

REED SMITH SHAW & McCLAY

FAX 202-457-6113  
TELEX NO. 64711

1200 18TH STREET, N.W.  
WASHINGTON, D.C. 20036  
202-457-6100

PITTSBURGH, PA  
PHILADELPHIA, PA  
HARRISBURG, PA  
McLEAN, VA

WRITER'S DIRECT DIAL NUMBER

(202) 457-8627

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July 23, 1992

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

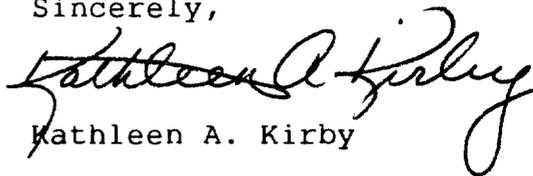
Re: Amendment of the Commission's Rules to Permit  
Private Carrier Paging Licensees to Provide  
Service to Individuals, RM-8017

Dear Ms. Searcy:

Transmitted herewith on behalf of Paging Network, Inc.  
are an original and five (5) copies of its Comments in the above-  
captioned proceeding.

Should any questions arise in connection with this  
filing, kindly contact the undersigned counsel directly,

Sincerely,

  
Kathleen A. Kirby

Enclosures

Enclosures rec'd  
DATE

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

ORIGINAL  
RECEIVED  
JUL 23 1992

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 )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF PAGING NETWORK, INC.  
IN SUPPORT OF PETITION FOR RULEMAKING FILED BY  
THE ASSOCIATION FOR PRIVATE CARRIER PAGING

PAGING NETWORK, INC.

Judith St. Ledger-Roty  
Kathleen A. Kirby

REED SMITH SHAW & McCLAY  
1200 18th Street, N.W.  
Washington, D.C. 20036  
(202) 457-8656

Its Attorneys

Dated: July 23, 1992

## SUMMARY

Paging Network, Inc. ("PageNet") strongly supports the Petition for Rulemaking filed by the Association for Private Carrier Paging ("APCP") to permit private carrier paging providers ("PCPs") licensed on the paging-only channels at 900 MHz to serve individuals. The Commission's exclusion of individuals from its list of eligibles for PCP service is, at this point, more an anachronism than a restriction with a clearly articulated, legitimate purpose.

The Commission's restriction eliminates an option for individuals needing all available land mobile communications alternatives without any countervailing benefit. Moreover, including individuals among PCP eligibles is consistent with Commission policy and Congressional intent to promote the larger and more effective use of radio in the public interest. PageNet believes that permitting PCP providers to service individuals will enhance the public interest by creating additional service options, including specialized pricing and subscription arrangements, and extending the availability of these services to a broader range of eligible end-users. Without the PCP option, non-business consumers will continue to be denied the ever-increasing availability, made possible by revolutions within the paging industry, to secure individually-tailored service arrangements.

Therefore, PageNet urges the Commission to initiate a proceeding proposing to authorize PCP service to individuals expeditiously.

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Provide Service to Individuals )

To: The Commission

**COMMENTS OF PAGING NETWORK, INC.  
IN SUPPORT OF PETITION FOR RULEMAKING FILED BY  
THE ASSOCIATION FOR PRIVATE CARRIER PAGING**

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to Section 1.405 of the Commission's Rules, hereby submits its comments in support of the Petition for Rulemaking ("Petition") filed June 4, 1992 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 90.75(c)(10) of the Commission's Rules to permit private carrier paging providers ("PCPs") licensed on the paging-only channels at 900 MHz to serve individuals. PageNet strongly supports APCP's Petition and urges the Commission to initiate a proceeding proposing to authorize PCP service to individuals expeditiously.

PageNet is the largest and fastest growing paging company in the United States, providing paging services through both PCP and common carrier systems nationwide. PageNet is a

member of APCP and participated in the discussions which led to APCP's Petition.

PageNet has a longstanding commitment to offer state of the art paging services to businesses and individuals at the lowest possible cost. PageNet believes that permitting PCP providers to service individuals will facilitate this goal and enhance the public interest by creating additional communications service options, including specialized pricing and subscription arrangements, and extending the availability of these services to a broader range of eligible end-users. Without the PCP option, non-business consumers will continue to be denied the ever-increasing ability to secure individually-tailored service arrangements.

