

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

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APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

PR Docket No. 93-38
RM-8017

To: The Commission

COMMENTS OF PAGEMART, INC.

Phillip L. Spector
Paul J. Kollmer
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
1615 L Street, N.W.
Suite 1300
Washington, D.C. 20036
Telephone: 202-223-7300
Facsimile: 202-223-7420

Attorneys for PAGEMART, INC.

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SUMMARY

PageMart is an innovative paging service company, dedicated to providing cutting-edge, cost-competitive paging services nationwide. The company has pioneered both technological advances and consumer-oriented marketing in order to deliver innovative paging services at affordable prices.

The hallmark of the paging industry is intense competition among service providers. As a result of such competition, the variety of services offered has multiplied and prices have continued to decline. Yet a significant and growing segment of paging consumers is denied these benefits because the eligibility rules under Part 90 prevent companies such as PageMart from offering economical and sophisticated paging services to nonbusiness users.

decline to market PCP companies' services. This, in turn, deprives consumers of the demonstrable benefits of competition, while at the same time cutting off PCP companies from a substantial number of otherwise eligible business users, who obtain paging services through retail outlets. PCP companies are likely to be irreparably harmed by the continuation of the current situation.

The Commission should implement its proposal to eliminate the arbitrary and anticompetitive Part 90 eligibility distinction between business and nonbusiness users of paging services. There is no legal impediment to doing so, and the policy rationale that at one time may have supported the rule has been completely undermined by the rapidly changing marketplace. As in the decision to eliminate individual eligibility restrictions for the

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be operating in all 50 states, covering every major metropolitan area.

During its brief existence, PageMart has endeavored to advance the state of the industry, from both technological and business perspectives. For example, PageMart was the first paging company to implement a system for direct satellite control of its paging transmitter network. This capacity has enabled the company to offer a broad array of local, regional, and nationwide services, using a common, nationwide frequency.

PageMart has been in the forefront of the effort to integrate paging and computers. The company pioneered the concept of a paging receiver that would meet the specifications of the Personal Computer Memory Card International Association. To date, several companies have announced plans to introduce such products (e.g., Motorola's NewsCard). PageMart also formulated specifications for an advanced messaging system called "Personal Messaging Information Service," which is designed to provide two-way data transfer for portable personal computers. Additionally, PageMart has begun preparations to provide service to the new wave of users who will be employing paging-capable notebook computers and personal organizers. In brief, PageMart will be able to interconnect its subscribers with all manner of electronic databases via these portable computers/pagers.

Of equal importance to PageMart's efforts to stay on the cutting edge of technology is its dedication to consumer-oriented marketing of pagers and paging services. PageMart was one of the first to recognize the consumer benefits of selling, rather than leasing, new pagers. Additionally, the company has moved as aggressively as it can (within the eligible-user restrictions imposed by Part 90) to begin the retail marketing of its services.

Through dedication, technological acumen, and a consumer-oriented business strategy, PageMart has grown in three years of actual operation from a start-up company to a major force in the paging industry. It is from this perspective that PageMart comments on the proposals set out in the NPRM.

II. COMPETITION IN THE PAGING INDUSTRY.

Traditionally, common carrier paging systems have operated under Part 22, and private carrier paging systems have operated under Part 90, providing arguably different services to specified user groups, based on the historically distinct public interest goals that underpin the public and private land mobile services. Common carrier paging systems were intended to provide services to all users -- commercial and noncommercial -- on a nondiscriminatory, first-come,

first-served basis.^{1/} Private carrier systems were intended to provide services to support the business enterprise of the licensee or other similarly situated business users.

