

Section



Federal Communications Commission
Washington, D.C. 20554

JUN 2 1997

The Honorable Richard Shelby
United States Senator
15 Lee Street
B28 U.S. Courthouse
Montgomery, Alabama 36104

Dear Senator Shelby:

Thank you for your letter of March 12, 1997, on behalf of your constituent, Benjamin Bryant, regarding the Commission's policies with regard to licensing of 931 MHz paging systems. Mr. Bryant expresses concern that his paging application will be dismissed and that paging frequencies will be awarded in a competitive bidding process.

On February 20, 1997, the Commission released a Second Report and Order and Further Notice of Proposed Rule Making in WT Docket 96-18 and PP Docket 93-253, which adopted rules governing geographic area licensing for Private Carrier and Common Carrier paging licenses and established competitive bidding procedures for those systems. For your convenience and information, enclosed is a copy of the Press Release concerning the Second Report and Order and Further Notice of Proposed Rule Making, which includes a summary of the principal decisions made. Specifically, all mutually exclusive applications for non-nationwide Common Carrier Paging licenses and exclusive non-nationwide Private Carrier Paging channels will be subject to competitive bidding procedures. Additionally, all pending mutually exclusive applications filed with the Commission on or before February 20, 1997, will be dismissed.

The Commission's interim paging freeze did not require prior issuance of a Notice of Proposed Rule Making. Indeed, the Commission has imposed freezes in a number of other proceedings to facilitate the transition to geographic licensing and auctions, including Multipoint Distribution Service, 800 and 900 MHz Specialized Mobile Radio (SMR) Service, Location and Monitoring Service, 220 MHz Service and 39 GHz Service. Our decision in these proceedings to suspend acceptance of applications while the related rulemaking was pending advances two critical goals -- preservation of our ability to assign licenses through auctions, and deterrence of license fraud and speculation. In particular, we are concerned that the potential benefits of geographic area licensing, with competitive bidding used to select from among competing applicants, would be undermined by continuing to invite site-specific applications for "free" spectrum on a first-come, first-served basis.

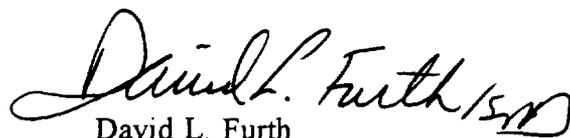
Assigning frequencies by auction, in turn, helps deter fraud and speculation and ensures that this valuable public resource is assigned rapidly and efficiently to the parties who value it the most, rather than given away to the first party who files its application with the Commission. The Commission has stated its belief in other contexts (such as Specialized Mobile Radio) that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures.

The Commission's newly adopted rules to auction paging frequencies is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use.

Moreover, the Commission has taken a number of steps to ensure that paging providers that are small businesses are not adversely affected by the transition to geographic area licensing and the use of competitive bidding procedures to award paging licenses. Additionally, the Part 90 shared paging channels will not be auctioned; instead they will be licensed on a site-by-site basis. We are establishing licensing areas of a size that will provide realistic bidding opportunities for small and medium-sized operators. We have also adopted special provisions in our competitive bidding rules for small businesses to facilitate their participation in the auction process, including bidding credits and installment payment provisions. In the Further Notice of Proposed Rule Making, we have proposed to allow paging licensees to partition their licensing areas in order to promote quicker build-out of small markets and rural areas.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink that reads "David L. Furth" with a stylized flourish at the end.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Enclosure

RICHARD SHELBY
ALABAMA

COMMITTEE ON APPROPRIATIONS
CHAIRMAN—SUBCOMMITTEE ON TRANSPORTATION
COMMITTEE ON BANKING, HOUSING,
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March 12, 1997

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*PRB
PY-paging*

1703

Ms. Judith L. Harris
Office of Legislative Affairs
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, D. 20554

Dear Ms. Harris:

I am enclosing a second letter I received from Mr. Benjamin Bryant.

Any information you may have regarding this matter would be appreciated in order for me to respond to my constituent's inquiry.

