

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

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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)
)
Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

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**REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION ON INTERIM LICENSING PROCEDURES**

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**REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION ON INTERIM LICENSING PROCEDURES**

The Personal Communications Industry Association ("PCIA"), by its attorneys, hereby submits its reply comments with respect to appropriate procedures for the interim licensing of Part 22 and Part 90 paging facilities during the pendency of the rulemaking in the above-captioned docket.¹ Virtually all of the opening comments filed with respect to the Commission's freeze on the acceptance of applications for Part 22 and Part 90 paging authorizations agree that the freeze and the announced procedures for the processing or holding in abeyance of already pending applications is working great harm on the consumers of paging service, is impeding the continued success of the already highly competitive paging marketplace, and is adversely affecting paging carriers, their employees, their suppliers and the economy. Moreover, these

¹ See *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems*, FCC 96-52 (Feb. 9, 1996) (Notice of Proposed Rule Making) ("*Notice*"). Comments on interim licensing procedures and policies were filed on March 1, 1996; reply comments are due on March 11, 1996.

significant harms do not appear to be outweighed by the limited benefits that the Commission is likely to obtain as a result of the auctioning of the limited available paging white space, in support of which the freeze was imposed. Thus, *all* of the commenting parties propose that the Commission lift the freeze in its entirety, make significant modifications thereto, and/or issue clarifications of statements contained in the *Notice* so that all affected parties will understand what applications are frozen, what applications may be processed, and the scope of the authorizations held by existing Part 22 and Part 90 licensees. In this reply, PCIA clarifies and reiterates its recommendations for striking a more effective balance between the needs of paging licensees to expand and modify their systems and the Commission's desire to ensure that what little auctionable spectrum remains is not somehow diminished during the pendency of the subject rulemaking.

I. SUMMARY

The paging industry is a thriving, successfully competitive marketplace, focused on meeting the needs of consumers around the country. Licensees of all sizes -- small, medium, and large -- provide a range of services to their subscribers, and private licensees are able to operate internal paging systems necessary to meet their individualized needs.

The freeze imposed by the Commission on the acceptance of applications (including its plans for the processing of already filed applications) will disrupt the ability of these licensees to meet public need and will undermine the competitive

environment that exists today. First and foremost, existing and new subscribers will suffer, as carriers are unable to meet their needs for modified coverage areas. Paging subscribers and the individuals who seek to reach them must rely heavily on a carrier's representations about available service -- and the freeze is likely to undermine that current public confidence in paging service availability. Also, efforts to implement new technologies will be largely halted, in light of the almost inevitable expansion of service area associated with such change-outs.

Second, the Commission's action decrees the comparative competitive posture of paging carriers. Where companies are unable to meet their customers' needs, those operators will not have a chance to offer a competitive response, but can expect only to lose customers to those licensees fortunate enough to have coverage in place when the freeze went into effect.

Third, the freeze's effects extend far beyond paging licensees -- to their employees, to their suppliers, to equipment manufacturers, to the economy and to government tax revenues. Jobs will be lost; private and public revenues will be reduced; and some businesses will be forced out of operation. These results do not appear to be outweighed by the benefits sought by the Commission in imposing the freeze.

The Commission should take this opportunity to modify the freeze in substantial respects, beginning with clarifications of certain policies affecting the interpretation of the freeze. Beyond that, the Commission should:

- Immediately lift the freeze on the acceptance and processing of applications for shared channels;
- Immediately lift the freeze on the acceptance and processing of applications for common carrier lower band frequencies;
- Process all 929 MHz exclusive frequency and 931 MHz applications on file with it as of the date of the freeze; and
- Permit additional expansion by 929 MHz exclusive frequency licensees and 931 MHz licensees in defined circumstances.

Such action will at least ameliorate the effects of the freeze during the pendency of the underlying rulemaking by permitting paging licensees to respond somewhat more effectively to customer demand and competitive pressures. This additional relief is warranted in light of the highly competitive nature of the industry and the high likelihood that final resolution of the rulemaking and the renewed processing of applications is likely to be delayed beyond the Commission's current expectations.

