specified in section 309(j)(13)(F) of the Communications Act. That section, which was enacted as part of legislation implementing domestically the General Agreement on Tariffs and Trade (GATT),[4] read prior to enactment of the Budget Act: "The authority of the Commission to provide preferential treatment in licensing procedures (by precluding the filing of mutually exclusive applications) to persons who make significant contributions to the development of a new service or to the development of new technologies that substantially enhance an existing service shall expire on September 30, 1998."[5] The Budget Act changed that date to "the date of enactment of the Balanced Budget Act of 1997."[6] Thus, as of August 5, 1997, the Commission's authority to grant any applicant a pioneer's preference expired.

4. The Commission has the following pioneer's preference requests pending before it:[7]

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[2] Recipients of preferences were Volunteers in Technical Assistance in the below 1 GHz low-Earth orbit satellite service, *see* ET Docket No. 91-280, *Report and Order*, 8 FCC Rcd 1812 (1993); Mobile Telecommunication Technologies Corporation in the 900 MHz narrowband Personal Communications Service, *see* GEN Docket No. 90-314 and ET Docket No. 92-100, *First Report and Order*, 8 FCC Rcd 7162 (1993); and American Personal Communications, Cox Enterprises, Inc., and Omnipoint Communications, Inc. in the 2 GHz broadband Personal Communications Service, *see* GEN Docket No. 90-314, *Third Report and Order*, 9 FCC Rcd 1337 (1994). Legislation implementing the General Agreement on Tariffs and Trade finalized the grant of the latter three preferences by precluding Commission reconsideration and judicial review. *See* Uruguay Round Agreements Act, Pub. L. No. 103-465, Title VIII, § 801, 108 Stat. 4809, 5050 (1994), 47 U.S.C. § 309(j)(13).

[3] Pub. L. 105-33, 111 Stat. 251 (1997).

[4] Uruguay Round Agreements Act, Pub. L. No. 103-465, Title VIII, § 801, 108 Stat. 4809, 5050 (1994), codified at 47 U.S.C. § 309(j)(13).

[5] 47 U.S.C. § 309(j)(13)(F).

[6] *See again* Pub. L. 105-33, 111 Stat. 251 (1997).

[7] Some of these requests are pending only in a technical sense, because they were not properly filed. For example, Motorola Satellite Systems, Inc.; Sky Station International; and Teledesic Corporation each failed to file "a separate request that it be awarded a pioneer's preference in the licensing process for the service," as was required by Section 1.402(a) of our rules.

o Suite 12 Group (now CellularVision U.S.A.), filed on September 23, 1991 in the 28 GHz Local Multipoint Distribution Service proceeding (PP-22 in RM-7872 and CC Docket No. 92-297);[8]

o Sky Station International, filed on March 20, 1996 for a global stratospheric telecommunications service in the 47.2-47.5 GHz and 47.9-48.2 GHz bands (RM-8784 and ET Docket No. 94-124);[9]

o Qualcomm Incorporated, filed on May 4, 1992 in the broadband Personal Communications Services proceeding (PP-68 in GEN Docket No. 90-314);[10]

o Strother Communications, Inc., filed on July 30, 1991 in the Digital Audio Radio Service proceeding (PP-25 in GEN Docket No. 90-357);

o Motorola Satellite Systems, Inc., filed on September 4, 1996 for a non-geostationary Fixed Satellite Service in the 36-51 GHz band (RM-8811 and IB Docket No. 97-95);[11]

o ProNet, Inc., filed on July 30, 1991 for an electronic tracking service in the 216-220 MHz band (PP-23 in RM-7784);

o Maritime Telecommunications Network, Inc., filed on June 2, 1995 for a digital shipboard earth station service (PP-34 in RM-7912);

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[8] In December 1992, we tentatively granted Suite 12 Group a pioneer's preference. *See* CC Docket No. 92-297, *Notice of Proposed Rule Making, Order, Tentative Decision and Order on Reconsideration*, 8 FCC Rcd 557 (1993). This tentative grant was scheduled for review by a peer review panel, which was to recommend to us whether that grant should be made final. However, pursuant to the Budget Act, we no longer have authority to act on the request.

