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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

JUL 25 1991

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 90.135(a)(8))
of the Commission's Rules and)
Regulations Concerning)
Modification of Licenses for)
Paging Operations)

PR 92-78

RM-7749

To: The Commission

COMMENTS OF PAGING NETWORK, INC.

I. INTRODUCTION

Paging Network, Inc. ("PageNet"), by its attorneys, and pursuant to Section 1.405 of the Commission's rules, respectfully submits its comments on the Petition for Rule Making ("Petition") filed by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("APCP"). The petition seeks to amend Section 90.135 of the Commission's rules to exempt Private Carrier Paging ("PCP") systems operating on paging-only frequencies from the license modification requirement contained in Section 90.135(a)(8). PageNet supports APCP's petition and urges the Commission to provide an opportunity for industry comment by issuing a notice of proposed rulemaking to amend Section 90.135.

PageNet is the licensee of PCP systems in several markets. It is also a major provider of common carrier paging

services nationwide. PageNet is an interested party to the instant proposal because the rule change, if adopted, would clarify the rules under which it operates as a PCP licensee.

II. DISCUSSION

Section 90.135 sets forth the circumstances under which licensees in the Private Land Mobile Radio Service ("PLMRS") are required to submit applications for modification of license. In general, these include changes in the ownership or operating parameters of the station and changes in station class, including changing from multiple licensed to cooperative use and from shared to unshared use. Subsection (a)(8) of the rule states that an application for modification of license is required every time the number of paging receivers on a licensed system changes by 50 units or more. PCP proposes that PCP systems be made exempt from this provision.

APCP advances two basic arguments in support of its proposal. The first argument, in which PageNet concurs, is that 50 units simply is not a meaningful measurement for PCPs. With present paging technology, a single PCP frequency can accommodate several thousands of units. A license is granted to a PCP applicant based upon an estimated number of subscribers to be placed on the system in a given period of time. Typically this number is quite large. PageNet's authorization for a PCP system in southern Florida, for example, lists 20,000 pagers authorized to operate on the system. This is the number of subscribers PageNet estimated it would have on the system within eight months

of the grant of the initial authorization, i.e., by December 26, 1991. Moreover, PCPs continue to add large numbers of subscribers to the system after licensing, once the PCP system is marketed. It is not unusual in this regard for PageNet to add up to 700 pagers per week. Thus, a change in 50 units is not significant on paging frequencies licensed for PCP operation. (APCP Petition at 5.)

Furthermore, strict enforcement of the 50 unit benchmark in triggering the applicability of the rule represents a cost to the industry and an administrative burden on the Commission of inordinate proportions. For licensees, this requirement means frequently and repeatedly filing modifications with updated subscriber information. (APCP Petition at 4.) In fact, PCP licensees could comply with this rule by "spitting-out" application after application every day, week or month, as their subscriber base grows by 50 unit increments. For the Commission, the influx of paperwork portends a tremendous burden on an already overworked staff, and the potential for marked inefficiencies. It is inevitable, for example, that the Commission has found or will find itself in the position of receiving updated license modifications before it can act on those previously filed. For these reasons, and because other mechanisms exist by which the Commission can be assured of keeping its PCP licensing records current with respect to subscriber levels, Section 90.135(a)(8) should be amended to exempt PCP licensees. PageNet urges the Commission to initiate a proceeding to that end, as APCP proposes in its petition.

Notwithstanding the above, PageNet notes that APCP's reliance on Section 90.179(e) in support of the rule change is misplaced. That rule does not apply to non-shared-use systems and thus is not relevant to this analysis.

APCP asserts that "PCP licensees are currently required by Section 90.179(e) of the Commission Rules to submit a list of users on an annual basis," eliminating the need for PCPs to submit license modifications in compliance with Section 90.135(a)(8). (APCP Petition at 4.) Section 90.179, however, applies to shared-use systems, only.^{1/} Therefore PageNet and other PCP licensees not operating shared-use systems are not subject to Section 90.179 and are not required to file end user lists on an annual basis.^{2/} In the entire history of the development of these services, the

¹ "Shared-use," as defined in the rule, exists "when persons not licensed for the station control the station for their own purposes pursuant to the licensee's authorization." 47 C.F.R. § 90.179. The Commission has stated that "a private land station is . . . shared by authorized users if more than one licensee or user has the capability of controlling the land station." Memorandum Opinion and Order Report in Gen. Docket No. 80-183, 55 RR 2d 427, n. 9 (1984), citing Memorandum Opinion and Order on Reconsideration in Docket No. 18921, 54 RR 2d 242 (1983). The Commission's interpretation has been confirmed by the court in Telocator Network of America v. F.C.C., 761 F.2d 763 (1985) (The court determined that PCP systems which utilize a store-forward messaging system such as that used by PageNet do not allow the end-users to control the land station. Only the sole licensee has control of the land station in such a PCP system.)