II. THE OPENING COMMENTS DRAMATICALLY DEMONSTRATE THE DAMAGE BEING DONE TO THE PUBLIC AND THE PAGING MARKETPLACE AS A RESULT OF THE COMMISSION'S FREEZE AND ITS POLICIES FOR PROCESSING ALREADY FILED APPLICATIONS

A. The Commenters Confirm the Highly Competitive Nature of the Paging Industry and the Resulting Benefits for the Users of Paging Services

The opening comments repeatedly underscore the Commission's own conclusion that the paging marketplace is highly and successfully competitive.² Consumers benefit from this competition through lower prices for service, access to innovative and

² *E.g.*, Notice, ¶¶ 6-7; *Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1468 (1994) (Second Report and Order) ("*CMRS Second Report and Order*"); *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 10 FCC Rcd 8844, 8867-68 (1995) (First Report) ("*1995 CMRS Competition Annual Report*"). *See, e.g.*, Joint Comments of AACS Communications, Inc., AirTouch Paging (and its affiliates), Answer, Inc., Arch Communications Group, Inc. (and its subsidiaries), Cal-Autofone, Centrapage of Vermont, Centracom, Inc., Communications Enterprises, Desert Mobilfone, Detroit Newspaper Agency, Electronic Engineering Company, Hello Pager Company, Inc., Jackson Mobilephone Company, LaVergne's Telephone Answering Service, Midco Communications, Donald G. Pollard d/b/a Siskiyou Mobilefone, PowerPage, Inc., Radio Electronic Products Corp., RETCOM, Inc., and Westlink Communications at 6 ("*AACS, et al.*") ("Stiff competition is waged between multiple paging carriers in virtually every market of the country on the basis of coverage, reliability, customer services, and price."); Comments of Coalition for a Competitive Paging Industry at 12 ("*Coalition/CPI*"); Comments of PageMart, Inc. at 2 ("*PageMart*"); Comments of Paging Network, Inc. at 2 ("*PageNet*"); Comments of Personal Communications, Inc., RCC of Pennsylvania, Inc., and Modern Communications Corporation at 1 ("*Personal Communications, et al.*"); Comments of Private Carrier Paging Licensees at 2-3 ("*PCP Licensees*").

technically advanced services, and service areas designed to include coverage responsive to the demands and needs of subscribers.

In addition to carrier-provided services, the current Part 90 rules contemplate that private entities, seeking to install and operate internal paging systems, will be able to obtain licenses on the shared paging frequencies. These entities thus have the flexibility to make an assessment of their needs, and then obtain service from a carrier or install their own operations. This decision may be affected by a number of factors, including need for direct control of the operations and to ensure timely transmission of pages.

B. The Freeze Is Adversely Affecting the Public Interest in a Number of Respects

1. Paging Subscribers and Other Members of the Public Are Confronting Impediments To Obtaining Necessary Service as a Result of the Freeze

Time and again, the opening comments reflect the fact that paging carriers licensed under Parts 22 and 90 cannot currently meet the needs of existing or possible new subscribers for services³ -- even where the services to be delivered are

³ *E.g.*, Comments of Ameritech Mobile Services, Inc. at 2-3 ("Ameritech"); Comments of Consolidated Communications Mobile Services, Inc. at 2 ("Consolidated"); Comments of MobileMedia Communications, Inc. at 7-9, 13-15 ("MobileMedia"); Comments of North State Communications, Inc. at 2; Personal Communications, *et al.* at 2-3; Comments of ProNet, Inc. at 3 ("ProNet"); Comments of Rule Radiophone Service, Inc. and Robert R. Rule d/b/a Rule Communications at 7 ("Rule Radiophone"); Comments of Jon D. Word and Pioneer Telephone Cooperative, Inc. at 11 ("Word/Pioneer").

contemplated by a contract signed several years ago, well in advance of any application freeze. Customers of all sizes -- large businesses as well as individual users -- are and will continue to be affected in their ability to obtain service from their carrier of choice while the freeze as currently framed remains in place.⁴

The comments confirm what PCIA pointed out in its opening comments -- that many paging carriers expand or modify their service areas in large part in response to the needs of their customers.⁵ Holes that have developed in coverage⁶ but that were once acceptable may require "filling" several months or years later in response to business and housing developments. Similarly, coverage originally focused on an urban area or the small town county seat may need to be expanded to adjacent areas to accommodate growth, relocation activities and travel patterns.⁷ Even if it were economically feasible for all paging carriers to submit applications for an entire wide area system when the system is first planned,⁸ this customer-driven expansion and modification cannot always be anticipated, and requires that the serving operator be able to respond to customer needs on an ongoing basis. Similarly, a system design that

⁴ See, e.g., MobileMedia at 7-8 ("MobileMedia/MobileComm may be required to turn away customers due to significantly increased loading on existing channels as a result of the freeze."); PageMart at 3.

