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March 1, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC. 20554

Via Messenger

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Re: **Future Development of Paging Systems
(Interim Licensing Proposal)**

WT Docket No. 96-18; PP Docket No. 93-2
Comments of North State Communications, Inc.

MAR 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

Transmitted herewith is the original and four copies of the
Comments of North State Communications, Inc. on the above-cap-
tioned Interim Licensing Proposal.

Kindly contact my office directly with any questions or
comments regarding the attached.

Respectfully submitted,

William J. Franklin

William J. Franklin
Attorney for North State
Communications, Inc.

cc: North State Communications, Inc.

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

In the Matter of)
)
Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)
)
Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

To: The Commission

RECEIVED

MAR - 1 1996

**COMMENTS OF
NORTH STATE COMMUNICATIONS, INC.
ON INTERIM LICENSING PROPOSAL**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

North State Communications, Inc. ("North State"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, hereby respectfully comments on the Commission's proposal to adopt interim licensing rules for commercial paging services.^{1/}

BACKGROUND

North State is an incumbent PRS licensee licensed in the north central part of California and in northwestern Nevada. Based on that experience, North State has a special expertise to comment on the interim licensing rules from the perspective of an experienced, small carrier.

In order to respond to requests of its subscribers for enhanced paging service, North State recently filed an application to add a new 931 MHz paging station to its primary existing transmitter site. This application was not filed to speculate in applications, but

^{1/} Future Development of Paging Systems, 11 FCC Rcd ___ (FCC 96-52, released February 9, 1996) (WT Docket No. 96-18, PP Docket No. 93-253) (Notice of Proposed Rulemaking) ("NPRM").

simply to better serve the public interest. At the time the application was prepared, North State's engineers had determined that the requested channel was available without the creation of a mutual exclusive filing or any violation of the Commission's 931 MHz licensing rules.

Although filed prior to the release of the NPRM, North State's application did not appear on Public Notice until February 28, 1996 (File No. 24380-CD-P/ML-96). Thus, under the NPRM's interim proposals, the Commission would hold North State's application in abeyance pending the outcome of this rulemaking. By denying North State the ability to improve its paging service, this proposal fails to serve the public interest.

THE COMMISSION SHOULD PROCESS ALL PENDING, NON-MUTUALLY EXCLUSIVE APPLICATIONS FILED BEFORE FEBRUARY 9, 1996, EVEN IF SUCH APPLICATIONS ARE ACCEPTED FOR FILING OR APPEAR ON PUBLIC NOTICE AFTER THAT DATE.

Stated generally, the NPRM seeks to promote continued growth in the paging industry while converting its licensing scheme to a geographic-based auction. NPRM at 2 (¶1). At the same time, the NPRM seeks to allow incumbent licensees to continue to operate their businesses during the rulemaking in any manner which would not impair the Commission's desired objectives. Id. at 64 (¶¶139-40). While these goals are laudable, the Commission unquestionably hasn't gone far enough in giving the industry the flexibility to continue serving its subscribers.

North State's Suggestion. North State respectfully suggests that the freeze be modified to permit the Wireless Bureau to process all non-shared applications on file as of the date of the NPRM, providing that such applications are not (and do not become) mutually exclusive. Such mutually exclusivity could occur as a result of applications filed in response

to the Public Notice of acceptance for filing of the pre-NPRM applications, even if the Public Notice appears and the competing applications are filed after the NPRM date.

As applied to its own situation, North State's suggested procedures would work as follows: If no mutually exclusive applications are filed within the 931 MHz cut-off period, then the Bureau would process North State's application in the normal course of business. On the other hand, if a mutually exclusive application were filed, then both applications would be held in abeyance as the NPRM proposed.

North State feels that this modification balances the needs of incumbents to expand their systems with the Commission's desire to limit post-NPRM speculative filings. Obviously, no speculator would deliberately file a mutually exclusive application, knowing that the very act of filing assures that it will not be granted under the current rules.

Additional Benefits. North State's suggestion eliminates the current confusion regarding the cut-off date for processing applications. On the one hand, the NPRM (in paragraph 146) establishes the cut-off date where "the window for filing competing applications must have closed as of [February 9, 1996]". Section 22.131 contemplates a 30-day filing window for initial authorizations and a 1-day filing window for modifications. Because of the 2 kilometer-relocation limit (Section 22.131(d)(2)(iii)), nearly all applications are deemed as "new". Under that scenario, the mutually exclusive cutoff period must have begun more than 30 days prior to February 8.

Because of the snow emergencies and the Congressional budget problems, applications which would be processed must have appeared on Public Notice by December 15, 1995 (the last Commission business day prior to January 8, 1996). Under the 60-day cut-off period under the prior Part 22 rules (NPRM at 66 (¶145)), this deadline is December 9,

1995. Given the current delays in issuing Public Notices, under either interpretation the acceptable applications must have been filed sometime in November 1995. The Commission will find it difficult, if not impossible, to justify such an arbitrary adoption of a retroactive cut-off date.

On the other hand, footnote 277 to the NPRM asserts that "applications filed prior to January 8, 1996, will be processed provided that they are not subject to mutually exclusive applications." This assertion contradicts the provisions of Section 22.131 discussed above. North State suggests that the better, and less confusing, policy is for the Commission to process all applications filed prior to February 9, provided that they are not mutually exclusive.

Support for the NPRM. Finally, North State supports the suggestion in paragraph 143 of the NPRM to permit incumbents to continue to file new applications during the pendency of the proceeding.^{2/} North State needs this ability to continue to expand its service.

Obviously, North State would be expanding its coverage to provide added service to the public. This added coverage should become protected if the auction winner is unwilling or unable to do so. While the Commission might want to designate this added coverage as secondary, procedures should exist to convert the coverage to primary status if either (a) the auction winner for the market either does not cover the incumbent's added coverage area during the auction winner's initial license term or (b) the auction winner loses its license for failure to construct or otherwise.

^{2/} The Commission should also continue to accept control applications during this period, even when filed on the mobile channel of a two-way frequency pair.

CONCLUSION

As set forth herein, North State respectfully requests that the Commission adopt its interim paging rules with the modifications set forth herein.

Respectfully Submitted,

NORTH STATE COMMUNICATIONS, INC.

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Its Attorney

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