

**ORIGINAL  
FILE**

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

**RECEIVED**

**JUL 23 1992**

Federal Communications Commission  
Office of the Secretary

In the Matter of: )  
)  
Amendment of Section 90.75(c)(10) ) **RM-8017**  
of the Commission's Rules and )  
Regulations to Permit Private )  
Carrier Paging Licensees )  
to Provide Service to Individuals )

**COMMENTS OF PAGEMART, INC.**

PageMart, Inc. ("PageMart"), by its attorneys, hereby submits these comments in support of the captioned petition for rulemaking submitted by the Association for Private Carrier Paging Section of the National Business and Educational Radio, Inc. ("NABER").<sup>1</sup>

**INTRODUCTION AND SUMMARY**

The NABER petition seeks relaxation of the eligibility restrictions imposed on private carrier paging ("PCP") operators, which are limited by Section 90.75(c)(10) of the Commission's Rules<sup>2</sup> principally to providing service to "business eligibles." This change is both long-overdue and necessary. The eligibility restrictions no longer serve any useful regulatory purpose in private paging, but instead have produced anticompetitive abuses, inefficient distribution and a "chilling effect" on the provision of authorized business radio services. The eligibility restrictions

<sup>1</sup> Petition for Rule Making of the Association of Private Carrier Paging of the National Association of Business and Educational Radio, Inc., RM-8107 (June 4, 1992). By Public Notice released June 23, 1992 (Rep. No. 1897), the Commission requested comments on the NABER Petition within 30 days.

<sup>2</sup> 47 C.F.R. § 90.75(c)(10).

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impede competition and deter the full utilization of Part 90 spectrum, consequences that Congress has directed the Commission to avoid and upon which the Commission itself based relaxation of eligibility requirements for Specialized Mobile Radio ("SMR") providers in 1988.<sup>3</sup>

No reasonable policy or factual basis supports the continued imposition of eligibility restrictions on PCP operators in light of the Commission's SMR Eligibility Order; indeed, the Commission's rulemaking obligations under the Administrative Procedure Act *require* the parallel relaxation of eligibility for private paging unless there are compelling reasons why the policies established for SMR operators should not apply. The reason offered by the Commission in 1991—that there has been no demonstration of "need" for relaxed eligibility—is thus incorrect as a matter of law and fact. The burden is not on private pagers to show any need for serving individuals, but rather on the Commission to explain why the policies developed for SMR eligibility are not "equally applicable" to PCP systems. And in any event, private paging operators have a critical competitive need to provide service to non-business individuals in order to meet rapidly changing marketplace demands in the expanding paging business.

**I THE BUSINESS ELIGIBILITY RESTRICTION SERVES NO VALID REGULATORY PURPOSE AND HAS LED TO ANTICOMPETITIVE ABUSES AND A "CHILLING EFFECT" ON PROVISION OF AUTHORIZED PRIVATE CARRIER PAGING SERVICES**

The Commission's private land mobile radio rules essentially limit private carrier paging operators to providing service to "persons primarily engaged in . . . [t]he operation of a commercial activity."<sup>4</sup> Licensees are "directly re-

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<sup>3</sup> Amendment of Part 90, Subparts M and S, of the Commission's Rules, Report and Order, 3 FCC Rcd. 1838 (1988) ("SMR Eligibility Order").

<sup>4</sup> Section 90.75(a). Private carrier paging operators are in addition permitted to serve public safety, specialized emergency, industrial and land transportation radio eligibles under Subparts

sponsible" to "exercise such direction and control as is necessary" to assure that services are used only by eligible persons.<sup>5</sup> The Rules do not limit (or specify) the types of business activities or the nature of the commercial function required to support eligibility, and the Commission has clarified that "individuals who need pagers for business purposes . . . are eligible in their own right under current rules."<sup>6</sup>

The Part 90 eligibility limitations developed, over time, as a patchwork of specific allocations established in response to the individualized communications requirements of distinct user groups.<sup>7</sup> With the authorization of commercial operations and interservice sharing in Part 90 frequencies, however, the Commission responded in the 1970s in an innovative way to the need for introducing private land mobile radio services "to a broader potential range of users"<sup>8</sup> and for promoting increased spectrum efficiency in Part 90 operations. The original eligibility purpose of "meeting specialized user requirements" has thus largely given way to the more practical requirement of accommodating a "rapidly increasing number of licensees" and minimizing regulatory burdens on private carriers.<sup>9</sup> Indeed, Congress has directed the Commission to base its Part 90 spectrum management decisions on the goals of reducing regulatory burdens and encouraging competition, and has specifically codified the Commission's broad authority to

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B, C, D and E of Part 90 of the Commission's Rules. Section 90.57(c)(10).

<sup>5</sup> Section 90.403(a).

<sup>6</sup> Amendment of Part 90 of the Commission's Rules to Expand Eligibility and Shared Use Criteria for Private Land Mobile Frequencies, Report and Order, 6 FCC Rcd. 542, ¶ 15 n.21 (1991) ("PCP Eligibility Order").

<sup>7</sup> Amendment of Part 90 of the Commission's Rules to Expand Eligibility and Shared Use Criteria for Private Land Mobile Frequencies, Notice of Proposed Rulemaking, 4 FCC Rcd. 2589 (1989) ("PCP Eligibility NPRM").

<sup>8</sup> Id., ¶¶ 4-7.

