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July 25, 1991

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, DC 20054

Re: RM-7749 *PR 9278*

Dear Ms. Searcy:

Transmitted herewith, on behalf of Celpage, Inc., is its original and four copies of its "Response" to the above-referenced Petition for Rulemaking concerning proposed amendments to Part 90 of the private radio rules. If there are any questions in this regard, please contact the undersigned.

Sincerely,

[Signature]
Frederick M. Joyce
Counsel for Celpage, Inc.

FMJ/dc
enclos.

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JUL 25 1991

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

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) RM-7749
Modification of Licenses for)
Paging Operations.)

To: The Commission

RESPONSE OF CELPAGE, INC.

Frederick M. Joyce
Its Counsel

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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

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To: The Commission

RESPONSE OF CELPAGE, INC.

Celpage, Inc., through its attorneys, and pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405, respectfully submits its Response to the above-referenced Petition for Rulemaking ("Petition") of the Association for Private Carrier Paging/National Association of Business and Educational Radio ("APCP"). Celpage wholeheartedly supports one element of the Petition, and vigorously opposes the other element for the following reasons:

I. Statement of Interest.

Celpage is the licensed operator of Private Carrier Paging ("PCP") facilities on the 152.480 MHz frequency throughout the Commonwealth of Puerto Rico. Celpage provides service to nearly 10,000 paging units on this shared frequency, in careful coordination with its co-channel licensees. Celpage has been a member of APCP virtually from its inception. Thus, Celpage is particularly concerned with the issues raised in the Petition, and,

is amply qualified to inform the Commission that some of the views expressed in APCP's Petition are not shared by its members.

II. Summary of Petition.

The Petition involves two issues: (1) whether Part 90 of the Rules should be amended to exempt PCP licensees on paging-only frequencies from the current requirement that they request a modification of license when there is a "change by 50 or more units in the number of paging receivers," see, 47 C.F.R. §90.135(a)(8); and, (2) whether the FCC should "increase its oversight" to require PCP licensees to "submit a list of users on an annual basis" Petition at 4, n.3.

III. The 50-Unit Rule Should be Amended.

The Petition aptly requests the FCC to amend a rule that has become an unnecessary regulatory burden for PCP system licensees. PCP service has seen truly tremendous growth, in terms of number of licenses issued and number of subscribers activated, in the relatively brief period in which the service has been authorized by the FCC. The current requirement that PCP licensees request prior Commission approval before adding (or subtracting) 50 paging units from their systems, has become little more than a quaint reminder of the modest beginnings of this private radio paging service.

The FCC may recall that it anticipated the vast potential for growth of the PCP customer base when it created PCP service: "[P]aging technology is changing so rapidly that the number of

paggers that would be accommodated on a channel is likely to change often" Paging Operations (Second Report & Order), 91 F.C.C. 2d 1214, 1230 (1982). Change has come to the PCP industry, and PCP systems now activate thousands of new subscribers nationwide, every day.

The Petition states that a "paging" frequency can "accommodate up to several thousand [paging] units" Petition at 5. In fact, with certain types of paging units "tens of thousands of paggers can be accommodated on a single channel." Paging Operations, 91 F.C.C. at 1223; see also, Report & Order (Expanded Eligibility), PR Docket No. 89-45, at 2 (1991); citing Reply Comments of Celpage at 4-5 ("a single paging channel can accommodate over 10,000 subscribers"). Celpage's PCP system, with close to 10,000 paging units in service, may be larger than many, but it is hardly unique in that respect. See Radio Communications Report at 12 (June 17, 1991) (reporting the "top-20" PCP operators).

With such high subscriber levels on many PCP systems nationwide, the 50-unit modification rule may not seem entirely "quaint" any longer to PCP licensees. Rather, compliance with this rule could well require the full-time attention of a conscientious licensee. For an agency that prides itself on "simplify[ing] administrative procedures," this archaic rule quite clearly defies that laudable policy objective. Cf. Private Land Mobile Radio Services (Shared Facilities), 51 RR 2d 355, 373 (1982).

Consequently, Celpage concurs with ACP's recommendation that

the 50 unit modification rule be amended to state that it will not apply to paging-only frequencies. Whatever frequency coordination objectives might be achieved by tracking the increases and decreases in the number of paging units on a given shared frequency, they can be achieved through the frequency coordinator's request for current information from applicants and licensees during the coordination process. See, e.g., Teletech, Inc., 4 FCC Rcd. 4058, 4059, n.8 (1989) (citing 47 C.F.R. § 90.175(a) which provides that coordinators "may consider all factors which may serve to mitigate potential interference").

