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June 26, 1992

Via Hand Delivery

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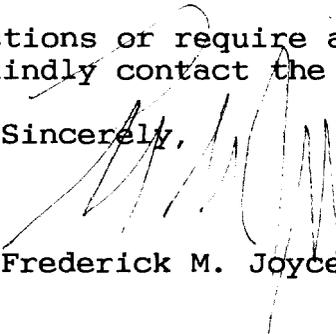
Re: Celpage, Inc.  
RM-7407 & RM-7749

Dear Ms. Searcy:

Transmitted herewith, on behalf of Celpage, Inc., please find enclosed the original and four (4) copies of its Comments in the above-referenced Rulemaking proceedings.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,

  
Frederick M. Joyce

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

RECEIVED

JUN 26 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of: )  
 )  
Amendment of Part 90 )  
of the Commission's Rules ) RM-7407  
Pertaining to End User and ) RM-7749  
Mobile Licensing Information. )  
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To: The Commission

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**COMMENTS OF CELPAGE, INC.**

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Its Counsel

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Date: June 26, 1991

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### SUMMARY OF COMMENTS

Celpage, Inc. is the licensee of Private Carrier Paging ("PCP") facilities on the 152.480 MHz frequency throughout the Commonwealth of Puerto Rico, and is the licensee of PCP facilities throughout the Continental United States. Celpage agrees with the FCC regarding elimination of the "End User List" rule. On the other hand, Celpage submits that the FCC's proposed modifications to the 50 Pager Rule merely mitigate, rather than eliminate an unnecessary regulatory burden.

An annual report to NABER would be far less costly than the FCC's proposed license modification requirement, because the annual report would not need a NABER coordination fee or an FCC license fee; these fees are required for a modification of license. The annual report in lieu of modifications would be of particular value to start-up licensees and smaller licensees that have relatively large increases in paging unit activations in their first few months of operation.

With regard to the FCC's proposed "channel occupancy standard," this is the type of information that NABER already requests from licensees when making coordination recommendations. Thus, NABER's proposed annual report would contain this information, for whatever use the FCC may make of it.

The proposal to adopt "airtime usage" standards ought to be evaluated in the broader context of finding ways to minimize harmful interference to shared PCP systems.

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To: The Commission

COMMENTS OF CELPAGE, INC.

Celpage, Inc., through its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Commission's above-referenced Notice of Proposed Rulemaking ("Notice"). Celpage supports some of the rule modifications recommended in the Notice, and has some suggestions for eliminating or modifying others, for the following reasons:

I. Statement of Interest.

Celpage is the licensee of Private Carrier Paging ("PCP") facilities on the 152.480 MHz frequency throughout the Commonwealth of Puerto Rico, and is the licensee of PCP facilities throughout the Continental United States. Celpage provides service to more than 10,000 paging units in Puerto Rico, and has quickly grown to become the second largest paging company in Puerto Rico. Celpage has also been an active member of the Association for Private Carrier Paging ("APCP") virtually since its inception, and has

previously been an interested party in FCC rulemaking proceedings pertaining to PCP and RCC paging issues.

Celpage previously filed Comments in response to APCP's "License Modification Rulemaking Petition" (the "APCP Petition") which was a precursor to this rulemaking proceeding. As with APCP's Petition, the rule changes proposed in the FCC's Notice are likely to have an immediate impact on Celpage's PCP business. Moreover, due to its practical experience in this field, Celpage is well-qualified to comment on the advantages and disadvantages of the proposed rule changes. Thus, Celpage has standing as a party in interest to file formal comments in this proceeding.

## II. Summary of Notice.

Among other things, the Notice concerns two proposed modifications to Part 90 of the FCC's Rules: (1) to eliminate the so-called "End User List" requirement of Section 90.179(e), a rule that applies to shared private land mobile radio systems; and, (2) to amend Section 90.135(a) which requires a modification of license anytime there is a 50 unit increase or decrease in paging units, and anytime there is an increase or decrease in mobile or control units (hereinafter referred to as the "50 Pager Rule").

Celpage agrees with the FCC regarding elimination of the "End User List" rule. On the other hand, Celpage submits that the FCC's proposed modifications to the 50 Pager Rule merely mitigate, rather than eliminate an unnecessary regulatory burden. Celpage's detailed comments in regard to these proposals follow.