<sup>9</sup> Id.

modify private radio services in order to make them “accessible to the largest feasible number of users.”<sup>10</sup>

Against this background, there is simply no regulatory purpose served by continuing to restrict commercial PCP operations to serving “business eligibles” under Section 90.75(c)(10). To the contrary, the existence and inherent ambiguity of this “business purpose” limitation have produced untoward, anticompetitive and spectrum-inefficient consequences which can be rectified only by relaxing PCP eligibility to permit service to non-business eligibles.

First, the vagueness of the “business purpose” requirement has caused a “chilling effect” on the provision of PCP services to *authorized* eligible users. Determining whether specific users have a bona fide business justification for private paging services necessitates the use of burdensome and intrusive compliance procedures. The requirement that licensees undertake “direction and control” to ensure user eligibility has deterred many PCP operators, including PageMart, from offering and promoting service to users who may be eligible under the Commission’s clarification that “individuals who need pagers for business purposes” are authorized users. For instance, working parents and sole practitioners whose “primary”—but perhaps not exclusive—use of the service is business-related do qualify as business radio service users, but incidental non-business use could create a gray area within the “business purpose” limitation.<sup>11</sup>

The practical difficulties associated with implementing acceptable compliance techniques have similarly prevented PCP operators from utilizing widespread distribution channels for private paging equipment. Many retailers, both specialized communications dealers and mass-market retailing chains, have

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<sup>10</sup> 47 U.S.C. § 332(a)(4); see SMR Eligibility Order, ¶¶ 24-25.

<sup>11</sup> See Petition at 7.

opted not to carry PCP products in order not to preclude selling to any potential customer. This self-restraint means that eligible business paging users have reduced market opportunities to purchase PCP services and that PCP operators have more limited distribution channels to offer authorized commercial services. Indeed, retail mass market distribution of paging equipment is a growing and increasingly dominant portion of paging sales (e.g., Motorola's Lifestyle and Express pagers).<sup>12</sup> PageMart has found that many nationally known mass merchandising chains are unwilling to offer paging products which cannot be sold to the entire potential market and which, unlike PageMart's common carrier paging competition, require a unique form of compliance review/certification by potential customers.<sup>13</sup> Thus, one of the principal market effects of the business eligibility limitation is to place PCP operators at a dramatic competitive disadvantage in serving mass-market retailers at the very time that these forms of distribution are becoming crucial to marketing of paging equipment and services.

A second and related competitive effect of the "business purpose" limitation has been that Part 22 common carrier paging operators have used and increasingly are asserting the eligibility restrictions in an anticompetitive manner.<sup>14</sup> Common carriers have repeatedly threatened, both formally and informally, to institute proceedings against their PCP competitors seeking sanctions for violation of the eligibility restrictions. Indeed, common carriers have aggressively used the existence and ambiguity of the eligibility limitations in their marketing efforts in ways that border on outright misrepresentation, for instance by

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<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> This hesitancy exists even though, as most market surveys show, the vast bulk of users for paging services have a business-related reason for purchasing paging equipment. The potential costs and competitive disadvantages associated with an inability to serve a currently small segment of the market (non-business individuals) effectively precludes mass-market distribution even though the total dollar volume involved is relatively small.

<sup>14</sup> *See* Petition at 7-8.

publicly distributing opinions of counsel to the effect that the FCC "expects the general public to take service from common carrier paging companies" in "congested urban areas."<sup>15</sup> As the paging market continues its transition from equipment rental to pager sales—with purchased equipment estimated to reach 50% of total paging units in the next several years—the ability of common carrier paging operators to exploit and distort the eligibility limitations in order to impede competition will increase geometrically.

Third, the business purposes restriction will increasingly limit both competition and efficient spectrum utilization over time. The difficulties associated with accessing mass-market distribution outlets and the increased compliance costs associated with PCP operations will effectively relegate private paging carriers to utilizing outmoded direct sales methods of distribution which require a large and costly sales force. This present and future inability of PCP operators to access the entire potential paging market has undermined full utilization of PCP frequencies (929 MHz) and slowed carrier migration to the 929 MHz band. In contrast, as noted below, common carrier paging spectrum is already allocated in most of the top markets, making the current nationwide Part 22 carriers the only realistic service option for non-business individual users. Absent relaxation of the PCP eligibility restrictions, therefore, the Commission will face a period of rapid growth in paging demand with a market structure preventing full utilization of spectrum available to serve nationwide, regional and local markets.<sup>16</sup>

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<sup>15</sup> An example of such an opinion letter, distributed by a common carrier paging operator (waiving any attorney/client privilege) in its sales efforts to a retailer, is Attachment 1 to these Comments.

<sup>16</sup> PCP operators such as PageMart have offered innovative, flexible and low-cost service options for business eligible paging customers, including adjustable local services which do not require equipment modification or replacement, that are unavailable from common carrier paging systems. See Section III below.

## **II. RETENTION OF PCP ELIGIBILITY RESTRICTIONS CANNOT BE HARMONIZED WITH SECTION 332 OF THE ACT OR THE COMMISSION'S 1988 SMR ELIGIBILITY ORDER**

Section 332 of the Communications Act, added by the 1982 amendments to the Act passed by Congress, explicitly directs the Commission to promote a number of important policies in its spectrum management actions for private mobile radio services: improving service "efficiency," reducing "regulatory burdens," encouraging "competition" and providing services "to the largest feasible number of users." 47 U.S.C. § 332(a)(1)-(4). Private carriers are authorized to provide service "indiscriminately" on a "commercial basis" without classification as a common carrier unless interconnected with the public telephone network. *Id.* § 332(c)(1)-(2). As the Commission concluded in 1988, Section 332 gives it the power to remove eligibility restrictions for private radio services which "do not resell the exchange services or facilities of a common carrier for profit" without in any way affecting their status as private carriers under the Act.<sup>17</sup>