[9] We recently discussed Sky Station's proposal extensively in the *Second Report and Order* in ET Docket No. 94-124. *See* FCC 97-153, released July 21, 1997.

[10] Previously, we denied Qualcomm's pioneer's preference request. *See* GEN Docket No. 90-314, *Third Report and Order*, 9 FCC Rcd 1337 (1994), *recon. denied*, *Memorandum Opinion and Order*, 9 FCC Rcd 7805 (1994). However, on January 7, 1997, this action was vacated and remanded to the Commission for further consideration. *See Freeman Engineering Associates, Inc., et al. v. FCC*, 103 F.3d 169 (D.C. Cir. 1997). Thus, the Qualcomm request is now pending before us, but we no longer have authority to act on it.

[11] We recently proposed to allocate spectrum in this band for both geostationary and non-geostationary Fixed Satellite Services. *See Notice of Proposed Rule Making*, IB Docket No. 97-95, FCC 97-85, released March 24, 1997.

o CruiseCom International, Inc., filed on April 10, 1992 for a digital shipboard earth station service (RM-7912);

o AfriSpace, Inc., filed on July 30, 1991 for an international satellite sound broadcasting service;

o Inner Ear Communications, Inc., filed on May 21, 1993 for a low-power broadcast service in the 72-76 MHz band;

o Teledesic Corporation, filed on March 14, 1994 for a low-Earth orbit satellite service;

o Web SportsNet, Inc. and Gregory D. Deieso, filed on July 15, 1996 for an Event Broadcast Stations radio service; and

o RadioTour/USA, filed on June 17, 1997 for a low-power FM information broadcasting service.

5. In accordance with the Budget Act, we are immediately terminating our pioneer's preference program and are dismissing these 13 pioneer's preference requests.[12]

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that the Commission's pioneer's preference program and ET Docket No. 93-266 ARE TERMINATED and Parts 0, 1, and 5 of the Commission's Rules ARE AMENDED as set forth in the attached Appendix, effective upon publication in the Federal Register.[13]

7. IT IS FURTHER ORDERED that the requests for pioneer's preference filed by Suite 12 Group (now CellularVision U.S.A.) on September 23, 1991 (PP-22 in RM-7872 and CC Docket No. 92-297); Sky Station International on March 20, 1996 (RM-8784 and ET Docket No. 94-124); Qualcomm Incorporated on May 4, 1992 (PP-68 in GEN Docket No. 90-314); Strother

[12] There may be additional pioneer's preference requests of which we are unaware. If any such requests are identified, the staff will dismiss them on delegated authority.

[13] In light of the fact that these rule changes are mandated by Congress and we have no discretion, we find good cause to proceed without notice and comment and to make the rule amendments effective less than 30 days after publication in the Federal Register.

Communications, Inc. on July 30, 1991 (PP-25 in GEN Docket No. 90-357); Motorola Satellite Systems, Inc. on September 4, 1996 (RM-8811 and IB Docket No. 97-95); ProNet, Inc. on July 30, 1991 (PP-23 in RM-7784); Maritime Telecommunications Network, Inc. on June 2, 1995 (PP-34 in RM-7912); CruiseCom International, Inc. on April 10, 1992 (RM-7912); AfriSpace, Inc. on July 30, 1991; Inner Ear Communications, Inc. on May 21, 1993; Teledesic Corporation on March 14, 1994; Web SportsNet, Inc. and Gregory D. Deieso on July 15, 1996; and RadioTour/USA on June 17, 1997 ARE DISMISSED. This action is taken pursuant to Sections 4(i), 7(a), 303(g), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(g), 303(r); and Section 309(j)(13)(F) of the Communications Act of 1934, as amended by the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997).

8. IT IS FURTHER ORDERED that the Acting Secretary of the Commission shall cause a copy of this *Order* to be served upon the 13 parties listed above.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

APPENDIX: RULE CHANGES

Parts 0, 1, and 5 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0 -- COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.241 is amended by deleting paragraph (f), and renumbering old paragraph (g) to be new paragraph (f).

PART 1 -- PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.402 is deleted.

PART 5 -- EXPERIMENTAL RADIO SERVICE

1. The authority citation in Part 5 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

2. Section 5.207 is deleted.