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Before the
Federal Communications Commission
Washington, D.C. 20554

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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

Paging Partners Corporation, a Delaware corporation, submits these its Comments in connection with the above-referenced Notice of Proposed Rulemaking ("NPRM" or "Notice"), FCC 96-52, released February 9, 1996.

BACKGROUND

On February 9, 1996, the Commission released its NPRM in the above proceeding, proposing geographic licensing for paging services including 931 MHz and 929 MHz facilities. The Commission tentatively concluded that the major trading area (MTA) is the most appropriate geographic area for paging licensing. In connection with incumbents, the Commission proposed that incumbents would continue operating under existing authorizations but that no incumbent licensee would be allowed to expand beyond its existing interference contour and into the geographic licensee's territory, without the consent of the geographic licensee. Other issues such as coverage requirements and co-channel interference protection were also proposed. Finally, the

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Commission proposed and sought comment on competitive bidding issues relating to the proposed geographic service area.

Paging Partners in its comments on the proposed interim licensing procedures suggested caution over what appears to be at best ill conceived notions and at worst unlawful actions in the Commission's proposals for the future regulation of paging. Paging Partners in its comments urges the Commission to weigh carefully the impact of its proposed rules on existing paging operations particularly in the 929 MHz and 931 MHz bands.

INTRODUCTION

Paging Partners operates common carrier and private carrier services in the northeast corridor of the United States. It presently provides one-way wireless messaging service on 931.7875 MHz in New York, New Jersey, Connecticut, Delaware, Pennsylvania, and Maryland, the District of Columbia and Virginia, with locations as well in Tennessee, Georgia, Alabama, and Mississippi. Since Paging Partners' common carrier frequency was not available over the entire region from Boston to Washington, D.C., Paging Partners applied for and received Part 90 private carrier paging authorizations. It has received exclusivity on the frequency 929.6375 MHz in Philadelphia and Washington, D.C. and has requests pending for exclusivity in Boston and New York.

DISCUSSION

I.

GEOGRAPHIC LICENSING

Paging Partners agrees with the Commission that licenses should be granted on a geographic basis. It is obvious that such an approach would give greater flexibility to the operator to respond to its subscribers, as well as to reduce the administrative burden to the Commission.

Paging Partners also agrees that the paging systems on 931 and 929 MHz frequencies should be treated similarly, should have similar Rules and Regulations and should be given the same flexibility as cellular and PCS operators relative to geographic licensing.

Paging Partners, however, suggests that an MSA/RSA or a Basic Trading Area ("BTA") approach would be more equitable to the incumbent operators, than the MTA proposed by the FCC. Many of the existing paging operators including Paging Partners are entrepreneurs who have built up their service in metropolitan areas but may not have the capital to step up immediately to an MTA license area.

As the Commission is aware, the Congress was concerned about efforts to promote economic opportunity and competition, to avoid excessive concentration of licenses and to disseminate licenses to a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women. See Section 309(j)2)(B) of the Communications Act of 1934, as amended. The geographic licensing concept, if it is to be used to promote competition by encouraging smaller entrepreneurs, must utilize a smaller geographic licensing area such as the MSA/RSA or BTA. As one can see from the C Block auction process, a typical small business cannot compete in a contest to acquire an MTA. While the MTA may provide an efficient arrangement from an FCC licensing perspective, the broader considerations of promoting economic opportunity and competition require a balancing which Paging Partners suggests is achieved if a smaller geographic licensing area such as MSA/RSA or BTA is used.

Paging Partners also urges the Commission to develop a guideline for exemptions of availability of geographic licensing areas based on the coverage of an incumbent operator. For example, if the operator has 70% coverage of the MSA/RSA or BTAs, the Commission should concede that the area is not available for application. In such a case the incumbent would receive a license for that geographic area.

II.

CO-CHANNEL INTERFERENCE PROTECTION

Paging Partners recommends that the Commission grandfather interference protection to 931 MHz licensees. However, Paging Partners objects to the application of the proposed standard to previously licensed facilities. Since the proposed standards in the NPRM are based on an average of height and power (1,000 watts, 1000 feet), as the height is lowered, the service and interference contours contract. This in essence reduces previously authorized areas. To alleviate this inequity, Paging Partners proposes that existing facilities be grandfathered with a 20 mile service area contour and a 50 mile interference contour. To do otherwise would be a de facto modification of an licensee's authorization, a taking, which raises serious equitable considerations, as well as retroactivity issues. See Bowen v. Georgetown University Hospital, 488 U.S. 204, 209 (1988). In addition, from a practical standpoint, business decisions have been made and money invested in reliance on the existing standards. Compare 47 U.S.C. 316.

III.

COMPETITIVE BIDDING ISSUES

While Paging Partners agrees with the concept of geographic licensing, it does question the Commission's proposal to use the action process to award frequencies among competing applicants. First, the frequencies are mature frequencies. The Commission itself stated in the NPRM at page 5 that some of these frequencies were allocated as long ago as *1949*, with the most recent allocations made in 1982. Further, the Commission stated that Common Carrier Paging ("CCP") channels are "heavily licensed, particularly in major markets." NPRM at p.11. In connection with PCP Channels, the Commission also states that "significant licensing already has occurred on PCP channels...As a result the 35 exclusive PCP channels are nearly as occupied as the 931 MHz CCP channels, and soon there may be insufficient spectrum available to allow coordination" in most major or

mid-sized markets." NPRM at 12. Having set forth the state of these frequency bands, the Commission states incumbent licensees cannot relocate because there are no alternate channels. NPRM at 21.

Given that background, Paging Partners is perplexed about this effort to auction CCP and PCP channels, since there appears to be little, if any, spectrum available. Even given the Commission conclusion based on its Competitive Bidding Second Report and Order, 9 FCC Rcd 2348, 2359 (1994) and the Part 22 Rewrite Order, 9 FCC Rcd 6513, 6536 (1994) that it has the authority to auction these frequencies, it appears to say -- as most of its opponents in this matter agree -- there will likely be no subject matter to auction. Auctions would create unnecessary burdens and problems for incumbent licensees with no discernible public benefit.

CONCLUSION

Paging Partners respectfully requests that the Commission take these Comments into consideration in connection with the proposed rulemaking.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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