**IV. Section 90.179(e) Does not, or Should not
Apply to Conventional PCP Operations.**

The Petition contends that "PCP licensees are currently required by Section 90.179(e) of the Commission's Rules' to submit a list of users on an annual basis," and, that the Commission should "increase its oversight in this area to ensure the continued accuracy of the data base and future frequency recommendations." Petition at 4, n.3. Celpage contends that this rule section certainly does not apply to conventionally-operated and designed PCP systems, that is, to the majority of PCP systems.

If, in the FCC's opinion, the rule does apply to most PCP systems, then the rule should be amended to eliminate this unnecessary and extremely burdensome administrative task. The development of detailed frequency coordination requirements has completely obviated the need for such reports.

Finally, the customer information to which the Petition refers

are "shared" by unlicensed individuals who can "control the station for their own purposes" within the meaning of the rule. For instance, Celpage's system is designed so that it is impossible for any end-user, the customer carrying a paging unit, to "control" Celpage's PCP transmitters or any other elements of the PCP system. Indeed, it is difficult to imagine any PCP system configuration in which a paging customer could "control" the use of the PCP system.

The FCC's regulatory history concerning shared use arrangements suggests that the reporting requirements of Section 90.179(e) are a vestige of a time when many unlicensed "users" did indeed lawfully "share" a licensee's equipment, telephone lines, and related operational material. See, e.g., Private Land Mobile Radio Services, 49 RR 2d 1085, 1090 (1981). In those instances, it would be logical to require the extensive records and annual reports found in Section 90.179(e): it might be necessary to immediately locate a "shared user" who has caused technical problems to a PCP system or the local landline network. However, the imposition of Section 90.179(e) reporting requirements against PCP customers who are in no way capable of "controlling the PCP station simply makes no sense and is contrary to decades of "de-regulation" in the private radio services.

B. The FCC has Properly Striven to Eliminate Reporting Requirements over the Years.

The regulatory history concerning sharing arrangements in the

private land mobile radio services is long, and not altogether storied. See, e.g., Private Land Mobile Radio Services, 49 RR 2d 1085, 1090 (1981) (after more than ten years' worth of comments and rule proposals concerning its "regulatory plan" for private radio sharing agreements, the FCC frankly admitted that "the plan pleased no one; and few had confidence that it would achieve its stated regulatory purposes or goals. "). The Petition proposes to turn back the FCC's regulatory clock by 20 years for no practical regulatory purpose.

The Petition has unwittingly underscored some of the historical infirmities of shared use regulations: the "rather detailed record keeping requirements" imposed by earlier versions of the sharing rules -- cost-sharing information, annual reports, and the like -- have been considered "burdensome" not only by most members of the mobile communications industry, but by the FCC itself. See Private Land Mobile Radio Services (Sharing Facilities), 51 RR 2d 355, 373 ("We [the FCC] conclude that the submission of annual reports on a routine basis is not necessary. "). Thus, as the rules for "cooperative and multiple licensing" of private radio systems have evolved, so too has the FCC streamlined or eliminated its shared and cooperative use reporting requirements. See, e.g., 47 C.F.R. §90.179(d) (non-profit, cost-sharing agreements are no longer filed with the FCC; they need only be filed with the station's records).

Certainly, Section 90.179(e) has survived the de-regulation process, and "shared use" licensees must submit "updated" mobile

and control station counts to the appropriate frequency coordinators on an annual basis, as it so states. See 47 C.F.R. §90.179(e). Ironically for PCP licensees, however, the FCC would have eliminated this requirement in its entirety several years ago but for NABER's specific request that this rule be retained to assist its coordination processes. See, e.g., Private Land Mobile Radio Services (Frequency Coordination), 61 RR 2d 148, 159 (1986) (wherein the FCC adopted NABER's proposal to require "applicants for new private carrier systems, applicants converting to a private carrier system, and applicants for non-profit cooperative systems provide periodic information on system users or members," while denying NABER's request that all PCP end-users be individually licensed).

The provision of all customer "names, addresses, telephone numbers," etc., at the time a PCP application is submitted to the coordinator serves no legitimate frequency coordination purpose since all PCP licensees remain responsible for their customer's eligibility to use a PCP system. Notice of Proposed Rulemaking (Expansion of Eligibility), PR Docket No.89-45, 4 FCC Rcd. 2589 at par.13 (1989) ("the commercial licensee will be responsible for ensuring that all operations are conducted in accordance with the Commission's rules and regulations, including our restrictions on permissible communications"). In short, the Petition has perhaps unwittingly stumbled into a regulatory morass from which the mobile industry emerged many years ago, and to which it surely should not return.