As discussed above and as addressed in the NABER petition, relaxation of the eligibility rules for private carrier paging will promote spectrum and market efficiency, eliminate costly and ambiguous regulatory burdens, and encourage effective competition for paging services. These are the precise statutory goals articulated by Congress and the very same reasons upon which the Commission in 1988 removed Part 90 eligibility limitations for SMR operators, allowing SMR services to be offered commercially to individual users.<sup>18</sup> Indeed, the Commission stressed that relaxing eligibility requirements for specialized mobile radio was

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<sup>17</sup> See Amendment of Part 90, Subparts M and S, of the Commission's Rules, Report and Order on Reconsideration, 4 FCC Rcd. 1356 (1989) ("SMR Reconsideration Order").

<sup>18</sup> Amendment of Part 90, Subparts M and S, of the Commission's Rules, Notice of Proposed Rulemaking, 1 FCC Rcd. 809, ¶¶ 80-92 (1986) ("SMR Eligibility NPRM"); SMR Eligibility Order, ¶¶ 29-35.

warranted because “[o]ur current exclusion of individuals from SMR systems places SMR licensees at a competitive disadvantage relative to common carriers, which can serve a broader class of prospective customers.”<sup>19</sup> Nothing less is true of PCP operators, for whom the legal and practical inability of serving “a broader class of customers” is rapidly becoming a critical competitive disadvantage.

The relief requested by NABER in this proceeding therefore meets the statutory standards laid down by Congress and is prima facie warranted. PCP operators merit relaxation of Part 90 eligibility limitations in order to serve individual users and compete against common carrier pagers for the same technical, market and policy reasons for which the Commission lifted eligibility requirements for SMR systems in 1988. Just as the FCC rejected arguments that maintaining eligibility restrictions was needed to preserve a “distinction” between private and common carriage in the SMR Eligibility Order,<sup>20</sup> continued retention of PCP eligibility restrictions cannot be justified on the ground that their elimination would blur the regulatory distinction between common carrier and private paging. Similarly, just as the FCC rejected arguments that increased demand associated with serving individual users would make SMR service less available for current frequency users, continued retention of PCP eligibility restrictions cannot be justified on the ground that their elimination would impair frequency “set aside” for business eligibles and licensees.<sup>21</sup>

The Commission preliminarily addressed some of these issues in 1989, when it proposed relaxing PCP eligibility in order to permit service to the federal government and individual users. There, the Commission correctly reasoned that

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<sup>19</sup> SMR Eligibility NPRM, ¶ 85.

<sup>20</sup> SMR Eligibility Order, ¶ 25.

<sup>21</sup> SMR Eligibility Order, ¶¶ 29-30.

relaxation was "an outgrowth" of its previous decision on SMR eligibility and that the "policy considerations" developed for SMR eligibility "are equally applicable" to PCP operations.<sup>22</sup> In its later 1991 Report and Order in Docket No. 89-45, however, the FCC inexplicably concluded that PCP service to individuals was not warranted because "individuals do not generally have communications needs that cannot be satisfied with existing options," and because private carriers had not demonstrated a "need among individuals for private carrier service."<sup>23</sup>

The Commission's 1991 rejection of expanded PCP eligibility was premised on an invalid legal standard. There can be no dispute that the policies underlying relaxation of SMR eligibility are "equally applicable" to PCP eligibility and totally consistent with (if not absolutely compelled by) the Congressionally mandated criteria in Section 332 of the Communications Act. Therefore, the Commission's obligation under settled principles of administrative rulemaking is to articulate a rational, record-based reason for applying a different rule to PCP operators which is consistent with the statutory standards. Where the Commission proposes to change its policies, it is well-established that it must, of course, provide "reasoned analysis indicating that prior policies are being deliberately changed and not casually ignored." Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1971). The 1991 PCP Eligibility Order provides no such analysis; continuation of eligibility limitations in the face of both the 1988 SMR decision and the present record is contingent on the Commission now developing some policy justifications, absent from Docket 89-45, on which to base a decision to apply different eligibility rules to SMR and PCP services.

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<sup>22</sup> PCP Eligibility NPRM, ¶ 17.

<sup>23</sup> PCP Eligibility Order, ¶ 15. In a footnote, the Commission rejected PageMart's comments on this issue, purportedly on the ground that "all" service options "are currently available to individuals through common carrier systems." Id. at n.21. As explained in the text, this is both incorrect and irrelevant.

Even more significantly, the articulated basis for the Commission's 1991 decision on PCP eligibility is fatally flawed. The Commission required no showing of "need" from SMR operators in expanding their eligibility to serve individual users, and expressly rejected arguments on reconsideration that eligibility restrictions were necessary because there were "other options" available to individual users from common carriers.<sup>24</sup> Thus, the Commission cannot legitimately conclude (as it did in 1991) that PCP operators bear any burden of demonstrating a "need" for individual user services or that relaxation of PCP eligibility can be denied on the ground that individuals can already obtain service or service options from Part 22 common carrier paging systems. The Commission has already (and properly) rejected these positions, and under the Administrative Procedure Act it is the Commission—not PCP operators—which bears the heavy burden of demonstrating that a reversal of its settled policies is required. E.g., Motor Vehicles Manufacturers Association v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 41 (1983).