Sincerely,



Richard Shelby

RCS/lmj
Enclosure

PLEASE RESPOND TO MY MONTGOMERY OFFICE

If you can, would you please request that the FCC, in their response to your office, include more detailed information about how I could possibly recover the funds I "invested." Even if I was granted the licenses, I would gladly transfer them back to the FCC so they could auction them off, if they paid me \$13,800.00!

Thanks

Montgomery Office:
Would you please call
me at 281-8694 when you
receive my letter? Thanks
for your help, greatly!

Ben Bryant Jr.

P.S (over)

2-28-97

Ben Bryant, Jr.
RR1, Box 43 1/2
Letohatchee, AL 36047

The Honorable Richard Shelby
15 Lee Street
B-28 US Courthouse
Montg. AL 36104

Dear Senator Shelby,

Please excuse this handwritten letter; I don't type! Last March I wrote to you about a problem I had with the Federal Communications Commission. At that time I had two ⁽²⁾931 Mhz paging applications on file and on public notice with the FCC. I was seeking, by these applications, to be granted two paging licenses. (I will elaborate on this later in this letter). Apparently, by April 19 (see enclosed copies of letter sent to you by the FCC) you made an inquiry on my behalf regarding the FCC's decision to "freeze" acceptance of paging applications (1st paragraph). I believe they froze acceptance and processing of applications for paging frequencies. - (2nd paragraph, lines 4, 5). My applications were already accepted and on file. I have underlined what I believe to be important statements in copies I made of the enclosed letters.

The second page of the FCC letter states: "The Order partially lifts the interim freeze for incumbent paging licensees..." My applications were pending and were under the freeze.

However, before I received your letter of May 10, I received a memorandum from the attorney, John Pellegrin, who assisted in the filing & legal review of my applications, dated May 16. Please see enclosed copy. He states in 1st paragraph that the FCC released a Public Notice outlining its processing procedures for pending applications. And, again he states in 2nd paragraph that the FCC "did indeed lift the freeze" and "your application should be processed in the near future..." Consequently, I believed that the FCC would process! As more and more time went on, I just thought they were very slow!

Now, making matters worse, I received several days ago from Pellegrin (dated Feb. 20, 1997 - see copy enclosed) another memo that stated that there is now an "unofficial defacto freeze". Please see paragraph under Background on 1st page.

(2)

Also, Pellegrin, who has considerable experience in communications law and FCC licensing and filed the Comments (a ten-fifteen page document that I originally mailed to you with my letter in March 1996) and Reconsideration, stated in the same Feb. 20 memo, that he was not "aware of any applications which have been processed!"

Who's telling the truth? Was the freeze ever lifted, really? Listen to this!— Last December I called the FCC and talked to Sam Gumbert; I told him the file numbers for my two applications and asked him what the status was. (My file nos are 21480-CD-PL-96 and 22524-CD-PL-96) He looked it up on the computer and told me that my first application had been dismissed and that the other one would probably be dismissed, both due to mutual exclusivity! If you will very carefully read Pellegrin's Feb 20, 1997 memo, you will (or maybe? its' confusing) understand this mutually exclusive idea that has to do

with overlap of applications in a given market. And on that second page Pellegrin talks about a possible "daisy-chain theory" that the FCC has apparently adopted. Again, we have new rules that the FCC are trying to impose on older, properly filed applications according to then-existing FCC rules.

Okay, after hearing that my application had been dismissed, I called Pellegrin's office and told his secretary ~~what~~ that happened. She said it was the first time they had ever heard of Pellegrin-assisted applications ^{that} had been dismissed. While I was waiting for a dismissal notice from the FCC, I called their status line (202-418-1350) and found out that both my applications were still pending! I know I gave the correct numbers to Sam Gumbert; whether he made a mistake or was lying to me, I don't know.

This new geographic approach seemingly prevents all applications from ever being granted. Pellegrin and I both agree that my applications

should be processed under the existing rules at the time I filed. The last page of his Feb. 20 memo says that there is a "decision iminent" from the FCC regarding the freeze and that they will go to an auction.

Let me tell you how I got involved in this, briefly. It's not pretty! I received an ~~unsolicited~~ un-invited telephone call from a telemarketer from On-Site Communications, Inc. in Pompano Beach, Florida. He persuaded me to allow him to send me information on how they could prepare 931 MHz applications for me, and that I could acquire these licenses and then lease them to existing paging companies and make bucketfuls of money! (2000⁰⁰ - 3500⁰⁰ monthly). I was skeptical at first. What I received was an actual FCC Form 600, brochures, a contract and a single page describing the qualifications of John Pellegrin, who was hired by On-Site to assist and file.