⁵ E.g., Comments of Glenayre Technologies, Inc. at 5 ("Glenayre"); Comments of Trott Communications Group, Inc. at 2 ("Trott").

⁶ Holes may develop, for example, as a result of the loss of a transmitter or the construction of new buildings.

⁷ See, e.g., PageNet at 4.

⁸ See discussion in Section II.B.3 *infra*.

provided adequate coverage a few months or a year ago, for example, may require adjustment as a result of the construction of new buildings that may block existing transmitters.

Several commenters pointed out that a number of licensees are converting existing systems from POCSAG technology to FLEX technology.⁹ Among other things, this conversion will enable licensees to provide service to greater numbers of alphanumeric pagers on a more spectrum-efficient basis.¹⁰ Deploying FLEX technology, however, cannot be accomplished merely by swapping out equipment at existing transmitter sites; rather, it generally is necessary for carriers to increase the number of transmitters used in their systems. Such changes inevitably result in alterations to the existing service areas beyond those permitted by the terms of the freeze.

Representatives of the medical community has confirmed what PCIA advised the Commission -- that private licensees operating internal paging systems, some of which are used in support of essential public services, will be harmed by the freeze.¹¹ Likewise, some carriers have entered into specific relationships with hospitals, and their agreements to maintain service performance levels may be rendered ineffective by

⁹ *E.g.*, Coalition/CPI at 13-14; ProNet at 7-8.

¹⁰ Coalition/CPI at 13.

¹¹ *E.g.*, Trott at 2-3; PCP Licensees at 7-8; Comments of Teletouch Licenses at 7-8 ("Teletouch").

the freeze. The *Notice* does not appear to contemplate this hardship for private entities like hospitals.

As the comments point out, subscribers have come to expect that pages sent to them will be transmitted and received by their pager. At the same time, with most operations, the person sending a page has no way concurrently to confirm that the page has been received -- the page sender must rely upon the carrier's representations about the area in which reliable service is available. This stands in marked contrast to two-way communications services.

This reliance by paging subscribers and the individuals trying to contact them on a carrier's anticipated coverage area underscores the need of licensees to be able to make modifications to their systems when coverage gaps occur or are identified.¹² For example, actual radio signal propagation may differ from that predicted for a number of reasons. Holes in pre-existing service may result from lost transmitter sites. Subscriber demand levels may require additional coverage or additional frequencies in order to ensure timely delivery of paging transmissions.¹³

In some cases, carriers may be able to accommodate these needs in accordance with the exceptions from the freeze adopted by the Commission. In many other cases, however, it will not be possible to do so. This may result, for example, from the location of the coverage gap as compared to the carrier's pre-existing interference

¹² See, e.g., PageNet at 4.

¹³ See, e.g., MobileMedia at 8-9 (noting increase in delays in initiating pages).

contours or to the nature of available transmitter sites.¹⁴ Without carrier ability to replace lost transmitter sites or to add new facilities to fill service holes, pages will not get through and customer usage patterns will be disrupted.

Perhaps one of the most critical problems associated with such service disruptions is the ability of doctors and hospitals to reach individuals awaiting donors who are taking advantage of the paging industry's LifePage program. As PCIA explained in its opening comments, the LifePage program is intended to allow individuals to maintain a more normal lifestyle without having to wait at home for a call that the required organ is available for transplant.¹⁵ If the necessary page cannot reach the patient in a timely manner¹⁶ due to coverage gaps or other problems that cannot be addressed due to the freeze, then the LifePage user may miss a critical transplant opportunity.¹⁷

2. The Freeze Will Disrupt Market Forces That Already Are Working Well for Paging Services

In recent years and in numerous proceedings, the Commission has sought to promote competition in the delivery of telecommunications services. With the paging

¹⁴ Indeed, the terms of the freeze may lead in some situations to carriers installing facilities in an unsuitable location or making inefficient spectrum use in order to satisfy consumer needs.

¹⁵ PCIA at 16.

¹⁶ Time often is of the essence when a compatible organ becomes available.

