Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

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To: The Commission

COMMENTS OF PAGEMART, INC.

PageMart, Inc. ("PageMart"), by its attorneys, hereby submits its Comments on the Interim Licensing Proposal in the above-referenced proceedings. PageMart is a medium-sized, innovative paging company that provides low-cost, nationwide services. PageMart holds both Part 22 radio common carrier ("RCC") and Part 90 private carrier paging ("PCP") licenses for paging services throughout the United States, including PCP licenses for which it qualifies for nationwide exclusivity. In the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceedings, FCC 96-52 (Feb. 9, 1996), the Commission requested comments on an expedited basis on its proposals regarding the licensing of paging operators during the pendency of the NPRM.

I. INTRODUCTION

Paging is a vibrant, high-growth sector of the fiercely competitive Commercial Mobile Radio Services ("CMRS") industry. According to the NPRM, ¶ 6, the paging industry grew by 38% in 1994 to 27.3 million subscribers. Many of these subscribers were attracted by, and depend on, their paging carrier's ability continuously to expand and improve its services and service area. It is essential that any action taken by the Commission in this matter allow paging companies to continue to upgrade their services, meet the demands of their customers, and compete effectively with other forms of CMRS.

To freeze or limit the expansion of services by existing paging operators during the months, if not years, it will take for the Commission to issue a final order in this proceeding would do great harm to the paging sector and to the general public. At a time when paging is facing unprecedented competition from new services such as PCS, paging operators cannot afford to be hamstrung by a freeze or limits on their ability to build out their systems. They have made business plans, entered into financing agreements, and marketed their services to customers on the basis of being able to expand according to the Commission's rules. The limitations proposed in the NPRM will seriously disrupt these business plans and expectations. And, while paging operators' plans are put on hold indefinitely, their

competitors will be racing ahead to build out their systems and put the paging operators at a competitive disadvantage.

It is not only the paging operators who will be harmed, but also members of the public. The public will be denied the new and expanded services which paging operators have been planning to offer but which will be frozen as a result of the NPRM. Many potential customers live in areas currently underserved, and the expansion plans of many paging operators are aimed at offering services to these customers. If paging operators are prevented from expanding or building out their systems during the pendency of this proceeding, these customers will lose out.

II. ALLOW INCREMENTAL EXPANSION BY CURRENT LICENSEES.

The NPRM states that licensees may add sites to existing systems or modify existing sites, but only "provided that such additions or modifications do not expand the interference contour of the incumbent's existing system." ¶ 140. Such a condition greatly restricts the ability of paging licensees to follow through with business plans and meet customer needs. It serves to freeze service areas as they presently exist and prevents even modest expansion to address customer demand.

The Commission implicitly recognized the burden this restriction would place on licensees and proposed as a stop-gap measure to allow incumbents to file new applications to expand their existing contours, but on the basis that such modifications would receive only secondary

site authorization. ¶ 143. While the ability to file for secondary site authorization may be better than no opportunity for expansion at all, this proposal is clearly insufficient. It does not offer a genuine solution for the licensees' real need for limited expansion of existing service areas, for these secondary operations would not receive long-term, or even short-term, interference protection.

A far more sensible solution would be to allow existing licensees to file new applications to expand their service contours so long as the new transmitters were to be located within their existing service contours and no interference is caused to existing licensees. As such, any expansion of service areas would by definition be limited and be contiguous with existing areas. These new applications would be open to competing applications from licensees in neighboring areas that wished to expand their service contours to cover the same area in question. Mutually exclusive applications would be treated in the same fashion as other mutually exclusive applications under the NPRM.

This modest change would allow existing licensees to make critical and necessary modifications, while at the same time preventing any large-scale expansion of service areas or rush for unlicensed spectrum. It would allow licensees, for example, to cover contiguous areas that may be currently underserved, to make adjustments based on

actual radio propagation performance, and to have a wider range of options in choosing tower sites for new and replacement transmitters. Given the terrain and zoning restrictions in certain areas, such flexibility is of significant importance.

III. PROCESS ANY APPLICATION RECEIVED BEFORE THE FEBRUARY 9, 1996, RELEASE OF THE NPRM.

The Commission proposed to freeze processing of all pending applications except those that are not mutually exclusive and for which the relevant period for filing competing applications has expired as of the adoption date of the NPRM. It would be far more equitable to process all those applications filed as of the date of release of the NPRM, even if the relevant window for filing competing applications had not yet closed.

It is patently unfair, on the other hand, to refuse to process the applications of parties that have complied with all the Commission's rules and were not given notice of a need to file before an earlier deadline. Thus, the Commission should process all applications filed before February 9, 1996, and allow parties that wish to file competing applications against those applications the opportunity to do so.

IV. ALLOW HOLDERS OF CONSTRUCTION PERMITS AND "SLOW-GROWTH" APPROVALS TO COMPLETE THEIR BUILD-OUTS.

According to 47 C.F.R. § 90.495(c), licensees granted exclusivity (on a local, regional or national level)

are given eight months from the date of licensing to build out their systems and make them operational. The Commission should clarify that nothing in the NPRM affects the rights of such licensees to enjoy their full eight-month period (or whatever remains of it) to make their systems operational.

On a related subject, the Commission proposed in the NPRM to dismiss all "slow growth" applications pending at the time an order pursuant to the NPRM is adopted. ¶ 42. In the interim, the Commission should continue to process and grant all "slow growth" applications that meet the established criteria. In addition, should the Commission decide in any order pursuant to the NPRM to discontinue "slow growth," it should not upset the already formulated business and financing plans of paging operators by attempting to shorten the build-out period of those licensees that have already had "slow growth" applications approved. These licensees should receive the full amount of time originally allotted to them to build out their systems and should be protected from interference within the entire service areas as to which they have received authorization to build out.

V. PERMIT LICENSEES WITH NATIONWIDE EXCLUSIVITY TO MODIFY OR EXPAND THEIR SYSTEMS WITHOUT FURTHER APPLICATION TO THE COMMISSION.

The NPRM states: "In the case of CCP and PCP licensees who have obtained nationwide exclusivity on a paging channel, we will allow applications for additional sites without restriction." ¶ 142. Such a provision is of

great importance to national licensees currently building out their systems to meet the needs of their customers. Because, as the Commission recognized, no other applicant may apply for the channels licensed to the national licensees, no one is harmed by allowing the national licensees to continue to build out their systems during the pendency of the rulemaking. It is important, therefore, that the Commission clarify that holders of nationwide licenses for both 929 and 931 MHZ will indeed be permitted to continue constructing their systems.

The Commission should allow holders of nationwide licenses to modify or expand their systems without having to apply to the Commission for each such change. Given the fact that these licensees possess exclusive rights to a nationwide frequency, there is no reason why they need endure the time and hassle of filing applications to modify or expand their facilities. Rather, they should be permitted, much as CCP licensees are permitted under 47 C.F.R. § 22.165, to modify or expand within the scope of their exclusive license without having to submit applications to the Commission.

VI. CONCLUSION

In order to promote the continued development of paging services, and to allow paging operators to continue to upgrade their services, meet the demands of existing and new customers, and compete effectively with other CMRS services, PageMart urges the Commission to modify the

proposals in the NPRM in accordance with the above discussion.

Respectfully submitted,

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