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<sup>24</sup> SMR Reconsideration Order, ¶ 16. Indeed, the Commission emphasized that maintaining eligibility limitations on this ground "would not permit SMR systems to serve any existing groups of customers because each of these groups can use a common carrier or operate its own system." Id. The Commission also rejected a "need" test for private carriage operations in Amendment of Subpart C of the Commission's Rules to Permit Commercial Enterprises to be Licensed in the Special Emergency Radio Service, 5 FCC Rcd. 3471, ¶¶ 5-7 (1990).

**III. THERE IS A DEMONSTRABLE AND IMMEDIATE NEED FOR EXPANDED ELIGIBILITY FOR PCP SERVICES IN ORDER TO PROVIDE FLEXIBLE AND COST-EFFECTIVE PAGING SERVICES TO INDIVIDUALS**

In any event, without regard to the legal considerations underlying the present issue, there is a demonstrable and immediate need for expanded eligibility for PCP services. Not only do private paging carriers offer users service options and pricing structures unavailable from other sources, but the growth and increasing mass market commercialization of the paging industry is creating demands for competitive paging alternatives which can only be satisfied by licensees of private paging frequencies. Expanding eligibility would therefore produce the public interest benefits of increased competition, added service options and lower prices which the Commission has consistently sought to encourage throughout the telecommunications industry.

There are at least five, separate needs supporting expansion of PCP eligibility to include non-business individuals:

1. Service and Pricing Options. Part 22 common carrier paging services are presently offered by three carriers on a nationwide and regional basis. In contrast, PageMart offers adjustable services, under which a user can customize local, regional and nationwide services on a single pager. For the major Part 22 carriers, users desiring local services must exchange their receivers or modify (recrystalize) their equipment for use on specific local frequencies, a time-consuming and expensive process. Moreover, the additional flexibility offered by PCP carriers allows immediate consumer needs to be satisfied. For instance, PageMart's system architecture allows it to offer an "add-a-city" local option under which additional local coverage can be added at only \$4.00 per city—a service feature unavailable from any of the Part 22 carriers.

PCP operators have also introduced technical developments which allow significantly lower cost structures, and thus service rates, than common carrier paging systems. PageMart pioneered the development of Direct Broadcast Satellite (DBS) control link technology, which results in tremendous operational flexibility and dramatically reduced facilities expense.<sup>25</sup> (PageMart's DBS developments are presently being emulated by several other paging operators). As a result, PCP paging services are priced substantially below the rates of SkyTel and MobileComm, the largest common carrier paging systems. For instance, PageMart offers regional service for \$21 per month and nationwide service for \$34 per month, compared with MobileComm's rates (the lower of the two common carriers) of \$32 and \$49 per month, respectively. (Attachment 2).

2. Part 22 Major Market Constraints. Individual numeric paging customers are now forced to choose between the three nationwide common carrier paging systems because PCP operators are precluded from serving non-business individuals.<sup>26</sup> However, since common carrier frequencies at 900 MHz are already allocated in most of the top markets, there are absolute barriers to entry preventing new common carrier competition for service in the major urban MSAs. At a time of rapid and unparalleled growth in paging services, the Commission must evaluate all potential ways to avoid the capacity constraints impeding satisfaction of escalating consumer demand for paging. PCP carriers have the capacity and are steadily developing the organizational and marketing capability to take on the nationwide Part 22 carriers in direct, head-to-head competition.

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<sup>25</sup> DBS control eliminates the need and cost of line-of-sight terrestrial radio links between the paging transmitter and centralized controller, and allows specific markets or regions to be paged without a full simulcast page throughout the entire system, further reducing operational costs.

<sup>26</sup> Motorola's Embarc system, also operating nationally, specializes in text (alpha-numeric) messaging services.

3. Changing Paging Market Demographics. "[T]he paging industry, whose users were once dominated by doctors and service contractors, is experiencing a wave of rapid growth as a broader audience discovers the convenience and value of paging."<sup>27</sup> Many of these potential consumers (such as child-raising parents) fall outside the recognized boundaries of the "business purpose" limitation, while others (such as working parents) are within the gray area of the rules' present ambiguity. It is unquestioned that a mass consumer market is developing for paging and paging equipment, and that the development of this market will make paging services attractive to an increasingly broader cross-section of the American population, in which non-business users will become increasingly important.<sup>28</sup> Without the ability to compete for this emerging non-business paging market, and while saddled with the costs and burdens associated with complying with an ambiguous eligibility requirement, PCP carriers may face extraordinary competitive hurdles in the immediate future.

4. State-Imposed Entry Barriers. Many states restrict entry for common carrier paging operators, creating protected markets or duopolies in which Part 22 carriers are sheltered from competition.<sup>29</sup> Since the 1982 Communications Act amendments preclude state regulation of private carrier services (Section 332(c)(3)), the Commission can address this unacceptable lack of competition by supporting PCP competition across the full range of potential paging end users.

5. Retail Distribution Efficiencies. The dominance of mass market retailing for paging equipment and services will revolutionize the industry over the next several years. Motorola has estimated that "the retail channel will account for

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<sup>27</sup> "Pagers' Popularity Booming," *HFD*, December 31, 1991, at 92 (Attachment 3).

<sup>28</sup> Other examples of non-business pager uses which are growing in popularity are for keeping in touch with Senior Citizens and school children, both of which will become increasingly important as our population ages and continues its escalating mobility and work hours.

<sup>29</sup> See Reply Comments of PageMart, RM-7896, at 5 & n.8 (filed June 25, 1992).