V. NABER Already Commands the Necessary Data.

The PCP frequency coordination process does not entail an annual inspection of every PCP frequency nationwide on the same date to determine usage levels on these frequencies. Rather, the coordination process is, by necessity, pro-active: a frequency recommendation is made only in response to an application for new or modified PCP facilities. Accordingly, requiring "real-time" subscriber information to assist in achieving a fairly accurate coordination recommendation makes perfect sense; but annual reports do not.

Perhaps several years ago NABER could not command the necessary cooperation from PCP licensees to obtain "real world" subscriber information, and an FCC-sanctioned rule to that effect would have been helpful. Today, however, most PCP licensees understand full well that it is in their best interests to keep NABER accurately apprised of the levels of usage on their shared PCP frequencies. Moreover, NABER has, with the active cooperation of the PCP industry, developed a rigorous set of "guidelines" that are used in the PCP coordination process. Those guidelines request from PCP licensees specific pager information, albeit on an anonymous basis, as well as traffic data, in response to new applications. The FCC's rules also quite clearly authorize the frequency coordinator to request this sort of information, and that information then becomes part of the coordination recommendation. See, e.g., Teletech, Inc., 4 FCC Rcd. 4058, 4059, n.8; 47 C.F.R. § 90.175(a).

NABER's pro-active coordination guidelines seem to be working, though Celpage would be the first to politely suggest that the PCP coordination process could withstand improvements. Nevertheless, APCP has been considering some of Celpage's proposals to help reduce the likelihood of co-channel PCP interference, and it is hoped that those constructive recommendations will soon be submitted to the Commission. In the meantime, the imposition of additional, unnecessary annual reporting requirements on PCP licensees cannot in any way be considered an "improvement" to the current coordination process.

VI. Customer Information is Proprietary.

There could be no more valuable nor confidential document to a paging company than its customer list. Since all information submitted to the frequency coordinator may ultimately become part of the FCC's license files, see, Teletech, Inc., 4 FCC Rcd. 4058, no thought of enforcing Section 90.179(e)'s customer reporting requirements against PCP operators should be considered until the FCC has adopted adequate procedures for maintaining the confidentiality of this proprietary information. Part 90 of the Rules would have to be amended to allow PCP licensees to submit this information "under seal" if Section 90.179(e) is enforced against PCP operators.

It is to be expected that most every PCP licensee would demand confidential treatment for its customer list. The implications for the additional administrative burdens on the FCC to ensure

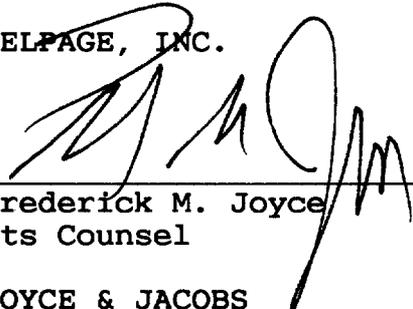
confidential treatment of this information should be obvious, since license files are presumptively available to the public. For these additional reasons, and to avoid unnecessary and unwise administrative burdens, the FCC should not enforce Section 90.179(e) against PCP licensees.

CONCLUSION

FOR ALL THE FOREGOING REASONS, Celpage supports the proposal to eliminate the 50-unit modification rule, yet vigorously opposes the proposal to enforce Section 90.179(e) against PCP licensees.

Respectfully submitted,

CELPAGE, INC.

By: 

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Its Counsel

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Date: July 25, 1991

CERTIFICATE OF SERVICE

I, Frederick M. Joyce, Esq., do hereby certify that on this 25th day of July, 1991, copies of the foregoing Response of Celpage, Inc. were mailed, postage prepaid, to the following:

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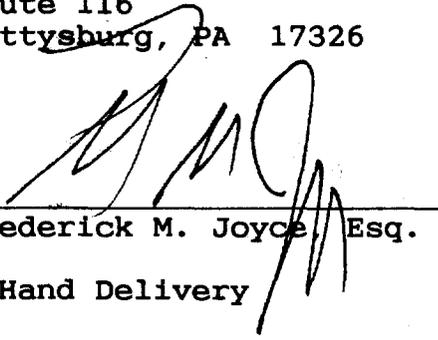
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