#### I. BACKGROUND

Under the Commission's Rules, PCPs are permitted to serve only those customers who qualify as eligible users as stated in Part 90. See generally 47 C.F.R. § 90.75. Presently, the Commission's rules prohibit PCPs from serving "individuals," that is, customers with no legitimate commercial purpose for paging service.<sup>1</sup>

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<sup>1</sup> APCP's Petition also raises the application of the permissible communications rules under Section 90.405(a)(2). PageNet agrees with APCP's contention that the Commission's Rules regarding permissible communications do not apply to PCP systems. These rules restricts permissible communications to those which make the licensee eligible for us of its authorizations. However, PCP licensees generally do not use their own systems; they are required to serve only those users eligible in the private land mobile radio

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While the Commission's rules currently do not provide for PCP service to individuals, expanding the PCP eligibility criteria to include individuals is consistent with Commission policy. In fact, in the rulemaking proceeding that gave birth to PCPs, the Commission stated that PCP service was intended to provide customers with "the benefit of having several paging service options available to satisfy their individualized service needs." Second Report and Order, Docket 80-183, 91 F.C.C.2d 1214, 1222 (1982) ("One-Way Paging Order"). The Commission expressly recognized the distinct benefit to users of individually-tailored PCP services. Moreover, Congress, through the Communications Act, has expressed its desire that private radio services be accessible to the "largest feasible number of users." See 47 U.S.C. § 331(a)(3).

In 1991, the Commission amended its rules to expand eligibility and shared use criteria for Private Land Mobile frequencies. See Report and Order, PR Docket 89-45, 68 RR 2d 1069 (1991) ("Eligibility Order"). The Commission declined to expand eligibility to individuals based on the record in that proceeding, indicating that there appeared to be no need among individuals for private carrier service. Id. at 1073. However, as described more fully below, the paging industry has changed exponentially since the adoption of the Commission's Eligibility Order. APCP has now provided an adequate record to warrant the expansion of

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services. See Paging Operations, 91 F.C.C.2d 1214, 1224 (1982). Thus, the rule has no direct application to PCP licensees.

the Commission's eligibility requirements. Therefore, PageNet believes that a modification to the Commission's eligibility requirements for PCP end-users is now warranted.

## II. DISCUSSION

### A. The Commission Has Not Articulated Any Rational Basis for Excluding Individuals from PCP Service Offerings

The Commission's exclusion of individuals from its list of eligibles for PCP service is, at this point, more an anachronism than a restriction with a clearly articulated, legitimate purpose. The various eligibility categories under Part 90 of the Commission's Rules developed over time in response to needs that were identified by different groups of radio communications users. See Specialized Mobile Radio Services, 64 RR 2d 1042, 1045 (1988) ("SMR"). Each group identified unique communications needs necessary to promote efficiency of operations. See Multiple Licensing - Safety and Special Radio Services, 24 F.C.C.2d 510, 519 n.2 (1970). Regardless of the type of entity, the radio communications facilities authorized under Part 90 were intended primarily to serve the individual needs of the licensee. SMR, 64 RR 2d at 1045. In defining "eligibles," the Commission considered the compatibility of service offerings as well as the needs of traditional private radio users, and attempted to preserve adequate spectrum to meet the needs of those users. Id.

However, licensees, such as PCP providers, have become expert at maximizing spectrum utilization and serving more users

more efficiently. Given today's paging market, the threat of spectrum shortages for traditional private radio users is not a concern. Indeed, PCP services can be analogized to the SMR services where the Commission recognized that expanding the class of SMR eligibles to include individuals would in no way displace traditional users, but would, in fact maximize spectral efficiency. Id. at 1047.

Thus, at this stage, PageNet can think of no rational basis for excluding individuals from PCP service. To the contrary, including individuals in the list of PCP eligible seems entirely consistent with Commission policy and Congressional intent. To date, the only reason the Commission has given for not expanding PCP service to individuals is the lack of an adequate record establishing the need for such an expansion. See Eligibility Order, 68 RR 2d at 1073. However, as described more fully below, the evolution of the paging industry has created an abundance of options that are presently denied individuals.