² The sheer volume of a showing listing 20,000 or more names, addresses and telephone numbers -- a document that would resemble the telephone book for a city the size of Fredericksburg, VA -- make the filing of such lists seem preposterous. PageNet, moreover, believes such information to be proprietary in nature.

Commission has never found that Section 90.179 applied to non-shared-use PCP systems. ^{3/}

To the extent the Commission concludes that the coordinator of shared PLMRS frequencies needs additional information concerning numbers of subscribers on PCP systems or channel usage, there are various workable means of supplying such data and a number of considerations to be taken into account. Currently, PCP applicants project anticipated subscriber levels when they first apply for a license, and provide similar projections periodically thereafter, when the previous projection is no longer accurate. This information is provided to the coordinator to enable it to manage the sharing of PCP frequencies. The Commission to date has not found the information supplied through such projections to be inadequate. Certainly it has never held that an annual filing of names, addresses and telephone numbers of tens of thousands of PCP

^{3/} See Tentative Decision and Further Inquiry and Notice of Proposed Rule Making in Docket No. 18921, 49 RR 2d 1084 (June 11, 1981); Report and Order in Docket No. 18921, 51 RR 2d 355 (April 13, 1982); Memorandum Opinion and Order in Docket No. 18921, 54 RR 2d 242 (June 2, 1983); Memorandum Opinion and Order in Gen. Docket No. 80-183, 55 RR 2d 427 (November 23, 1983); and Memorandum Opinion and Order in PR Docket No. 83-737, 61 RR 2d 148 (September 26, 1986). It is our understanding, furthermore, based on discussions with counsel involved, that the letter from Terry Fishel, chief of the FCC Licensing Division's Land Mobile Branch in Gettysburg, which APCP appends to its petition in support of its argument, was written in response to an inquiry by counsel for a shared-use PCP system. It does not, therefore, stand for the proposition, as asserted by APCP, that all PCP licensees must file annual end user lists.

pager subscribers on non-shared-use systems is required to enable the coordinator to perform its function.

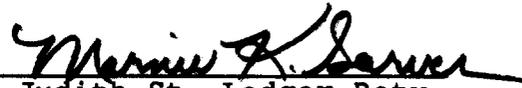
III. CONCLUSION

PageNet supports APCP's Petition for a Notice of Proposed Rulemaking to exempt PCP systems operating on paging-only frequencies from the license modification requirement of Section 90.135(a)(8). This reporting requirement is not necessary and unduly burdensome both for PCP licensees and for the Commission.

Respectfully submitted,

PAGING NETWORK, INC.

By:



Judith St. Ledger-Roty
Marnie K. Sarver
Kimberley A. Mangum

REED SMITH SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-6100

Its Attorneys

July 25, 1991

CERTIFICATE OF SERVICE

I, Marnie K. Sarver, hereby certify that copies of the foregoing "Comments of Paging Network, Inc." were mailed this 25th day of July, 1991, by first class mail, postage prepaid, to the following individuals.

- * Ralph A. Haller, Chief
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554
- * Beverly G. Baker, Deputy Chief
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554
- * Kent Y. Nakamura, Legal Counsel
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554
- * Richard J. Shiben, Chief
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554
- * Edward R. Jacobs, Deputy Chief
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554

* F. Ronald Netro, Chief
Rules Branch, Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5126
Washington, DC 20554

* Rosalind K. Allen, Deputy Chief
Rules Branch, Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
2025 M Street, NW, Room 5126
Washington, DC 20554

David E. Weisman, Esq.
Alan S. Tilles, Esq.
Meyer, Faller, Weisman and Rosenberg, P.C.
4400 Jenifer Street, N.W.
Washington, DC 20015
Counsel for the Association of Private
Carrier Paging


Marnie K. Sarver

*/ By Hand