¹⁷ See, e.g., MobileMedia at 9.

industry, as noted above, the Commission already has found such competition to be thriving. Yet the freeze will impede the competition that already exists, and will thwart its continued development.¹⁸

Where paging companies are unable to meet the needs of customers for expansion or modification of their services, the subscriber is likely to seek out suitable service from one of the competitors in the market. As a result, the Commission's freeze policy would serve as a primary determinant of the comparative competitive posture of each licensee in that area.¹⁹ It seems particularly ironic that, in a proceeding where one of the Commission's goals is to establish rules "so that competitive success is dictated by the marketplace, rather than regulation,"²⁰ the Commission would take regulatory action that will substantially affect the competitive success of many participants in the paging marketplace.

3. The Paging Freeze Harms Paging Companies, Their Employees, Their Suppliers, and the Economy

A number of commenters, particularly small and medium sized companies, have described how their systems must grow by one or two transmitters at a time.²¹ This approach simply makes economic sense for these licensees, who do not have the

¹⁸ See, e.g., AACS, *et al.* at 6; Glenayre at 5.

¹⁹ E.g., AACS, *et al.* at 6.

²⁰ Notice, ¶ 2.

²¹ E.g., Rule Radiophone at 2-3; Word/Pioneer at 11.

resources to plan, apply for, and construct within twelve months all the facilities required to implement a long range business plan. Instead, such carriers start with a core service area that provides the economic base for subsequent system expansion and growth of their paging operations. As a result, while their plans may contemplate the installation of a number of transmitters, those facilities may be applied for and constructed over a number of years. With the imposition of the freeze, many paging companies, who have been proceeding in good faith with their business plans, find those activities largely brought to a halt. Planned changes simply cannot be made.

Because paging companies are continually making changes to their facilities in order to meet customer demand and remain competitive, the freeze order necessarily has interrupted rational business activities. For some companies, the freeze has occurred at a time when they have invested substantial sums in engineering their systems, locating transmitter sites, securing those sites as well as rights to necessary equipment -- and now those efforts are placed on indefinite hold.²² Depending upon the length of the freeze, it is quite likely that licensees will have to start anew once the Commission again accepts applications with a system redesign. Money spent on

²² *E.g.*, Comments of Brandon Communications, Inc. at 1-2 ("Brandon"); Comments of John L. Crump, d/b/a ACE Communications at 1-2; Comments of Diamond Page Partnerships, AmericaOne, and Affiliated Entities at 2-3 ("Diamond Page"); Comments of Merryville Investments at 1-2 ("Merryville"); Comments of Morris Communications, Inc. at 1-3 ("Morris"); Comments of Nationwide Paging, Inc. and (800) Page-USA, Inc. at 1-2 ("Nationwide"); PageMart at 2; Comments of Pager One at 1-2; Personal Communications, *et al.* at 2-3; PCP Licensees at 5-6; Rule Radiophone at 3; Teletouch at 5-6.

activities that must be replicated in the future is a financial "hit" for licensees of all sizes; it can represent a particular hardship for smaller companies.²³

Not only do the carrier and its owners suffer as a result of the freeze, but many other related individuals and companies are affected.²⁴ Some commenters have explained, for example, that they expect to have to layoff employees if the freeze remains in place for more than a few months.²⁵ The suppliers of services to paging operators and the manufacturers of equipment used in paging systems also will be adversely affected. Numerous commenters indicated that they will be forced to cancel equipment orders made in reliance on being able to implement their business plans.²⁶ Glenayre, a manufacturer of paging equipment, has described the harms it will suffer during the freeze, including lost revenues, lost profits, and lost jobs.²⁷

The layoff of paging licensee employees, the failure to use services that otherwise would be required, the cancellation of equipment orders -- these and other

²³ See, e.g., Comments of the Paging Coalition at 4 ("Paging Coalition") ("All paging licensees and their public subscribers will suffer from being unable to apply for and receive authority to expand and modify their paging services in a timely fashion. However, the impact will be most severe on small and medium-size paging providers -- including the very entities for which Congress has mandated safeguards, in order to ensure their participation in the wireless marketplace.").

²⁴ See, e.g., Brandon at 3; Merryville at 2.

²⁵ E.g., Personal Communications, *et al.* at 3; ProNet at 19.

²⁶ E.g., Brandon at 3; Morris at 3; Pager One at 1-2; Personal Communications, *et al.* at 3; ProNet at 19.