I fell for this without first calling the FCC! I was trying to find their number and location, and then the Salesman called back. I guess seeing an actual FCC form and a page about a Washington attorney convinced me it was good - , so was the salesman; very good! I ended up mailing not one, but two 6,896⁰⁰ checks, about \$13,800⁰⁰ to On-Site Communications! After about three weeks, I called a government office in Montgomery and got the FCC's telephone number. When I called the FCC, a lady told me that: ① leasing a license may cause you to lose it, ② they were designed for persons or companies to personally construct a business, ③ there were thousands on file ④ new applications would not be accepted soon and ⑤ - the worst news - you could do it yourself for about 1,000⁰⁰ to 1,400⁰⁰, and ⑥ there had been for some time fraudulent schemes like this using F.C.C. licenses.

Whether On-Site defrauded me, technically, I don't know. But they sure overcharged! The president was named David Beale. I have filed a complaint against him with the Federal Trade Commission, and will with the Florida Attorney General's Office.

The FCC release refers to "fraudulent paging application schemes" as the reason for the original freeze. It seems that the only ways I will ever recover the money is: ① be granted the licenses and lease (if you can!) or go into partnership legally -

By the way, David Beale started doing this by collecting \$12,000.00 from prospective partners to go into business! David Beale and his newer company Precision Development is now de-funct. I called; number was disconnected. He seems to fit the description!

or ② Hope FCC will reimburse me! They will be probably selling my licences, anyway.

PLEASE do what you can to help me!

If you need any suggestions, consider calling John Pellegrin. Thank you for your time, and any help would be greatly appreciated

Sincerely Ben Bryant Jr.



Federal Communications Commission
Washington, D.C. 20554

MAY 3 1996

The Honorable Richard Shelby
United States Senator
15 Lee Street
B-28 U.S. Courthouse
Montgomery, Alabama 36104

Dear Senator Shelby:

Thank you for your letter of April 19, 1996, on behalf of your constituent, Benjamin Bryant, regarding the Commission's decision to freeze acceptance of paging applications. Mr. Bryant expresses concern that their paging application has not been granted because of the implementation of the freeze.

The Commission is currently conducting a rulemaking proceeding that proposes to transition from licensing paging frequencies on a transmitter-by-transmitter basis to a geographic licensing approach, using auctions to award licenses where there are mutually exclusive applications. In conjunction with that proceeding, the Commission initially froze processing of applications for paging frequencies. On April 23, 1996, the Commission released a First Report and Order in WT Docket 96-18 and PP Docket 93-253, which adopted interim measures governing the licensing of paging systems and partially lifted the interim freeze for incumbent paging licensees. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions made. Specifically, small and medium sized incumbent paging companies will be permitted to expand their service areas if the proposed new site is within 65 kilometers (40 miles) of an authorized and operating site. These interim rules will remain in effect until the Commission adopts final rules in the paging proceeding.

Thank you for your inquiry.

Sincerely,

A handwritten signature in cursive script, reading "David L. Furth".

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

Enclosure



NEWS

News media information 202 / 418-0500
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<ftp.fcc.gov>

Federal Communications Commission
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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

Report No. DC 96-33

ACTION IN DOCKET CASE

April 24, 1996

FCC RELEASES INTERIM ORDER PARTIALLY LIFTING THE PAGING FREEZE FOR INCUMBENT LICENSEES (WT Docket No. 96-18, PP Docket No. 93-253)

The Federal Communications Commission released a *First Report and Order*, (*Order*) on April 23, 1996, which adopts interim measures governing the licensing of paging systems, effective upon publication of the *Order* in the Federal Register. This item will allow small and medium-sized paging companies to incrementally expand to serve their customers, upgrade their equipment to spectrum efficient technology, and compete with nationwide paging companies during the pendency of this rulemaking proceeding.