The Commission has expressly recognized that while the Communications Amendments Act of 1982 refers to "eligible users" in its definition of "private land mobile service," see 47 U.S.C. § 153(gg), 332(c)(1) and 332(c)(2), it does not define or limit eligible users. Congress clearly expected the Commission to expand the class of eligible users consistent with the public interest. As the Commission's restriction eliminates an option for individuals needing all available land mobile communications alternatives without any countervailing benefit, PageNet believes that the public interest warrants such an expansion at this time.

**B. Expanding the Eligibility Requirements Will Facilitate the Commission's Goal of Providing the Greatest Number of Communications Services to the Largest Feasible Number of End-Users**

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The mobile communications industry has made great strides in recent years. Consumer demand for paging services has skyrocketed, and paging companies have responded by engaging in new means to make equipment and services readily available to a wider number of consumers at an affordable price. Moreover, competition among paging companies is forcing providers to serve niche markets.

On the private side, however, paging operators are being unduly restrained from developing and competing in the market for paging services, and it is consumers who are suffering. The Commission's eligibility restrictions are preventing consumers from obtaining the best possible service to meet their individualized needs for several reasons: first, because PCP providers, who, unlike common carriers, can make specialized, unique arrangements designed to meet individualized needs, are prohibited from providing service to ineligibles, and second because, in reality, the rules foster anticompetitive behavior whose "chilling" effect results in the denial of service to eligible users.

1. Expanding Eligibility Criteria Will Allow PCP Providers to Satisfy the Unmet Needs of Individuals

Precluding private radio service to individuals seems a contradiction in terms. Individuals represent a larger number of paging subscribers than ever before. Currently, ten percent of all paging subscribers are non-business users, and that number is constantly growing.<sup>2</sup> Yet, under the Commission's present rules, PCPs are prohibited from meeting the personal communications needs of this significant market segment.

Demand for paging services has increased dramatically, competition has become fierce, and frequencies more and more scarce. As a result, paging operators gain a competitive edge by filling individual market niches, and maximizing efficiencies on PCP as well as RCC frequencies. The individual consumer should be able to reap the resulting benefits of increased choice, ready availability, specialized services and pricing arrangements. But, as the Commission's restrictions do not allow individuals to choose from among PCP as well as RCC services, individual consumers are denied many of these benefits.

For example, in response to consumer demand, the manner in which PCP operators market and sell mobile communications equipment and services has changed. Until recently, the majority of pagers were leased from paging company offices. Now, as consumers demand ready availability, PCP operators are engaging in new marketing techniques -- pagers are being offered both by

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<sup>2</sup> See "Meet the Beeper People," Washington Post Home Section, July 16, 1992 at 9.

specialty and multi-purpose outlets and through a variety of resellers. Consumers can become paging subscribers simply by making a purchase at their nearby K-Mart.

Thus, potential subscribers may now be offered unprecedented convenience. The ease of purchasing a pager at a retail outlet would be particularly attractive to individuals and small business owners, yet it is these consumers who would or possibly could be denied this expedience. It is a practical nightmare for retailers to operate under the Commission's restrictions, because of the difficulty in distinguishing between individuals who are purchasing pagers for a business purpose and those who are not.

It is, therefore, vitally important to the consumer to allow PCPs to enter the market for individual subscribers. PCPs may represent much needed competition in a market that is otherwise closed to new entrants because of RCC frequency shortages or state entry restrictions. In addition, PCPs may provide individually-tailored services not offered by the RCCs. Consumers are finding more and more personal applications for pagers in conducting the business of their everyday lives, be it keeping track of pre-schoolers or monitoring a pregnancy. However, RCCs, by virtue of their common carrier status, may not be able or permitted to meet personalized requirements of certain customers, and these individual needs go unmet. There is no reason, however, why these personal services cannot be offered on a private carrier basis. Indeed, PCPs by definition are best able to meet the needs of niche subscribers.

Moreover, the means in which paging services are distributed have multiplied. Expanded means of distribution itself results in specialized options. Because of this revolution within the paging industry, business consumers are able to customize pricing and subscription arrangements to meet their specialized needs. However, individuals cannot take advantage of the competitive benefits that result when a specialty shop runs a sale or differentiates prices for its paging services in response to its competitor across the street. There is no reason that non-business users should be denied these significant benefits -- the only thing precluding these individuals from having the same choices is the Commission's outdated restriction.

