Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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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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REPLY COMMENTS OF PAGEMART, INC.

PageMart, Inc. ("PageMart"), by its attorneys, hereby submits its Reply Comments on the Interim Licensing Proposal in the above-referenced proceedings. PageMart submits these Reply Comments in order to urge the Commission to confirm and clarify that during the pendency of this rulemaking: (1) licensees with nationwide exclusivity will continue to be able to file applications to add new transmitters; (2) licensees who have qualified for nationwide exclusivity can apply for such exclusivity; and (3) the interference contours of licensees will not be altered.

PageMart is a medium-sized, innovative paging company that provides low-cost, nationwide services. PageMart holds both Part 22 common carrier paging ("CCP") 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.

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In the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceedings, FCC 96-52 (Feb. 9, 1996), the Commission requested comments and reply comments on an expedited basis on its proposals regarding the licensing of paging operators during the pendency of the NPRM.

I. REAFFIRM THAT LICENSEES WITH NATIONWIDE EXCLUSIVITY WILL NOT BE SUBJECT TO ANY RESTRICTIONS ON THEIR ABILITY TO BUILD OUT THEIR SYSTEMS.

In the NPRM, the Commission proposed to allow licensees who have obtained nationwide exclusivity to continue filing new applications for additional sites without restrictions. The Commission recognized that since "no other applicant may apply for them, the addition of such sites by the nationwide licensee will not affect the spectrum available to others and is consistent with the goals of this rulemaking." ¶ 142.

We wish to stress again in these reply comments that this is clearly the correct course of action. Allowing licensees with nationwide exclusivity to continue to build out their systems harms no one, but is essential both for paging operators and paging customers. Licensees with nationwide exclusivity have already formulated business plans and committed large sums of capital in designing networks, ordering equipment, and building out their systems. In order to carry out their business plans and recoup their investments, these licensees must be allowed to continue to add new transmitters.

Just as important as permitting licensees to continue with their plans is allowing consumers to gain the benefit of truly nationwide systems. Consumers have demonstrated a strong demand for nationwide systems, and nationwide systems have become one of the paging industry's most vibrant sectors. The Commission should take no action that would prevent licensees from filling gaps in coverage areas and thereby responding to their customers' needs.

It should be stressed that no one is harmed by allowing licensees with nationwide exclusivity to continue to build out their systems, for no one else may use the spectrum that has been granted exclusively to such licensees. While one commenter has claimed that "there is no rational basis for exempting only nationwide licensees from the freeze,"[1/] such a position is untenable and illogical. Rather, as the Commission has indicated, there would be no rational basis for freezing licensees with nationwide exclusivity. Not surprisingly, this commenter does not propose to extend the freeze to nationwide carriers for there would be absolutely no justification for doing so.

While PageMart wholeheartedly supports the complaints of this commenter and indeed the entire paging industry that the freeze is unduly harsh and ill-considered, surely the solution is to remedy the defects in the freeze

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1/ Comments of the Coalition for a Competitive Paging Industry (February 28, 1996), p. 16.

-- not to extend the freeze, when there is no reason to do so, into areas such as nationwide paging.

II. CLARIFY THAT THE NPRM DOES NOT RESTRICT THE ABILITY OF PAGING OPERATORS WHO QUALIFY FOR NATIONWIDE EXCLUSIVITY TO APPLY FOR SUCH EXCLUSIVITY.

The NPRM is silent on the question as to whether PCP licensees who meet the qualifications for nationwide exclusivity under 47 C.F.R. § 495 may continue to apply for such exclusivity. The Commission should clarify and confirm that, as long as a licensee already has constructed the 300 transmitters required under 47 C.F.R. § 495(a)(3) and need not apply for any new transmitters, such a licensee will continue to be permitted to apply for nationwide exclusivity during the pendency of the NPRM. Nothing in the NPRM would appear to limit a qualified licensee from applying for nationwide exclusivity, nor is there any reason or factor articulated in the NPRM that would serve as a justification for preventing a licensee from doing so. Confirmation of this point would provide useful reassurance to companies who have already invested in constructing the necessary number of transmitters nationwide to qualify for exclusivity.

III. CLARIFY THAT CURRENTLY APPLICABLE INTERFERENCE STANDARDS WILL GOVERN DURING THE PENDENCY OF THE RULEMAKING.

In a one-sentence footnote in the NPRM, with no supporting comment or rationale, the Commission apparently

proposes to alter dramatically the interference protection given to licensees during the pendency of the rule-making. Note 271, ¶ 140. The footnote, however, does not propose this change but assumes somehow it has already taken place. The Commission should clarify immediately whether the changed proposed in this footnote is merely a typographical mistake or is deliberate. Whether mistaken or deliberate, the Commission should recognize the enormous damage that this change causes for incumbent licensees and clarify immediately that during the pendency of the rule-making there will be no change in interference contours.

The footnote supplements the statement that "during the pendency of this proceeding, we will allow incumbent licensees to add sites to existing systems or modify existing sites, provided that such additions or modifications do not expand the interference contour of the incumbent's existing system." ¶ 140. The footnote reads: "The interference contour is based on a median field strength of 21 dBμV/m." Note 271, ¶ 140.

The footnote is flat-out wrong. While the different frequencies in the CCP and PCP services use varying methods to set the interference contour for sites, none uses the 21 dBμ method. In the 929 MHZ and 931 MHZ bands, for example, licensees are granted a uniform interference contour measured in miles from the transmitting

site, based on antenna height above average terrain and effective radiated power.[2/]

The proposal set forth by the Commission earlier in the NPRM (¶ 52) to replace the existing definition of interference contours with a 21 dBμ standard (and apparently adopted by footnote 271) would greatly reduce the interference contour of most paging stations. Each case would differ, depending on the height of transmitters in question, the power used, and the surrounding terrain, but, in general, licensees would witness a significant loss of protected area.[3/]

It is no wonder, then, that this proposal has raised the fury of the entire paging industry. By reducing the interference contour afforded to licensees, the proposal disrupts long-established plans and severely impairs licensees' ability to meet customers' demands, improve systems and introduce new technology (such as higher speed transmitters). And, by taking significant slices of protected territory away from licensees, it substantially diminishes the value of their systems.

It is clear that the proposal to shrink the interference contours will be one of the major subjects for commenters in the principal comments in this rule-making, which are due March 18. What cannot be overemphasized is

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[2/] See 47 C.F.R. § 90.495(b)(2) and 47 C.F.R. § 22.537(e).

[3/] See, e.g., the Comments of ProNet Inc., Exhibit 1 (March 1, 1996).

the importance of the Commission clarifying that, during the pendency of the rule-making, interference contours will not be altered.

As several commenters noted, to make such a drastic change in licensees' interference contours without any opportunity for notice and comment is not only damaging and unsettling for licensees, it is also in violation of the Administrative Procedure Act (5 U.S.C. § 553(b) and (c)). We therefore urge the Commission to clarify without further delay that, during the pendency of the NPRM, the Commission's existing rules governing interference contours will not be altered.

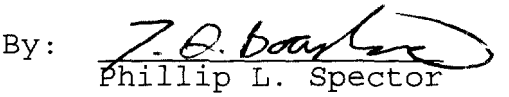
IV. CONCLUSION

Accordingly, we request the Commission, on an urgent basis, to issue the above clarifications and confirmations to enable licensees to proceed with their

legitimate business operations and plans during the pendency of the NPRM.

Respectfully submitted,

PAGEMART, INC.

By: 

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