In the *Notice of Proposed Rulemaking*, adopted on February 8, 1996, the Commission suspended acceptance of new applications for paging channels. This freeze applied to all paging channels except the CCP nationwide channels and the exclusive PCP channels on which the licensees had earned nationwide exclusivity.

The *Order* partially lifts the interim freeze for incumbent paging licensees; clarifies that the formulas proposed in the *Notice of Proposed Rulemaking* are proposed for the final rules, and are not mandated for the interim period; (3) clarifies the internal minor modifications allowed during the interim period; and (4) provides that certain services are not subject to these interim measures. The *Order* states that the interim freeze is necessary to combat fraudulent paging application schemes, but that due to the highly competitive nature of the paging industry paging operators need some flexibility to modify and expand their systems.

* To combat fraud.

- The Commission is lifting the paging application freeze for incumbent paging licensees, and will resume accepting applications for additional CCP and PCP transmission sites if (1) the applicant is an incumbent paging licensee, and (2) the applicant certifies that the proposed transmission site is within 65 kilometers (40 miles) of an authorized and operating transmission site which was licensed to the same applicant on the same channel on February 8, 1996. During this interim period all applications for exclusive 929 MHz channels and all CCP channels will be put on Public Notice.

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TELEPHONE (202) 293-3831
FACSIMILE (202) 293-3836

MEMORANDUM FOR 931 MHZ APPLICANTS

From: John D. Pellegrin

Date: February 20, 1997

Re: **Report For Paging Applicants/Processing
Status and Strategy**

This memo is designed to bring 931 MHz paging applicants current as to the status of their applications pending at the FCC. The memo will also discuss FCC policies which have contributed to this situation, and suggested strategies and possible remedies for applicants whose applications have not yet been processed.

Background

Freeze again? *

While we were successful in having the FCC overturn its original official freeze instituted in February 1996, the FCC has now imposed an unofficial *de facto* freeze since then. We are not aware of any applications which have been processed. Indeed, none have been dismissed, and none have been granted.

Why,
Indeed?

→ Why would the Commission do this? Where is the benefit to allow this backlog of applications to languish at the FCC? The Commission benefits because it has announced it is going to auction all remaining paging licenses in the near future, which will raise revenue for the US Treasury. The FCC will divide the country into geographic areas (roughly equivalent to the 50 states) and auction off the right to own all licenses remaining available in that particular geographic area. Obviously, the more licenses available the more valuable the geographic region, and the bigger the anticipated auction revenue for the FCC. While the Commission could theoretically limit the auctions to applicants already on file, this is not likely, if it chooses to maximize revenue.

Of course, the Commission would never admit it is higher auction prices which drives any of its policies with respect to trying to deny pending applications. But this practice is clear from the FCC treatment of licenses in auctions for other radio services, such as wireless cable (MMDS).

In order to give the FCC some justification for this policy, we have learned in our discussion

with engineering consultants that the FCC has adopted a very liberal interpretation of its rules to result in applications on file to block the processing of applications filed for other markets!

* very
imper

Assuming there are 30 931 MHz applications available in a given market, if 31 applications are filed, then no one applicant can be granted under the Commission's existing processing policies. However, the Commission has expanded the possibility of an application being blocked by counting applications in other markets as well as the given market. The Commission does this by applying a so-called "daisy chain" theory.

Under the daisy chain theory, if one application in a market is overlapped by one application in another market, which could be 40 miles away, the Commission takes the position that in determining if it can award the 30 licenses in either market, it will consider the applications in the given market (Market A) as well as all applications in the distant market (Market B) which is overlapped by only one application from Market A! Despite the fact that there is only one link between the markets, i.e., one channel overlap out of 30 possible overlaps, the Commission still treats the two markets as the same market for mutual exclusivity purposes. Using this new approach, it is easy to see that very few applications could ever be granted.

new
approach

Compounding the problem, our research does not find any instance where the Commission has clearly delineated this policy in its prior orders or decisions with respect to the 931 MHz service. Since your applications were filed pursuant to then-existing standards, we believe the FCC's imposition of this new processing standard without any notice or advisory is arbitrary and capricious.