An expansion of the Commission's eligibility criteria to include individuals will remedy this situation and ensure that the largest feasible number of end-users will be provided with paging services that suit their personal needs at an affordable price. Moreover, such an expansion is consistent with both Commission policy and Congress' intent as expressed in the legislative history of the Communications Act.

**2. The Commission's Current Eligibility Restrictions Foster Anticompetitive Behavior Which Prevents Eligible End-Users from Receiving PCP Service**

While the trend toward using varied means to distribute PCP services and equipment represents desirable ready access for end-users, the Commission's restriction is keeping PCPs from maximizing the potential of these distribution means. Not only

are ineligible individuals unable to take advantage of a variety of pricing and subscription arrangements, but consumers who are eligible to receive PCP service under the Commission's rules may also be denied access to that service. This anomaly results because PCP providers are faced with significant disincentives to provide service to certain end-users.

Specifically, PCP providers utilizing resellers have little control over which customers actually use their systems. Resellers may breach agreements not to sell to ineligible users, or purchasers may falsify that they meet eligibility requirements. Yet, PCP licensees remain solely responsible for complying with the Commission's restrictions on user eligibility.

Thus, while resale promotes the public interest by making pagers increasingly available to end-users through a multitude of distribution means, it opens PCP operators to liability. RCC competitors continuously question the eligibility of PCP end-users, particularly "business individuals." This forces PCP operators into a defensive posture, often at significant cost. The unfortunate reality of the situation is that when faced with the likelihood that RCCs will undermine the competitive alternative service offered by the PCPs through constant "whistle blowing," a PCP licensee may opt not to offer service where the eligibility of a user is questionable, rather than risk losing its license. This is particularly true in the case of "business individuals," that is, those individuals who are eligible in their own right under the current rules because they need pagers for business purposes. Thus, the Commission's

prohibition on service to individuals does not promote efficient spectrum utilization and deprives eligible users of needed service.

**B. Expansion of Eligibility to Individuals Promotes the Commission's Goal of Maximizing Spectral Efficiency**

Expanding the Commission's eligibility criteria to include individuals would further encourage a competitive private land mobile radio market, as well as promote new system designs, technology and marketing techniques to develop PCP spectrum to the maximum extent. APCP's proposal would result in increased spectral efficiency, as PCP providers would have an expanded base from which to load their channels to the greatest degree possible -- thus, licensees could serve more end-users on the same spectrum. Expanding eligibility would also create a larger base of potential customers and might make it economically viable for new PCP systems to operate in areas not previously served. Finally, in major urban areas, where there exists a critical shortage of RCC frequencies, PCP providers could provide end-users with a viable option.

Opponents of APCP's Petition may argue that expanding eligibility may displace current users and result in frequency shortages and a deterioration service quality. They might also state that, as a result of increased demand for PCP spectrum, PCP licenses would increasingly seek to obtain RCC channels through intercategory sharing. As APCP points out, however, the Commission rejected this argument in its Specialized Mobile Radio services ("SMR") proceeding. 64 RR 2d 1042, 1048 (1988). As the

Commission stated, while it is true that increasing the potential customer base for PCP licensees could increase PCP spectrum use and lead PCPs to seek non-PCP spectrum, such a result does not disserve the public interest. Instead, it is in the public interest to promote greater utilization of the spectrum. Under the inter-category sharing rules, any PCP seeking access to non-PCP channels must show that there are no PCP channels available. Moreover, the PCP licensee can only get a channel as yet unassigned in the RCC pool. Thus, an unused channel would be used to meet a public need; meeting existing demand is better than leaving spectrum unused.

In addition, PCP providers would be under no obligation to provide service where it would displace current users or decrease the quality of communications. *Id.* The definition of eligibility does not mean that licensees must provide service to a particular group. To the contrary, private radio licensees may exclude any particular user if they so desire. Thus, expanding eligibility need not preclude currently eligible users or result in overcrowding of the spectrum. Rather, aggregating demand will result in greater efficiency and increased ability of the licensee to serve end-users on the same spectrum.

**C. Expansion of Eligibility to Individuals is Consistent With Commission Policy and the Communications Act**

As stated above, ACP's Petition is consistent with the Commission's recognized goal of providing as many communications service options to individuals as is feasible. The Commission has recognized the need and desirability of increasing communications

alternatives and services for individuals. Moreover, the Commission has made it abundantly clear that the mere fact that a licensee serves individuals does not convert a private carrier into a common carrier. For example, the Commission expanded its eligibility criteria for Specialized Mobile Radio systems ("SMR") to include individuals. Specialized Mobile Radio Service, 64 RR 2d 1042 (1988). In addition, the amateur services, the citizens band services, the general mobile service, the remote control, and the model aircraft service are all personal services governed by the Private Radio Bureau.