**III. The End User List Should be Eliminated.**

Section 90.179(e) of the Commission's Rules requires applicants for shared stations to submit with their applications an End User List containing the names, addresses, telephone numbers, eligibility statements, contact persons, and mobile counts for each user placed in service. That information must also be provided eight months after license grant, annually thereafter, and anytime there is a 20% decrease in the system's total mobile and control count.<sup>1</sup>

The Notice reached the tentative conclusion that the End User List is no longer necessary to assist the FCC in maintaining accurate and current channel usage information. Notice at ¶ 15. Also, the Notice stated that the End User List was not essential to assist the FCC to "fulfill compliance functions to assure customer eligibility" since the Commission can request that information directly from a licensee. Notice at ¶ 16. Moreover, elimination of the End User List would "have the added benefit of avoiding the potential for infringement of customer data confidentiality." Notice at ¶ 17. Celpage agrees with the FCC's reasoning and conclusions.

With respect to perhaps the majority of commercial PCP systems, the End User List requirements simply do not apply since a for-profit PCP system is unlikely to be a "shared system" within the meaning of the FCC's Rules and case precedents. See 47 C.F.R.

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<sup>1</sup> 47 C.F.R. § 90.179(e).

§ 90.179 (a "station is shared when persons not licensed for the station control the station for their own purposes pursuant to the licensee's authorization."); see also Telocator Network of America v. FCC, 761 F.2d 763 (D.C. Cir. 1985). Celpage's system, for instance, is exclusively controlled by Celpage and is not shared by any other end user.

Nevertheless, if the End User List is an "unnecessary" governmental regulation, then it should be eliminated. See Notice at ¶ 13 (footnote omitted). The rule cannot be justified by the mere fact that it applies only to a certain, small category of PCPs. If the Rule does not further a legitimate regulatory end, then all Part 90 licensees are best served by its elimination; it is difficult enough for licensees to comply with the myriad Part 90 rules and regulations that do serve legitimate regulatory ends.

Moreover, there is always the possibility that carriers that are not subject to this particular rule, could mistakenly be asked to comply with it. Merely defending against mistaken compliance actions can cause a licensee to needlessly squander time, money and goodwill in attempting to explain why a rule does not apply to its operations.

Finally, as Celpage has previously stated, there could be no more valuable nor confidential document to a paging company than its customer list. See Notice at ¶ 11, n.22. 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 (1989), the End User List rule has the potential for

unintentional disclosure of confidential customer data information.

As the FCC observed in its Notice, there are other ways in which the FCC can maintain an accurate license data base and pursue compliance actions. Notice at ¶ 18. The End User List rule is now more obstructive than it is useful, and it should be eliminated. For all these reasons, Celpage supports elimination of the End User List rule.

**IV. The 50 Pager Rule Should be Eliminated.**

The Notice proposes a modification to the rule that now requires license modifications whenever there is an increase or decrease of 50 paging units on a system. Notice at ¶ 19; see 47 C.F.R. 90.135(a)(8). The FCC's proposed modifications to that rule; however, do not eliminate the basic infirmities of this rule. The simplest and soundest way to eliminate these infirmities would be to eliminate the rule provision entirely. In brief, the 50 Pager Rule is simply another unnecessary governmental regulation.

**A. The Rule Should be Eliminated.**

The FCC appears to be concerned, on the one hand, with obtaining "adequate information to ensure a current data base ...." Notice at ¶ 22. On the other hand, the Commission concedes that it "uniformly grants applications to add paging units ...." Id. at ¶ 23. It is difficult to reconcile these statements.

If license modification applications to increase paging counts are invariably granted, then Celpage must agree with the FCC's tentative conclusion that it is time to completely eliminate the

modification of license requirement in regard to additional units. Id. There is no practical reason to retain this modification rule if it is only used as an indirect means of counting pager units.

B. Annual Reports Would be Useful.

The FCC has not explained why it needs a "current data base," or even what that term entails. Id. at ¶ 22. Yet, if for whatever reasons the FCC simply needs to know the "raw numbers" of units operating on a given frequency at regular intervals, then NABER's proposed annual paging report should be sufficient to meet that need. See Notice at ¶ 19.