²⁷ Glenayre at 4.

effects of the freeze will undoubtedly adversely affect local and regional economies.²⁸

Moreover, revenue losses for paging licensees and their suppliers will reduce tax payments to the federal and state governments. The freeze thus has far ranging adverse ripple effects that appear to far outweigh the benefits for the Commission's proposals for revamping the Part 22 and Part 90 rules.²⁹

III. THE COMMISSION SHOULD CLARIFY AND MODIFY ITS FREEZE AND ITS PLANS FOR THE INTERIM ACCEPTANCE AND PROCESSING OF APPLICATIONS WHILE COMPLETING ACTION ON THE RULEMAKING PROPOSALS

The opening comments contain numerous suggestions for modifying the freeze to permit paging licensees more effectively to maintain their competitive operations while the Commission considers and acts on the substantive rulemaking proposals. The

²⁸ See, e.g., *Personal Communications, et al.* at 3.

²⁹ Concerns about similar economic harms have led the Commission twice in the past to lift freezes imposed on the acceptance of applications for 929-930 MHz paging authorizations. See *Acceptance of 929-930 MHz One-way Paging Applications*, DA 91-1407 (Nov. 12, 1991) ("A number of private carrier paging entities have made significant capital expenditures that would, in effect, be inadvertently stranded during the pendency of the licensing freeze and result in sever economic harm to those entities. . . . [F]or reasons of equity to those who may suffer severe economic harm if the freeze were to remain in effect in whole or in part, we will lift the freeze . . ."); *Amendment of the Commission's Rules To Provide Channel Exclusivity To Qualified Private Paging systems at 929-930 MHz*, FCC 93-171 (Apr. 6, 1993) ("Since the *Notice* was adopted, we have become aware that the freeze is impairing the ability of some PCP operators to develop or expand their systems based on plans formulated prior to the adoption of the *Notice*. As a result, the freeze may inadvertently be stranding investment in ongoing projects while delaying the ultimate provision of paging service to prospective customers. This potential negative impact of the freeze is sufficiently widespread that we are concerned it may outweigh the public interest benefits that caused us to implement it." [footnote omitted]).

comments also include a number of requests for clarification of the nature of the Commission's action. This remaining uncertainty about permissible activities during the freeze is only exacerbating the problems otherwise created for the paging marketplace by the freeze order.

PCIA accordingly reiterates its request that the Commission clarify that:

- 929 MHz exclusive frequency licensees with time remaining on their exclusivity construction period (as specified in Section 90.495 of the Commission's Rules) may complete system build out and retain their exclusive license;³⁰
- Licensees required to comply with the Commission's recent order on reconsideration in the 929 MHz exclusivity proceeding³¹ concerning multifrequency transmitters will retain their exclusive licenses as long as they comply with the six month deadline imposed in that order; and
- Any 929 MHz licensees that requested extended implementation or slow growth will be given a reasonable period of time to complete construction and will retain its exclusive frequency authorization if the Commission decides not to grant such request.³²

These clarifications are consistent with the Commission's pre-existing policies and the public interest, and will promote a greater level of certainty and understanding about activities that may be pursued during the freeze period (whether or not the freeze is modified in the manner suggested by PCIA).

³⁰ See, e.g., Diamond Page at 7-8; PageMart at 5-6; Comments of TSR Paging, Inc. 8-12 ("TSR").

³¹ *Amendment of the Commission's Rules To Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, FCC 96-53 (Feb. 13, 1996) (Memorandum Opinion & Order) ("*PCP Exclusivity Reconsideration Order*").

³² See, e.g., Comments of A+ Network, Inc. at 3-5.

The Commission should further state that, during the pendency of the rulemaking, the existing service and interference contours of licensees, whether under Part 22 or Part 90, will be protected in full under the existing standards.³³ As PCIA and numerous commenters pointed out, it is possible to interpret language in the *Notice* as requiring licensees to recalculate their entire protected coverage areas if they decide to make any permissible modifications to their operations during the freeze period.³⁴ Because of the nature of the formula proposed by the Commission, application of this proposal during the freeze will restrict even further the ability of licensees to make minor system modifications and expansions.³⁵ Moreover, imposing a new service and interference contour definition for purposes of the freeze without benefit of notice and comment renders the action legally infirm for failure to comply with the Administrative Procedure Act.³⁶

³³ See, e.g., Comments of American Paging, Inc. at 2-3 ("API"); Ameritech at 10-12; Paging Coalition at 15-23; Comments of Priority Communications, Inc. at 13 ("Priority").