30 to 40 percent of the [paging] market within five years," and designed its colorful Bravo Express line of paging equipment specifically to capitalize on the retail sales boom in paging equipment.<sup>30</sup> MobileComm agrees that "[t]he pager industry is now moving more toward retail sales," and estimates that retail sales will account for 20 percent of its business this year.<sup>31</sup> NEC "conservatively" estimates that over the next four years 50 percent of all pagers will be sold in office supply/business stores, electronic superstores and mass merchants.<sup>32</sup>

The eligibility restrictions make it extremely difficult, and frequently altogether impossible, for PCP operators to compete for retail pager sales. Aside from the cost and burden of compliance requirements, the essence of mass merchandising is selling product to the public at large, which in practical terms disqualifies PCP services from many outlets regardless of the relative size of the non-business market. If PCP operators are kept excluded from mass market retail outlets, however, the economic underpinnings of private carrier paging may be threatened. It will be difficult to attract the massive capital investment required for construction of PCP systems if PCP operators are, by regulatory fiat, kept excluded from a retail market which comprises 50% of total pager sales.

In sum, there are many immediate needs which PCP operators can serve in the non-business market and a real competitive basis for expansion of PCP eligibility requirements. PCP operators, which are participating in a critical stage in the development of the paging market, face a critical need for relief from onerous,

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<sup>30</sup> "Pagers' Popularity Booming," HFD, December 31, 1991, at 92 (quoting Motorola's Paging Group U.S. marketing manager).

<sup>31</sup> "Pagers: The Next Big Retail Sale," HFD, December 17, 1991 (quoting MobileComm's director of retail marketing and retail marketing executive)(Attachment 3).

<sup>32</sup> "Pagers' Popularity Booming," HFD, December 31, 1991, at 93 (quoting NEC's manager of market planning).

costly and competitively stifling eligibility restrictions.

CONCLUSION

The Commission should grant the NABER petition and implement NABER's proposal for expanding eligibility for private carrier paging services to include non-business individual users.

Respectfully submitted,

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Dated: July 23, 1992.

**ATTACHMENT 1**

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June 2, 1992

FCC Rules Restricting Public Utilization of  
Private Carrier Paging (PCP) Channels

Dear John,

You have asked our opinion on the limitations which the Federal Communications Commission (FCC) has placed on the use of 900 MHz private carrier paging (PCP) frequencies by the general public. You have expressed concern that certain PCP companies may be marketing service to non-business customers.

After reviewing the relevant rules and policies and discussing the PCP service with the legal staff of the FCC's Private Radio Bureau, we wish to confirm that PCP companies may not lawfully offer service to the public at large; only qualified business or government customers may take service from PCP companies and the service must be related to the customer's business purpose.

As you know, the FCC's rules allocate different paging channels for common and private carrier companies. Common carriers are companies, such as the American Paging group, which hold themselves out for service to the general public. In contrast, private carriers are authorized to serve the private needs of defined groups of users in the business, government or non-profit sector.

A company operating as a common carrier is not eligible to hold an FCC license for a private carrier frequency and vice versa.

The FCC's rules contain several provisions for enforcing this

frequency allocation policy. These provisions include the following:

1. Section 90.494 of the Rules stating that PCP frequencies are "available to all eligible Part 90 users" only. To be an eligible user under Part 90, a user must fall into one of the private service categories stated in the rules. These categories include: public safety organizations (the police); businesses providing emergency assistance (ambulance services, doctors, fire departments); specific industry groups (the electric power industry, forestry companies); and general business users (including educational and non-profit organizations).

2. Various rule provisions stating that private Part 90 licensees are only authorized to use private frequencies "for transmission of communications necessary to [the] activities of the licensee." See eg, Section 90.75. Further, the Rules define a "private carrier" as an "entity authorized to provide communications services to other private services on a commercial basis." See Section 90.7.

3. Sections 90.490 and 90.179 of the rules which provide that a PCP channel must be shared with other eligible private carriers. The sharing requirement is designed to maximize business users' access to the limited number of available PCP channels. The Rules therefore also make every PCP company responsible "for assuring that [its] facility is used only by persons and only for purposes consistent with the requirements of this [Part 90] rule part." See section 90.179 (b).

In view of the foregoing, it is our opinion that PCP companies may not sell service to members of the general public for their personal use. Rather PCP services may only be sold to persons working in an eligible business and the paging service may only be used for communications related to that person's business.

PCP frequencies are already becoming congested in many urban areas and the FCC wishes to make sure that they are used as efficiently as possible by business users. The FCC expects the general public to take service from common carrier paging companies which, in contrast to the PCP companies, are awarded exclusive licenses to operate on dedicated interference-free frequencies wherever they provide service.

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I hope this addresses your concerns and am attaching the relevant portions of the FCC rule provisions referenced above. If you would like us to expand upon any of the points covered above, please let me know.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Gregory Staple".

Gregory Staple

FCC Counsel

American Paging Network Inc.

**ATTACHMENT 2**

# Thanks to advanced satellite technology, we offer you paging choices that are out of this world.

## And prices that aren't.

### Introducing *PageMeUSA*™ — Nationwide Paging Services of PageMart, Inc.

From now on, virtually no matter where you travel, you can be in touch with *PageMeUSA*. You'll be connected by advanced satellite technology to a nationwide network of transmitters that delivers your messages in seconds. And, you'll get the most paging choices at significant savings over other services. So now, being in touch is easier and more affordable.

### You Choose the Service You Need.

*PageMeUSA* gives you the flexibility of customizing your paging service to reach you in the cities you travel to most. Whether it be around town, around the state, to several states or the entire nation, you make the choice.