The FCC contends that NABER's proposal "would be no less burdensome and costly to licensees ...." Id. at ¶ 21. That is not the case. An annual report to NABER would be far less costly than a license modification requirement, because the annual report would not need a NABER coordination fee or an FCC license fee; these fees are required for a modification of license. The annual report in lieu of modifications would be of particular value to start-up licensees and smaller licensees that have relatively large increases in paging unit activations in their first few months of operation. The annual report would be a welcome relief from having to file a modification application every few weeks or months.

The FCC's proposal, that a modification of license be filed for every 35% increase in paging units rather than every 50 units, simply moderates but does not eliminate an unnecessary regulatory burden. New carriers, those that are less financially able to

incur regulatory expenses, will be hit hardest by this rule since their units in service grow at a proportionately faster rate than larger systems. Smaller carriers will be required to file modification applications every few weeks or months, under the FCC's proposal, with attendant NABER and FCC fees. Since the FCC invariably grants all of these modifications, this would be a grand waste of time and money.

The only practical reason to retain some vestige of Rule Section 90.135(a)(8) would be to have some idea of how many paging units are currently active on a particular frequency (presumably, the FCC could use that information to determine if additional PCP frequency allocations are needed; however, unless the FCC tells the industry precisely why it needs this information, it will be difficult to comment on the utility of this FCC rule proposal). That is why the annual report recommendation makes eminent sense. It is easy to administer and obey, it removes one more regulatory burden from the FCC, and it is practically cost-free for the licensee.

The Notice questions why NABER would need this annual report information. Notice at ¶ 22. For carriers such as Celpage the answer is apparent: NABER is the gate-keeper for these shared PCP frequencies, and it is simply critical for NABER to know how many ships intend to pass through a particular frequency lane at any given time. Though the FCC may never deny an application for additional paging units, NABER routinely decides whether one frequency is more congested than another before acting on

applications before it. That is the essence of informed coordination decision making.

The FCC has delegated this critical coordination responsibility to NABER -- it must then give NABER all the tools and authority necessary to accomplish that task. For PCP licensees, it simply makes more sense for NABER to maintain this annual paging count, than it does for the FCC. Of course, NABER would be expected to share that information with the FCC as often as the Commission deems necessary.

C. Routine Compliance.

If the FCC has a particular need to "count pagers" on more than an annual basis, NABER already has the capability of providing that information to the FCC without additional financial and paperwork burdens to licensees. PCP licensees are well aware that the frequency coordinator can and routinely does request applicants and licensees to provide current pager count information during the coordination process. See, e.g., Teletech, Inc., 4 FCC Rcd. 4058, 4059, n.8 (citing 47 C.F.R. § 90.175(a) which provides that coordinators "may consider all factors which may serve to mitigate potential interference"). That information presumably becomes a permanent part of NABER's data base.

Perhaps several years ago NABER could not command the necessary cooperation from licensees to obtain this "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, else they risk having to share an already overcrowded frequency with a new licensee.

With the active cooperation of the PCP industry, NABER has developed a rigorous set of "guidelines" to be used in the PCP coordination process. Those guidelines include requesting pager count information, as well as the type of pager, from licensed PCP operators in response to certain applications. The FCC's rules quite clearly authorize the frequency coordinator to request this 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). The annual report to NABER would simply help NABER "fill in the gaps" in its database for those particular channels that have not received coordination activity in the prior year.

NABER's pro-active coordination guidelines and efforts seem to be working. Also, the PCP industry has evidently grown at an enormous rate. It makes no sense at this juncture of the PCP industry to replace one unnecessary regulatory burden with another. The 35% modification proposal is unnecessary and costly; while an annual report and routine data-base management by NABER would be useful and economical.

**V. Signalling Standards for Paging Systems.**

The Notice requests comments on whether the FCC should adopt "channel occupancy standards" to help measure actual airtime usage

on a given channel based on both the number of units in service and the type of unit in service. Notice at ¶ 24. The FCC also wants comments on whether it should mandate a "median" or "average" transmission length. Notice at ¶¶ 24-25.