³⁴ See, e.g., PageNet at 14.

³⁵ See, e.g., API at 3; Ameritech at 12; PageNet at 13 ("[T]he formula proposed for the interference contour in the NPRM is so restrictive that it would not allow 931 MHz paging carriers to construct and operate fill-in transmitters as currently provided under Sections 22.163 and 22.165(d) of the Commission's Rules."); Paging Coalition at 13; ProNet at 4-5.

³⁶ See, e.g., Paging Coalition at 18-21; Priority at 6-7; ProNet at 5.

The definition of service and interference contour is properly an issue for consideration in the market area licensing rulemaking. In fact, the paging industry is engaged in discussions about the appropriate nature of these standards, and will provide comment to the Commission in the context of the substantive rulemaking proposals.

Beyond these steps, the record before the Commission clearly supports modification of the freeze and the interim licensing procedures in the following respects:

1. ***The Commission Should Immediately Lift the Freeze on the Acceptance and Processing of Applications for Shared Channels.*** The freeze is having damaging effects for the numerous operators on shared frequencies.³⁷ These results seem particularly unjustifiable in light of the nature of the current shared use of these frequencies,³⁸ with a number of issues (including exclusivity) needing to be resolved before even reaching the feasibility of market area licensing.³⁹ Retention of the freeze regarding applications for these frequencies will impose great hardship on small and medium-sized carriers, as well as licensees of internal systems -- the very categories of licensees that the Commission has sought to encourage in other contexts.

2. ***The Commission Should Also Immediately Lift the Freeze on the Acceptance and Processing of Applications for Common Carrier Lower Band Frequencies.*** Licensees on the lower band common carrier frequencies and their customers are, as described in Section II.B.1, significantly harmed by the freeze on

³⁷ E.g., Comments of A+ Network, Inc. at 1.

³⁸ See, e.g., Glenayre at 7; MobileMedia at 16; Comments of Preferred Networks, Inc. at 8-9.

³⁹ Without some sort of exclusive licensing, there cannot be mutual exclusivity; without mutual exclusivity, there is no statutory basis for the Commission to proceed with competitive bidding arrangements. See 47 U.S.C. § 309(j)(1); *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, 9 FCC Rcd 2348, 2350-51 (1994).

Commission acceptance of applications. As the same time, these frequencies already are heavily congested. It thus appears that the public interest will benefit to a greater extent by the Commission permitting licensees to meet user needs and public demand than is possible based on the likely returns from competitive bidding conducted in these bands.

3. ***The Commission Should Process All 929 MHz Exclusive Frequency and 931 MHz Applications on File With It as of the Date of the Freeze.*** Applications pending with the Commission as of February 8, 1996, regardless of public notice date, were filed in good faith. There is no justification for not processing these applications. The Commission can pursue its usual public notice procedures, as appropriate, and take action on any applications where no mutually exclusive application is submitted.

4. ***The Commission Should Permit Additional Expansion by 931 MHz Licensees in Defined Circumstances.*** The Commission should permit, in addition to modifications already contemplated by the *Notice*, system modifications and expansions in 931 MHz frequencies consistent with the following conditions:

- a. Pending 931 MHz applications that have not appeared on the December 6, 1995 public notice or earlier public notices should be modified to specify a particular 931 MHz frequency.
- b. Any new applications for 931 MHz channels filed during the pendency of the rulemaking must specify a particular frequency.
- c. Competing applications could be filed during the 30 day window applied to other Part 22 applications under the current rules.

d. If a mutually exclusive application is filed, the parties would not be allowed to resolve the situation by settlement. Rather, the applications would be removed from the processing line and held in abeyance pending resolution of the market area licensing rulemaking.

As previously noted by PCIA in its opening comments, Commission processing of 931 MHz applications was delayed for months. Now, with the issuance of decisions on these pending applications, carriers need to be able to accommodate those grants to the marketplace and to customer needs.⁴⁰ To do so effectively may require modifications beyond those now permitted by the freeze.

5. *The Commission Should Permit Additional Expansion by 929 MHz Exclusive Frequency Licensees in Defined Situations.* The Commission should permit system modifications and expansions in 929 MHz exclusive frequencies consistent with the following conditions:

a. Incumbent exclusive licensees should be allowed to file applications for new stations within 40 miles of authorized transmitter sites,⁴¹ subject to applicable frequency coordination requirements.

b. The Commission should adopt an interim licensing procedure for 929 MHz exclusive frequencies that permits the filing of mutually exclusive applications in a procedure similar to that followed for common carrier frequencies.