* very
import

Possible Solutions

The first possible solution is for each applicant to once again turn to your elected representatives in Congress. Essentially a letter-writing campaign should focus on the unfairness of holding your applications hostage while the FCC considers changing the rules to hold an auction for the frequencies you previously applied for, in a transparent attempt to drive up auction revenues and deny potential service in the interim.

Each applicant could also hire a consulting firm to perform an engineering search of the Commission's database to see if your application is actually blocked, using the Commission's "daisy chain" approach. If it is not, there is no reason for the Commission not to grant the application. We can recommend various firms, if you wish.

It is clear that the Commission intends to withhold processing your applications until it issues new auction rules. Only then will it probably dismiss all pending 931 MHz applications. Whenever those applications are dismissed, it would seem that a legal appeal could be filed based on the unfair and improper use of this "daisy chain" approach in the processing of 931 MHz paging applications. However, we do not recommend that you wait for this likely event.

We would consider approaching the FCC for a meeting to confirm the above scenario, and to determine with particularity that the Commission is indeed using the daisy chain interpretation of the rules described above, and to see if it will change its approach. We would then consider filing an appeal of any continued FCC processing freeze and attempt at denying your properly-filed

application, under the appropriate circumstances. Unfortunately, we are unable to guarantee we can undertake such an appeal at this time, unless the resources for doing this work become available.

We have also discovered that a Commission decision is imminent regarding the pending Rulemaking proceeding which commenced a year ago and which has had the effect of imposing an application processing freeze. The FCC will undoubtedly adopt an auction licensing regime. However, if pending applications can be shown not to be mutually exclusive, then they should not be subject to any auction protocol. ← Once the Commission decision is released, we should have more information available as to strategy alternatives.

We realize that all applicants have been extremely patient, and we will continue to work as best we can to find some solution to this processing stalemate at the Commission. We would be glad to suggest language for letters to Congressional representatives, and your thoughts and comments regarding this memo are welcome.

*** * * Law Offices of John D. Pellegrin, Chartered * * ***

LAW OFFICES

John D. Pellegrin

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1140 CONNECTICUT AVENUE, N.W.

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WASHINGTON, D.C. 20036

TELEPHONE (202) 293-3831

FACSIMILE (202) 293-3836

MEMORANDUM

For: 931 MHz Paging Applicants

Date: May 16, 1996

This is a follow-up to our Client Memorandum of April 26, 1996 regarding the Federal Communications Commission's decision to partially lift the freeze on all paging applications which were filed on or before February 8, 1996. The Commission released a Public Notice on May 10th which outlined its processing procedures for pending applications such as yours and identified the applicants' individual Public Notice filing windows. We are in the process of checking these Public Notices as just released by the Commission to ensure their accuracy and completeness.

Those of you who contacted your elected Congressional officials regarding the FCC filing freeze may have received letters from those officials and the FCC in response. These letters may be a bit confusing. When responding to their letters, the Commission did not directly address the issue of pending applications, such as yours, rather focusing on the filing of new applications by incumbents. Bear in mind, however, the Commission did indeed lift the freeze based on Comments filed with the FCC and your efforts, as well as that of your elected officials in Congress. Thus, your application should be processed in the near future by the FCC.

They
sure
were! ←

Important. It has come to our attention that the FCC has or may in the immediate future request additional information from some applicants. The FCC has not served this office with a copy of its correspondence to applicants we assisted. The information requested is technical in nature, and will require a carefully prepared response. While we are preparing a letter to the FCC requesting copies of all correspondence to you, we cannot assume that the FCC will serve us in every instance. As a result, if you receive any correspondence from the FCC, please mail or fax a copy to us immediately. We cannot assist in the preparation of a response unless we know what information the FCC requires. (There is also a limited time period within which to respond. Failure to meet that deadline could result in the dismissal of your application.) So it is in your best interest to keep us informed of any material/letters you receive from the FCC.

* * * LAW OFFICES OF JOHN D. PELLEGRIN, CHARTERED * * *

LAW OFFICES

John D. Pellegrin

CHARTERED

1140 CONNECTICUT AVENUE, N.W.

SUITE 606

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application, under the appropriate circumstances. Unfortunately, we are unable to guarantee we can undertake such an appeal at this time, unless the resources for doing this work become available.

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*** * * Law Offices of John D. Pellegrin, Chartered * * ***