Once again, it would be useful to know why the FCC suddenly needs this information. It has been Celpage's and many other licensees's experience in the recent past that the FCC has granted applications for new PCP licenses on already congested frequencies regardless of airtime usage or "traffic studies." If that policy is now subject to change, it would be useful for commenting parties to know.

With regard to the "channel occupancy standard," this is the type of information that NABER already requests from licensees when making coordination recommendations. Thus, NABER's proposed annual report would contain this information, for whatever use the FCC may make of it.

In regard to regulating transmission times, this is a subject that deserves careful consideration and practical suggestions. Many PCP licensees would be willing and able to share a frequency with another efficient, digital paging system. Nevertheless, if that licensee is forced to share a frequency with an inefficient, tone and voice paging service, there will be problems: degradation of service, paging delays, and harm to investment are inevitable when inefficient tone & voice systems share a frequency with efficient digital systems.

That is not to suggest that the FCC should outlaw tone and

voice paging: some customers may want this service. The beauty of PCP service is its ability to provide individualized service to a variety of different customers and different needs. Finding fair means to accommodate these different services, however, is a difficult task that may be beyond the limited scope of this Notice.

NABER recently suggested to the FCC, in a petition for rulemaking, means by which disparate PCP systems could be required to cooperate to resolve co-channel interference problems. See Amendment of Part 90.173 of the Rules, RM-7837, Order (February 24, 1992). The FCC "declined to formalize or amplify" NABER's proposals for helping to resolve interference conflicts. Id. Celpage fails to understand how that issue -- interference reduction and avoidance -- can logically be separated from the issue of "capping" airtime usage of shared PCP channels.

PCP licensees who share a popular frequency, such as the 152.480 MHZ frequency, employ a variety of methods to minimize harmful interference, including voluntary limits on airtime usage. But, airtime limits alone will not eliminate shared channel interference problems. Some of the standard methods employed to eliminate co-channel interference were addressed in NABER's RM-7837 Petition: they warrant further consideration.

It makes little practical sense to look at one issue, airtime usage, without addressing the more fundamental problem: shared channel interference. If the FCC wants to address the airtime issue, it ought to do so in the broader context of finding ways to minimize harmful interference to shared PCP systems.

**VI. Direct Access Implications.**

Though the Notice is nominally aimed at "reducing" one or two regulatory burdens, it also suggests adopting additional regulations aimed at furthering the public interest. It is fair and reasonable, then, to consider this Notice in the broader context of other proposals now pending before the Commission, in particular, the Direct Access proposal.

Celpage and many other PCP licensees have respectfully opposed the Commission's "Direct Access" rulemaking proceeding in PR Docket No. 88-54. Celpage has pointed out that if the Commission allows submission of Direct Access applications, that is, applications submitted without prior frequency coordinator approval, it is inevitable that "coordinated" applications will cross with non-coordinated, "Direct Access" applications. As the Commission noted in another proceeding: "Such a situation could undermine public perceptions of the frequency coordination process and the fairness of our licensing procedures." Amendment of Part 90 of the Rules, RM-6910, Notice, at para. 13.

The subject Notice highlights additional problems with the Direct Access proposal. The FCC has expressed concern in the Notice with maintaining an accurate data base; yet, under the Direct Access proposal, two different entities would be counting paging units, NABER and the FCC. With new applications arriving at each location every day, their respective data bases would never be reconciled.

On the other hand, without Direct Access, if NABER is allowed

to maintain an accurate data base at no cost to licensees, and if the FCC and the industry can work together to adopt sound, economical means of reducing interference on shared systems, then, Direct Access applications would be unnecessary and unsound.

CONCLUSION

FOR ALL THE FOREGOING REASONS, Celpage supports the proposal to eliminate the 50 Pager Rule, it supports NABER's annual report recommendation, and it encourages the FCC to reconsider ideas for resolving interference conflicts on shared private land mobile systems.

Respectfully submitted,  
CELPAGE, INC.

By: \_\_\_\_\_  
Frederick M. Joyce  
Its Counsel

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Date: June 26, 1992

**CERTIFICATE OF SERVICE**

I, Frederick M. Joyce, Esq., do hereby certify that on this 26th day of June, 1992, copies of the foregoing Comments of Celpage, Inc. were mailed, postage prepaid, to the following:

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