The expansion of eligibility proposed by APCP is also consistent with Sections 331 and 332 of the Communications Act. 47 U.S.C. §§ 331, 332. Congress enacted Section 331(c)(1) to provide a clear demarcation between private and common carrier services. Opponents of APCP's Petition may claim that allowing PCP operators to provide service to individuals in some way removes them from their classification as private carriers. However, as indicated above, providing service to individuals has never been the defining characteristic of common versus private carrier systems. Because PCP licensees do not sell interconnected telephone service they are not common carriers under Section 331(c)(1) of the Act, regardless of who their customers are. See SMR, 68 RR 2d at 1047.

Moreover, in enacting the Communications Amendment Act of 1982, Congress recognized the Commission's broad discretion to dictate which land mobile systems are to be regulated as private. Congress directed the Commission to "add, modify, or delete

private land mobile services as the need arises, consistent with the guidelines specified in Section 332(a)." H.R. Conf. Rep. No. 765, 97th Cong., 2d Sess. 54, reprinted in 1982 U.S. Code Cong. & Ad. News 2296, 2298. Section 332(a) allows the FCC, when faced with future technological and public policy advances, to create new rules that make more efficient use of the spectrum.<sup>3</sup> As demonstrated above, APCP's proposal promotes spectral efficiency. Moreover, APCP's proposal encourages competition and will result in the provision of services to the largest feasible number of subscribers. Thus, APCP's proposal is entirely consistent with the language and intent of the Communications Act.

### III. CONCLUSION

PageNet supports APCP's Petition for a Notice of Proposed Rulemaking to amend Section 90.75(c)(10) of the Commission's Rules to permit private carrier paging providers licensed on the paging-only channels at 900 MHz to serve individuals. Consumer demand for paging services has skyrocketed

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<sup>3</sup> Section 332(a) specifically instructs the Commission to manage the private land mobile services spectrum subject to four considerations:

- That such actions will -
- (1) promote the safety of life and property;
  - (2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;
  - (3) encourage competition and provide services to the largest feasible number of users; or
  - (4) increase interservice sharing opportunities between private land mobile services and other services.

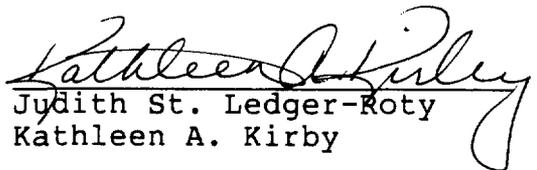
47 U.S.C. § 332(a) (1982).

and is becoming increasingly sophisticated. As a result, the paging industry has responded by engaging in new means of marketing and distribution to suit individualized needs. PageNet firmly believes that individuals as well as non-business consumers should be able to take advantage of these increased options. Permitting PCP providers to service individuals will enhance the public interest by creating additional communications service options, including specialized pricing and subscription arrangements, and extending the availability of these services to a broader range of eligible end-users.

Respectfully submitted,

PAGING NETWORK, INC.

By:

  
Judith St. Ledger-Roty  
Kathleen A. Kirby

REED SMITH SHAW & McCLAY  
1200 18th Street, N.W.  
Washington, D.C. 20036  
(202) 457-8656

Its Attorneys

Dated: July 23, 1992

CERTIFICATE OF SERVICE

I, Kathleen A. Kirby, hereby certify that on this 23rd day of July 1992, a true copy of the foregoing **Comments of Paging Network, Inc. in Support of Petition for Rulemaking Filed By The Association for Private Carrier Paging** was mailed, first class, postage prepaid to:

Michael Cutler, Chairman  
Association for Private Carrier Paging  
1501 Duke Street  
Suite 200  
Alexandria, Virginia 22314

David E. Weisman  
Alan S. Tilles  
Meyer, Faller, Weisman  
and Rosenberg, P.C.  
4400 Jenifer Street  
Washington, D.C. 20015  
Of Counsel  
Association for Private Carrier Paging

  
Kathleen A. Kirby