Plus, you'll have the convenience of choosing a local number, an 800 number or our exclusive Personal 800

CARRIER	PageMart	SkyTel	MobileComm
Local	\$6.95*	N/A	\$17
Additional Cities	add \$4 ea.	N/A	N/A
Regional	\$21	\$38	\$32
Additional Regional	add \$6	N/A	add \$7
Nationwide (1)	\$34	\$54	\$49

(1) Coverage includes most major metropolitan cities and may vary by carrier. Other service plans may be available from each carrier. Prices are for AIRTIME ONLY and do not include cost of pager. \*Cost per month, billed annually. SkyTel is a reg. trademark of MTel Corp. MobileComm is a reg. trademark of Bell South Company. Prices effective 6/18/92

### Compare the Cost.

You save money because you pay only for service in the cities you choose. In fact, *PageMeUSA*'s airtime rate represents a savings of up to 40% over other comparable carriers.

### Own, Not Lease.

One other money-saving advantage *PageMart* sells the latest, state-of-the-art pagers at a price you can



number for access, so you can tailor your service to the needs of the people who need to contact you.

afford. Don't get tied to expensive long-term leasing contracts.

And thanks to *PageMart*'s own national frequency, our pagers operate most everywhere you travel.

### Specialized Services to Fit Your Specific Needs.

*PageMeUSA* offers voice messaging for rapid notification of your messages and other specialized communications services to fit your specific needs. That's why *PageMeUSA* is becoming the paging system of choice.



For more details on the *PageMeUSA*™ program and other *PageMart* communications services call toll free 800-324-7243.

## **PageMart**

**1 - 8 0 0 - 3 2 4 - P A G E**

**ATTACHMENT 3**

# Electronics Report Mobile Electronics

## Pagers: The Next Big Retail Sale

Manufacturers, carriers, stores learning to merchandise to a broad base of consumers

By James La Rossa Jr.

It took the advent of sophisticated communications products like cellphones to make the consumer electronics industry notice that one of the best retail sales was right under their noses all along: pagers.

Pagers have become the talk of the mobile electronics industry. They are easy to use, are relatively cheap, and are useful to a wide class of consumers—from expectant fathers being summoned by the hospital to children called home for dinner.

What has really brought the category into the limelight are the efforts that manufacturers, carriers and retailers are making to merchandise pagers to retail consumers.

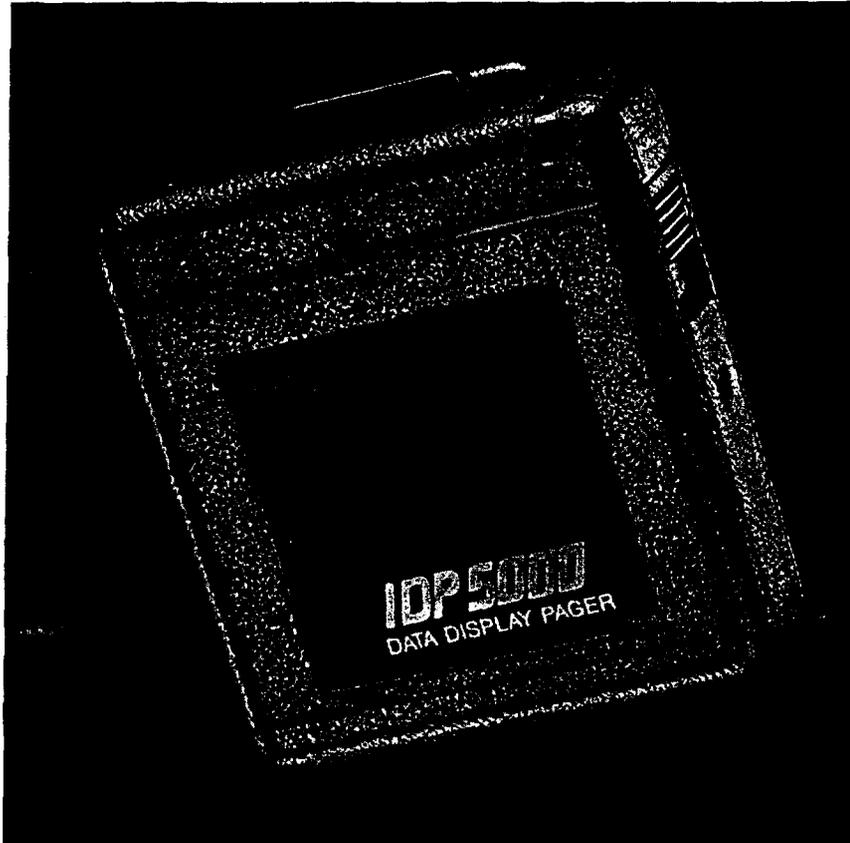
Chains as different as Lechmere, Sound Advice and Al & Ed's Autosound are all getting into pagers.

Michael Blumberg, vice president of the Sound Advice Electronic Centers, notes "There is a definite correlation between pagers and cellphones. Although we haven't sold pagers until now, my rough estimate is that around 30 percent of our phone customers own pagers." Sound Advice is in the process of testing a pager program. "With the new fashion colors, we think we can attract a wide market," Blumberg said.

Pagers are still most popular through business-to-business channels, though Radio Common Carriers like MobileComm, a BellSouth Company, believe that retail sales will account for 20 percent of their business next year, said Mike Lurie, director of retail marketing, MobilComm.

