



PUBLIC NOTICE

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COMMENT SOUGHT ON IN-FLIGHT PHONE CORP. PETITION FOR DECLARATORY RULING

On March 16, 1995, In-Flight Phone Corp. (In-Flight) filed a Petition for Declaratory Ruling requesting that its pioneer's preference (PP) Request filed in the Narrowband Personal Communications Services proceeding, ET Docket No. 92-100, now be considered in ET Docket No. 94-32, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use. Specifically, In-Flight requests that the Commission rule that: 1) its PP Request was filed by the deadline applicable to permit consideration in ET Docket No. 94-32, in which the Second Notice of Proposed Rulemaking (Second NPRM) proposes that the 4660-4685 MHz band be allocated to a General Wireless Communications Service (GWCS); and 2) that the request will be considered in that docket.

In-Flight filed its PP Request in ET Docket No. 92-100 on October 30, 1992, seeking a preference in the 901-902 MHz and 940-941 MHz bands for a live ground-to-air audio news, information, and entertainment service for airline passengers. However, because the rules adopted in ET Docket No. 92-100 were not related to In-Flight's proposal, its PP Request has not been acted upon by the Commission.

On May 4, 1994, the Commission released a Notice of Inquiry (NOI) in ET Docket No. 94-32, seeking information on potential applications of 50 megahertz of transferred Federal Government spectrum. On November 8, 1994, a Notice of Proposed Rulemaking (NPRM) was released proposing the allocation of the spectrum, and a First Report and Order and Second Notice of Proposed Rulemaking was released on February 17, 1995. The Second NPRM proposed that the 4660-4685 MHz band be allocated for a GWCS.

In-Flight argues that its PP Request should be considered in ET Docket No. 94-32 because the proposed service rules would allow it to apply for a license to provide its service in the 4660-4685 MHz band. In-Flight claims that the service for which the preference is sought is identical in all relevant respects to the service it would provide as a GWCS licensee. Finally,

In-Flight requests that the Commission issue the requested ruling well in advance of the August 10, 1995 statutory deadline for issuing final rules in ET Docket No. 94-32, so that the Commission will have sufficient time to decide whether to award a pioneer's preference to In-Flight.

We herein request comment on In-Flight's Petition for Declaratory Ruling. Comments are due May 19, 1995, and reply comments are due May 31, 1995. We note that In-Flight's PP Request has been formally opposed. Accordingly, the PP Request constitutes a restricted Commission proceeding in which ex parte presentations are prohibited; see 47 C.F.R. Section 1.1208(c).

The Petition for Declaratory Ruling and related materials are available for inspection in the Office of Engineering and Technology, Suite 480, 2000 M Street N.W., Washington, DC during regular business hours M-F 8:00 AM to 5:00 PM. This material may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20036, (202) 857-3800. For further information, contact Thomas Derenge in the Office of Engineering and Technology, (202) 739-0703.

- By the Chief, Office of Engineering and Technology -