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FEDERAL COMMUNICATIONS COMMISSION
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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	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

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Comments of B & B Communications, Inc.

B & B Communications, Inc. (B & B) hereby submits its Comments with respect to the Commission's Interim Licensing Proposal in the above-captioned Docket. B & B is part of a family-owned and operated group of companies which provide radio common carrier service in central Texas. The Bergman family which has owned and run these systems for many years strongly believes that the Commission's existing licensing procedures have worked well, particularly with the streamlining improvements which took place in the context of the part 22 re-write. Accordingly, the interim freeze imposed by the Commission should be lifted.

I. The Freeze is Unneeded and Counterproductive

It has been B & B's experience that the vast majority of paging applications for non-930 MHz channels in recent years have been able to be filed, processed and granted without mutual

exclusivity occurring. The required pre-filing engineering analysis ensures that existing systems are not interfered with. In the case of these lower band paging frequencies (152, 454, 35 MHz), virtually all of the applications are filed in connection with the expansion of already mature systems. This is NOT a situation where large fields of fertile and untilled spectrum are available for new filers. Rather, existing operators are usually expanding their systems at the margins by the addition of a new site or the relocation of an existing site. Mutual exclusivity has simply not been a problem which most such system operators have faced.

The imposition of a freeze on all paging applications is therefore a harsh and unwarranted interim measure for number of reasons. We must start with the presumption that the imposition of a freeze of any duration has the unwanted effect of denying or at least delaying the improvement of service to the public. Such a result should obviously be avoided unless there are strong countervailing policy considerations. Here no such considerations appear.

First, it is not at all clear that auctioning frequencies on some sort of geographic basis will ever be adopted by the Commission - at least for the lower band frequencies which concern B & B - and therefore the current freeze will simply delay service without contributing to any ultimate "improvement" in the licensing process.

Second, because of the wide distribution of incumbents in the lower bands, it is unlikely that auctions would command anything like the sums which have been generated for new services. Thus, the "upside" of preserving "auctionable" assets for the treasury is not there.

Third, one of the Commission's stated objectives in this proceeding has been to achieve regulatory parity with other CMRS providers. In this case, however, by freezing the expansion and improvement of existing conventional lower band paging systems, the Commission is making it impossible for these existing carriers to implement the systems necessary to compete with new narrowband providers who are expected to enter the market on a wide area basis soon. In effect, the Commission is hobbling existing carriers and letting new providers catch up and overtake them. This is not regulatory parity; rather it is a form of regulatory handicapping which works a real injustice. The Commission's approach here would have been the equivalent of freezing cellular carriers from expanding their systems during the five years that the Commission spent determining how to deal with unserved areas and during the time that PCS licenses were being auctioned. Instead of improving and expanding their systems to meet the potential competitive force of PCS, the cellular carriers would have been crippled at the outset. Here the Commission, by suddenly imposing a freeze, has denied conventional paging carriers the same opportunity to improve their systems in the light of newly authorized wide-area

competition. This disparity of treatment is unfair and unwarranted.

Fourth, the reality again is that most applications filed for lower band authorizations are for expansion at the margins of existing systems. Because very little "auctionable" territory is likely to be given away while the Commission completes its work in this docket, there is no reason to prevent the marginal service improvements which would otherwise be implemented during the freeze.

Finally, the reality is that there are so many paging channels available for licensing that there should be very little demand for authorizations to fill in or serve small areas which are not now served by lower band licensees. The main and perhaps the only bidders for such authorizations would be the existing operators. Auctions work best in an environment where there are numerous competing applicants for the same valuable license. Here that predicate does not exist. There is therefore no need to invoke the cumbersome and time-consuming processes associated with auctions when there is likely to be little demand for many of the frequencies to be auctioned. In sum, the freeze is having and will have real deleterious effects on service without speeding or improving service to the public and without significant benefit to the federal coffers.

II. Alternative Resolution of Mutually Exclusive Situations

Though it is clear that mutual exclusivity has not been a problem in the lower band paging frequencies, B&B acknowledges that there are and will continue to be rare situations in which adjacent carriers may simultaneously seek to expand their service areas on the same channel into the same area. B&B proposes that the Commission could simply issue a public notice that the applications are mutually exclusive and allow the parties 45 days to resolve the problem through negotiation. In the vast majority of cases, the parties, as neighboring carriers, could work out a mutually agreeable way of providing interference-free operation or dividing the disputed territory equitably. Only if they were not able to negotiate an agreement after the 45 day period would the rights to the disputed area be auctioned. We emphasize that the occasions when a resort to auction would be necessary should be rare since any truly valuable service areas have almost certainly already been filed for. Relatively less important service improvements at the margin should be susceptible of mutual agreement.[1] Even the threat of going to auction would serve as a stimulus to the parties to resolve the dispute privately.

B&B is confident that with this fail-safe measure to

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[1]The Commission has found, for example, that adjacent cellular carriers have been able to work out agreements between themselves so as to permit overlapping signals while maintaining appropriate territorial priorities without involving the Commission's staff.

resolve mutual exclusivity, the licensing of mature lower band paging frequencies could proceed immediately in the fashion which has worked quite well for many years. B&B therefore suggests that the freeze on filing Part 22 paging applications for bands other than 930 MHz should be lifted immediately.

Respectfully submitted,

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