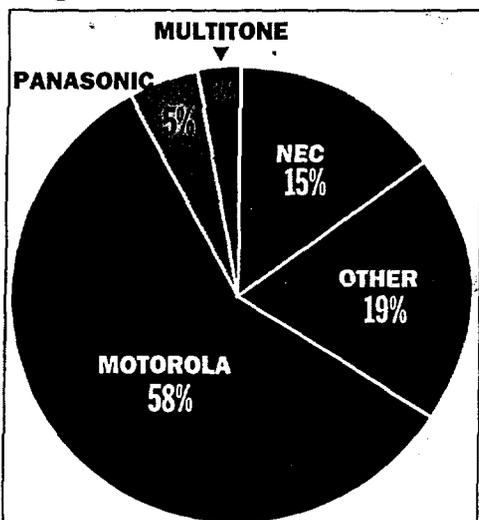
"Pagers have been used cost-effectively by the business community for years," said James Flynn, senior director of marketing, Metromedia Paging, a Southwestern Bell Company. "Consumers today are surprised by how affordable pagers are. Our objective is to make pagers available through convenient retail channels."

According to the North American Telecommunications Association (NATA), which tracks pagers, \$490 million worth of pagers were sold last year, or 3.2 million units. A total of 11.2 million pagers were in use in 1990. NATA projects that sales this year will tip \$500 million, or 4 million units. Thirteen and a half million



An NEC numeric pager

### Pager Market Share Leaders



SOURCE: NORTH AMERICAN TELECOMMUNICATIONS ASSOC.

pagers will be in service in this country, said NATA. "We are seeing the same kind of huge growth in pagers as we did in cellular a few years ago," said Mitchell Wander, NATA market research manager.

While numerous manufacturers are starting to look at pagers as a serious long-term sale, the top few manufacturers still control most of the market (see graph).

NATA research concludes that Motorola still sells the majority of pagers, at 58 percent of the total U.S. market share; NEC 15 percent; Panasonic 5 percent; Multitone (a Springfield, N.J.-based firm) 3 percent; and the remaining 19 percent split among such companies as Uniden, Fujitsu and Ericsson.

Motorola and NEC recently launched aggressive retail campaigns. Motorola's Bravo Express series of pagers, available in eight colors, targets male and female professionals, small business owners, working parents and teens.

According to Motorola, the paging industry, whose users were once dominated by doctors and service contractors, is now experiencing a wave of rapid growth as a different and broader audience is discovering the value and convenience of pagers.

Charles Speights, manager of market planning for NEC America described his company's retail program as a two-tiered strategy—one to promote NEC pagers in stores through merchandising and packaging, and the other to promote the carrier's product and service. Said Speights, "NEC has tailor-made programs to take advantage of the natural explosion taking place in the retail arena."

"The pager industry is now moving more toward retail sales," said Paul Schleissner, retail marketing executive for MobileComm, which recently embarked on a retail program for its line of Uniden and Motorola pagers. "Pagers have not made the retail splash that many people had hoped for because of their business distribution...most consumers don't even know what pagers are."

"Several things have come together all of a sudden," said MobilComm's Lurie. "Cellular phones have made people more aware of wireless technology. Pagers right now are right for retail."

"The cellular phone industry spent the dollars to convince the public they need personal communications. The paging industry wasn't prepared to make that kind of investment," said Robert Picow, president, Allied Communications Inc., a distributor of cellular phones.

Some vendors see similarities between the burgeoning pager market and the fax industry of a few years ago when it first began to make a large impact on the retail scene. "The fax wasn't marketed first to consumers, and look at it today," Lurie commented.

Retailers should worry about selling the pager and let a carrier with a strong retail program worry about servicing the customer after the retail sale, according to several vendors.

Carriers like MobilComm offer retailers point-of-purchase materials, as well as a host of other consumer services like voice mail. MobilComm also spends about \$12 on co-op, per activated pager.

# Electronics Report **Mobile Electronics**

## Pagers' Popularity Booming

Little beepers find way to desks of big retailers and floors of many stores

By James La Rossa Jr.

16 months ago anyone said that pagers would soon evolve as a profitable consumer electronics tool for retail chains, most vendors would have chuckled.

But pager lovers all over America are having the last laugh as suddenly these little beepers are on the desks of many big retailers. And they are showing up on plenty of retail floors as well.

"My Maxon pager is one of the best things I have out there," said Bob Fraser, mobile electronics buyer for ABC Appliance Warehouse.

All is not rosy in the pager industry, as beepers integrated into watches and pen-sized beepers have gotten mixed reviews, analysts said. But, overall, the category is being scrutinized by retailers today like it has never been before.

"Vendors haven't had a new product since CD players," noted Mike Lurie, director of retail marketing, MobilComm, a BellSouth company. "We knew the potential for pagers was out there, but until recently there was no way to do it on a wide scale." Carriers like MobilComm believe that retail sales will account for 20 percent of industry sales in 1992.

Motorola was one of the first companies to recognize how well pagers could sell at retail. Earlier this year, the company launched the Bravo series of pagers—multi-colored, consumer-oriented units meant to attract attention at the store level.

"Our transition from standard black to colorful beepers was developed specifically for retail," said Steve Spiro, U.S. market manager, Motorola Paging Group.

"Colors alert the consumer that these pagers are different, and carriers like it too," Spiro said.

Like NEC and Uniden, Motorola realized that the paging industry, whose users were once dominated by doctors and service contractors, is experiencing a wave of rapid growth as a broader audience discovers the convenience and value of pagers. Spiro estimates that the retail channel will account for 30 to 40 percent of the market in five years.

Motorola's latest introduction, the Bravo Express, is available in eight colors and is the "hottest product we have right now because of its unique shape. Women really like it," Spiro said.