⁴⁰ *E.g.*, AACS, *et al.* at 7-8.

⁴¹ PCIA's opening comments misstated the intended standard, which is correctly set forth in this reply.

c. If mutually exclusive applications are filed, the parties would not be permitted to resolve the situation by a settlement. Rather, the mutually exclusive applications would be held in abeyance until their treatment or dismissal is resolved in the underlying geographic area licensing rulemaking.

The 929 MHz industry has undergone significant regulatory changes in the last few years, with the adoption of exclusivity policies. Many issues associated with that transition remain unresolved at the same time that licensees have been seeking to comply with revised Commission requirements. Once all outstanding issues are resolved, licensees should not be foreclosed from making service adjustments made necessary by the Commission's actions.

IV. ADDITIONAL RELIEF IS REQUIRED DURING THE PENDENCY OF THIS RULEMAKING IN LIGHT OF THE HARMS CAUSED BY THE FREEZE TO A VIBRANT TELECOMMUNICATIONS MARKETPLACE

The record now before the Commission reflects the fact that modification of the freeze will have numerous benefits for the public interest, yet can be achieved without seriously undermining the objectives being sought by the Commission. In frequencies where there is at best limited white space to auction, paging operators will be permitted to respond fully to customer and competitive pressures. In areas where there may be interest from multiple parties, such entities will be able to file mutually exclusive proposals, thus causing the original application to be pulled from the processing line and to be held in abeyance until the Commission completes its action on the substantive rulemaking.

Given the competitive nature of this established service -- unique among all other services where the Commission has imposed application freezes⁴² -- the additional relief proposed by PCIA is appropriate. While the Commission should adopt its plan for secondary licensing even if it makes no other changes to the freeze, the Commission should recognize that secondary licensing alone is not an adequate solution.⁴³ While some licensees undoubtedly will determine that the cost-benefit analysis warrants the construction of facilities protected only on a secondary basis, many others will forego such opportunities and continue to suffer competitive disadvantages because of the limitations associated with secondary licensing.

While the Commission has represented its intent to act promptly on the interim licensing issues as well as on the substantive rulemaking itself, PCIA remains concerned that whatever freeze or interim procedures are adopted will remain in place for months or years to come. The rulemaking itself raises a number of complex issues that do not lend themselves to quick and easy resolution. Moreover, the Commission is now confronted with a host of implementation activities pursuant to the Telecommunications Act of 1996. It thus seems likely that adoption of a report and

⁴² See, e.g., AACS, *et al.* at 9 n.21; PCP Licensees at 8-9; Teletouch at 8-9.

⁴³ See, e.g., AACS, *et al.* at 18-19; Ameritech at 7-9; Brandon at 4-6; Consolidated at 4; MobileMedia at 11-12 ("Secondary site authorization . . . is unacceptable for reliable paging operations."); Merryville at 5-7; Comments of Metrocall, Inc. at 9-10; Morris at 6-7; Nationwide at 5-6; Comments of Pacific Bell at 3; PageMart at 4; Pager One at 4-6; Paging Coalition at 13; TSR at 12-13; Word/Pioneer at 16-17.

order in this proceeding will be delayed.⁴⁴ And, even once the report and order is adopted, the Commission will need to establish its auction procedures, further delaying submission and action on applications in whatever Part 22 and Part 90 frequencies are made subject to competitive bidding licensee selection processes. This likely delay underscores the need for the Commission to specify fair and reasonable interim licensing procedures.

V. CONCLUSION

The paging industry freeze imposed by the *Notice* harms the public interest -- by harming consumers themselves, paging marketplace competition, paging companies, employees of paging operators, paging equipment manufacturers, and the economy. The extent of these harms far outweighs the benefits to be achieved by maintaining the freeze in its current form. PCIA urges the Commission to act promptly to modify the freeze consistent with its proposals listed above. Such action would, as demonstrated in PCIA's opening comments, these reply comments, and the entire record now before the Commission, greatly benefit the public while protecting the Commission's interests

⁴⁴ See, e.g., Consolidated at 3-4.

in adopting market area and competitive bidding licensing rules for Part 22 and Part 90 frequencies.

Respectfully submitted,

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