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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	FCC 96-52
	)	
Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

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To: The Commission

COMMENTS OPPOSING THE PAGING APPLICATION FILING AND PROCESSING FREEZE AND COMMENTS CONCERNING THE INTERIM LICENSING PROPOSAL

Paging Associates, Inc. (hereinafter Commenter), by its attorney, hereby submits comments in opposition to the Commission's paging application filing and processing freeze and submits comments concerning the Commission's proposed interim licensing proposal contained in the Notice of Proposed Rule Making (NPRM) in the captioned docket. In support whereof, the following is respectfully submitted:

1) Commenter is a communications company located in Connecticut which provides a variety of communications services. Commenter would qualify as a small business under the Commission's small business auction rules adopted in other services. Commenter is currently licensed to provide paging services in Connecticut. Commenter's paging service area is much smaller than the large

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market areas proposed to be licensed by the Commission in the captioned rule making proceeding.[1]

2) Commenter opposes the Commission's decision to freeze indefinitely the filing and processing of paging applications which propose expansion of existing composite interference contours. It is not uncommon for Commission rule makings to take a year or more to conclude. Depending upon the nature of the rules adopted and the subsequent, inevitable resulting appellate litigation, the Commission's paging application freeze may be in effect for two or three years! The Commission's prohibition of initiation of new paging service initiation is unprecedented and is not supported by the arguments and facts contained in the NPRM.

3) The Commission adopted the captioned rule making proceeding "to promote continued growth and preserve vigorous competition." NPRM, para. 1. The NPRM notes the great innovation and expansion of paging services and indicates that "in the past few years, the growth in consumer demand for paging service has accelerated markedly, and this trend is continuing." NPRM, at 4-6.

4) Commissioner Ness notes that the paging industry is a mature and competitive industry. Separate Statement of Commissioner Susan Ness. Commissioner Chong calls the paging industry "one of the great success stories of American wireless communications" and that the Commission "ought to step away from intrusive regulation . . . ." Separate Statement of Commissioner Rachelle B.

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[1] Because the instant pleading concerns the proposed interim filing rules and does not concern the establishment of service areas or auction procedures, a detailed analysis of Commenter's paging service area is not necessary for the purposes of the instant filing.

Chong. Moreover, the NPRM indicates that "it is [the Commission's] desire to allow incumbent licensees to continue operating their businesses and meeting public demand for paging services during this rulemaking." NPRM, para. 140.

5) Despite the acknowledged growth and innovation in the paging industry, despite the Commission's asserted desire to enable incumbent licensees to continue to meet public demand, the Commission nevertheless adopts the most intrusive of all regulations by freezing the processing of all applications, even those proposing to expand existing services.[2] While the Commission may have previously selectively suspended application processing for discrete services, we are unaware of any instance in which the Commission has stopped the paging industry dead in its tracks by adopting a paging application filing/processing freeze of the magnitude set forth in the NPRM.[3]

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[2] During the pendency of the NPRM the Commission will permit service area expansion provided that the paging company's composite interference contour is not enlarged. NPRM, at para. 140. Commenter supports this proposal, especially in view of the fact that service areas may be expanded without prior Commission approval. However, being able to provide what amounts to "fill-in" service is not adequate in an industry that is growing by leaps and bounds.

[3] The Commission's recent freeze of FM applications proposing new stations is not analogous. The utility to the public of an FM transmitter in Bangor, Maine is not dependant upon whether that FM station owner may propose a new FM transmitter in Waterville, Maine. The FM transmitter in Bangor, Maine provides adequate service in the public interest regardless of whether another FM transmitter is operating next door or across the country. The paging industry is different. It is absolutely critical to a paging company that it be able to meet new market place demand as it develops. The utility of a paging transmitter to the public is dependant upon the ability of the paging company to provide service to the areas demanded by the public. A paging transmitter in Bangor, Maine may lose its usefulness to the public, and lose its value to the paging company, if the public also demands service in

(continued...)

6) In 1983 the Commission proposed a substantial restructuring of the common carrier paging industry. At that time there existed a frequency allocation fence -- some frequencies were available only to radio common carriers while other frequencies were available only to wireline common carriers.

7) The Commission proposed to eliminate the spectrum allocation fence and to make all frequencies available to all filers. However, the Commission did not freeze the filing and processing of paging applications which did not cross the fence, which were not mutually exclusive with fence crossing applications, and which were otherwise acceptable under the rules. In the Matter of Revision and Update of Part 22 of the Public Mobile Radio Service Rules, Report and Order, 95 F.C.C.2d 769, 825 (1983).

8) The Commission states that "current licensing activity on the lower paging bands is confined largely to the addition of fill-in sites and minor expansion by existing licensees." NPRM, para. 13. The Commission further states that its "records indicate that the demand for lower band channels appears to be less than for the upper bands, and our existing licensing rules have not caused application backlogs of the type found in the 931 MHz band." NPRM, para. 28.

9) Under the circumstances discussed above, the Commission's decision to freeze applications by all applicants for all paging services is not supported by, and is in fact contradicted by, the Commission's own findings. Commenter urges the Commission to

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[3](...continued)
Waterville, Maine, but the paging company is unable to meet that demand because Federal regulations prohibit expansion.

continue to accept and to process non-mutually exclusive applications regardless of whether the application proposes new or expanded paging service. The Commission should not prevent institution of uncontested paging services because some unknown person in the future might wish to acquire paging spectrum in an auction even though that same unknown person is today uninterested in the spectrum which has been available for many years.

10) The Commission has not presented adequate public interest justifications for bringing the entire, vigorously expanding paging industry to its knees while the Commission takes an indeterminate amount of time to consider rules to fix a wireless communications service which the NPRM acknowledges, in large part, is not broken. The findings noted above contained in the NPRM indicate that the public interest is not served by applying the paging application filing/processing freeze to the entire paging industry.

WHEREFORE, because the Commission has not justified the public interest in freezing the filing and processing of non-mutually exclusive paging applications, including those applications filed by existing licensees seeking to expand existing service on the lower frequency bands, the Commission must reconsider its decision to freeze the filing and processing of all paging applications.

Respectfully submitted,
PAGING ASSOCIATES, INC.

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