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FEDERAL COMMUNICATIONS COMMISSION
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via Hand Delivery

February 16, 1996

David Furth, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Rm 5202
Washington, DC 20554

Re: Concerned Paging Companies Against the Freeze

EX PARTE PRESENTATION in re: Notice of Proposed Rule Making in WT Docket No. 96-18 and PP Docket No. 93-253

Dear Mr. Furth:

On behalf of the radio paging companies that have signed this letter, we are writing to you to express our deep concern about the FCC's "freeze" on the processing of all radio paging applications, while the agency considers whether to auction off the little remaining unused paging spectrum. Two copies of this letter are being concurrently submitted to the Secretary's Office for inclusion in the record in this proceeding. We sincerely believe that your agency has no idea of the profound financial and operational harm this action is already taking on these paging companies, their customers, and their thousands of employees. Many of the customers who use these paging services are involved in health, safety, and law enforcement services.

The companies who have joined here to voice their concerns range from entrepreneurs who have in the past year invested their lives' savings to build new paging systems in reliance upon recently granted FCC licenses, to larger, publicly owned paging companies, who must make substantial financial commitments years in advance, just to keep up with the enormous growth rates of their customer bases. Collectively, they provide essential paging services to literally millions of customers; their combined annual revenues are in the hundreds of millions of dollars. Their combined work forces measure in the tens of thousands; and they have created tens of thousands of ancillary jobs for technicians, engineers, software companies, and equipment manufacturers. In short, the financial stakes for these companies are truly enormous; the FCC's "freeze" threatens to almost immediately harm these jobs and investments, while degrading the quality of service provided to these customers.

Most of these companies have applications in processing at the FCC, to obtain authorizations for additional sites that are critical to build-out their paging systems. Without

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these additional transmitter sites, they will have coverage "holes" in their systems, and critical pages won't be delivered to their customers. The FCC's proposal to allow expansions only within existing interference contours in no way alleviates these problems; that is a drastic impediment to necessary expansion plans, and will cause these companies to lose millions of dollars already committed to equipment and expansion plans.

A competitive paging system cannot be managed without constantly adding, and moving, transmitters to meet customers' needs. In this respect alone, paging systems are entirely different from "single transmitter site" businesses, such as SMRS and wireless cable. Paging companies have not been clamoring for vast amounts of additional spectrum (unlike ESMR, PCS and MDS proponents); rather, they are already the most efficient users of the most narrow channels available under the FCC's Rules. But, they must be able to add transmitter sites to their authorized frequencies, in order to provide the quality, wide-area, simulcast coverage that all paging customers routinely expect. Each day, these business men and women make investments to improve coverage for paging customers; each day, they hire thousands of field technicians, salespeople, and service representatives to keep up with customer needs and demands. Your plan to "freeze" paging applications until auction rules are adopted, would immediately stop this growth, lead to service degradation, and throw employees out of work.

Paging companies are not expecting "free spectrum" anymore, and are willing to fairly pay what the market dictates for legitimate mutually exclusive application situations. But, your freeze is not preserving unlicensed spectrum for auction; it is punishing legitimate paging operators who are already licensed to use very small amounts of radio spectrum. Moreover, history strongly suggests that this freeze will remain in place for many months, if not years, before paging auctions are completed and expansion plans can proceed. The FCC's experience with freezing SMRS and MDS applications for years pending adoption of auction rules, and the protracted pace of those on-going auctions (the MDS auctions began in November of last year, and show no sign of ending soon), gives the paging industry absolutely no reason to believe that <u>this</u> freeze will be brief or painless.

If the FCC wants to deter "speculators" from filing hundreds of paging applications while your agency considers adopting auction rules for paging, there are many reasonable ways of doing so under existing FCC Rules, without harming legitimate paging companies and their customers. First of all, because paging companies are entitled to interference protection for their wide-area systems, there are very few areas in the United States where a "speculator" could legitimately apply for a new paging channel. Second, unlike the SMRS service (which was "frozen"by the FCC for years, to try to avoid speculative applications), all common carrier paging applications are subject to public protest and mutually exclusive applications. Most paging companies do not allow speculative applications to go unchallenged when they would block a paging company's right to expand service coverage on a particular paging channel. For PCP frequencies, we ought to be able to work with the FCC to expeditiously craft similar processing rules, or coordination procedures, that will deter speculators, while preserving the unlicensed areas of the Country that remain for legitimate, mutually exclusive auction procedures.

Finally, if the FCC were to strictly enforce its application rules, speculative applications would go away. Not one of the paging companies that have signed this letter would apply for an FCC license unless they had the financial and technical ability to build that transmitter site; that is obviously not the case for speculators. If the FCC were to require all applicants to provide proof of site availability, financial and technical ability to build a paging station, the vast majority of these speculators would have their applications dismissed. The FCC's statutory obligation to ensure that no license is granted unless there is a genuine "need" for it; provides it with ample legal authority, without protracted rulemaking proceedings, to require all applicants to explain how they intend to build and use a requested paging station. These simple actions will clear the FCC's backlog of speculative filings in very short order.

The FCC has stated time and again that it considers itself to be the "job creating" commission; this freeze proposal will surely put paging employees, and the myriad companies that serve them, out of work, while immediately adversely affecting service to customers. We urge you to consider alternative means of dealing with speculative filings, while allowing legitimate paging companies to proceed with their daily business needs. The amount of capital that would be squandered by this freeze is enormous; the harm to this thriving industry could be irreparable.

These concerned paging companies will be expanding upon these concerns, and suggesting immediate alternatives to the FCC, in formal comments during the "interim" comment period. Nevertheless, each day that the freeze remains in place is causing serious disruptions of service and business plans. These concerned small business people will be calling your offices in the next few days, and will be traveling to Washington to meet with you to impress upon you the harm that the freeze is causing to their businesses and customers. We sincerely hope the FCC will listen carefully to these concerns, and work with us to find a compromise that will not harm the paging industry and their millions of customers. Thank you for your time and attention.

Sincerely,

JOYCE & JACOBS Attys. at Law, L.L.P.

Counsel to the undersigned
Concerned Paging Companies

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Sincerely,

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