According to the North American Telecommunications Association (NATA), which tracks pagers, \$490 million worth of pagers were sold last year, or 3.2 million units. A total of 11.2 million pagers were in use in 1990. NATA projects that sales this year will top \$500 million, or 4 million units.

Thirteen and a half million pager subscribers will be on-line at year's end. By 1993, NATA projects that pager sales for the year will be \$790 million, or 8.2 million units. By the middle of this decade, 24 million pagers will be in service in this country, said the association.

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### Day in the Sun

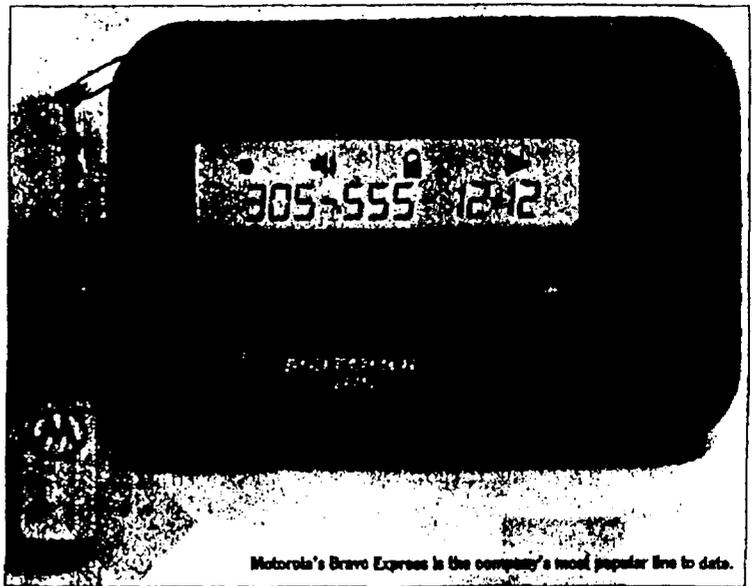
Many people thank cellular phones for giving pagers their day in the sun. Cellphones have gotten a lot of promotion and press in the telecommunications industry and some of that has rubbed off on pagers.

Michael Blumberg, vice president of the Sound Advice Electronic Centers, notes "There is a definite correlation between pagers and cellphones. Although we haven't sold pagers until now, my rough estimate is that around 30 percent of our phone customers own pagers." Sound Advice tested a pager program last autumn. "With the new fashion colors, we think we can attract a wide market," Blumberg said.

"The cellular phone industry spent the dollars to convince the public they need personal communications. The paging industry wasn't prepared to make that kind of investment," said Robert Picow, presi-



Charles Speights, NEC America, Inc.



Motorola's Bravo Express is the company's most popular line to date.

dent of Allied Communications, Inc., a distributor of cellular phones.

"We are seeing the same kind of huge growth in pagers as we did in cellular a few years ago," said Mitchell Winkler, market research manager, North American Telecommunications Association (NATA), which tracks pagers.

What has really brought the category into the limelight are the efforts that manufacturers, carriers and retailers are making to merchandise pagers to retail consumers. Chains as different as Lechmere, Sound Advice and Al & Ed's Autosound are all getting into pagers.

Charles Speights, manager of market planning for NEC America described his company's retail program as a two-tier strategy—one to promote NEC pagers in stores through merchandising and packaging, and another to promote the carrier's product and service. Said Speights, "NEC has tailor-made programs to take advantage of the natural explosion taking place in the retail arena."

Speights estimated that over the next 4 years, 30 percent of all pagers will be sold in office supply/business stores, electronic superstores and mass merchants and "that is a conservative estimate."

### Increased Awareness of Mobility

Consumer awareness of mobile communications has coattailed into an awareness of pagers, according to Speights. "The consumer is saying 'I've got a mobile phone. How can I save money on those bills?' A pager receives messages and then at the

user's discretion, he can return the call, so he doesn't have to have his cellphone on all the time."

"Several things have come together all of a sudden," said MobilComm's Lurie. "Cellular phones have made people more aware of wireless technology. Pagers right now are right for retail."

Some vendors see similarities between the burgeoning pager market and the fax industry of a few years ago when it first began to make a large impact on the retail scene. "The fax wasn't marketed first to consumers and look at it today," Lurie commented.

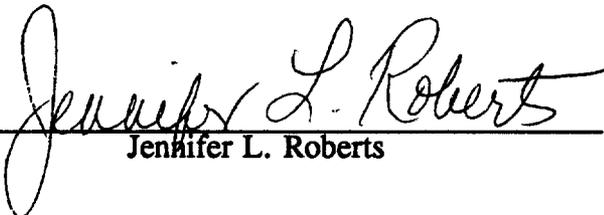
Retailers should worry about selling the pager and let a carrier with a strong retail program worry about servicing the customer after the retail sale, according to vendors. Carriers like MobilComm offer retailers point-of-purchase materials, as well as a host of other consumer services such as voice mail. MobilComm also spends about \$12 on co-op, per activated pager.

One drawback to retail paging sales is that those customers tend to turn off service at a more frequent rate, or jump to other service providers, called churn. Lurie estimated that retail clientele churn 4 to 5 percent per month. "That is for a lot of reasons. Retail attracts college students or occasional users who need the product for short-term use."

Having easy accessibility to pagers is a relatively new phenomenon. According to Motorola's Spiro, "We interview many (See PAGES, page 93)

## CERTIFICATE OF SERVICE

I, Jennifer L. Roberts, do hereby certify on this 23rd day of July, 1992, that I have served a copy of the foregoing **COMMENTS OF PAGEMART, INC.** to the parties listed below via first class mail, postage prepaid, or via hand delivery.

  
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