For a variety of reasons that will be discussed in detail below, marketplace realities have overtaken the line of demarcation between Part 22 and Part 90 user groups. The marketplace has transformed the "eligible user" distinction that is the subject of this proceeding -- a distinction aptly characterized by the Commission as "arbitrary"^{2/}-- from what at one time might have been a useful regulatory

local market continues to increase.^{3/} The increase in the number of competitors in each local market appears to have put an end to the tradition of domination of each market by a sole provider.^{4/}

As a result, business customers have enjoyed lower prices, while being offered an increasing variety of services. Although total paging industry revenues have continued to grow by 10 to 15 percent annually, service providers' revenues per pager -- reflecting the actual cost to the consumer -- have fallen each year.^{5/} Recent market studies demonstrate that price competition will continue to intensify among providers and that they will continue to provide enhanced services as a basis of market differentiation.^{6/}

Individuals who have no business purpose are able to obtain paging services only from common carriers. With regard to these customers, the carriers essentially enjoy a monopoly, being sheltered from competition from the PCP companies by virtue of Sections 90.75(c) and 90.494(a) of the Commission's Rules. Feeling no competitive pressures,

^{3/} R. Lane & J. Kealey, Paging Study Shows More Competition and Consolidation (hereinafter "Paging Competition"), Telocator, October 1992, at 8, 10.

^{4/} Id.

^{5/} R. Wyszor, Survey Shows Paging Growth and Predicts Stable Revenue, Telocator, Aug./Sept. 1992, at 20.

^{6/} Paging Competition, supra note 3, at 12.

the common carriers generally have no incentive to provide

The Commission correctly noted that the Part 90 eligibility restriction at issue in this proceeding "arbitrarily deprives the user of the opportunity to compare alternatives."²¹ PageMart's inability to pass on its lower costs or offer its innovative services to nonbusiness consumers typifies the inefficiencies created by the restriction.

III. PCP SERVICE ELIGIBILITY RESTRICTIONS UNNECESSARILY HAMPER COMPETITION IN THE CONSUMER PAGING MARKET.

Whatever public interest rationale originally justified the rule preventing PCP companies from offering services to individuals for nonbusiness purposes, it no longer has legitimacy in today's marketplace. Personal paging is growing at a dramatic rate, and manufacturers and service providers are focusing increasingly on the relatively untapped pool of nonbusiness consumers. Depriving these consumers of the benefits of competition is wholly unjustified and, as discussed below, may ultimately undermine the long-term viability of PCP service providers, thereby decreasing competition for business customers as well.

²¹ NPRM ¶ 9.

A. The Paging Market Focuses Increasingly On Consumers Without Business Purposes.

As the Commission itself has recognized, the market for paging services continues to expand rapidly.^{8/} A recent study by Economic and Management Consultants International, Inc. ("EMCI") estimates that there were approximately 14 million paging subscribers at the end of 1992. The growth

was only 3.2 percent in 1992, compared to average market penetration rates in excess of 25 percent for business.

the marketplace will have substantial adverse consequences for individual consumers, as well as for the paging industry as a whole.

B. The Part 90 Eligibility Restriction Will Have the Practical Effect of Precluding PCP Companies from Marketing through Retail Outlets.

The accelerating shift in the paging market to a focus on nonbusiness use is pushing service providers to begin (as many have already) an aggressive retail marketing campaign. One of the most efficient means of pursuing such a strategy is to offer service through the established retail outlets, including both general retailers, such as Walmart and Sears, and electronics specialty stores, such as Circuit City and Radio Shack. Consumers benefit substantially from such retailing, of course, in terms of accessibility and convenience factors, lower prices, and a wider variety of service and pager options.

As a practical matter, however, these consumer benefits are limited by the Part 90 eligibility restrictions, which substantially inhibit a PCP company's ability to adopt an aggressive, widespread retailing plan on a par with companies not subject to Part 90. In order to market PCP services through retail channels, retailers have to restrict the sale of PCP services to consumers who have a business purpose. In PageMart's experience, this creates a significant disincentive for retailers to bother with offering PCP services.

Imagine the average, nonbusiness consumer in the electronics department of a retail store, considering the purchase of both a pager and a cellular telephone. With regard to the latter, the salesperson would simply explain the relative virtues of competing models, based on price and feature comparisons. With regard to the pager, however, the salesperson may have to forego a sale because the customer is not an eligible Part 90 user.

Most retailers understandably are reluctant to become entangled in this process. Two groups have suffered as a result. First, individuals with nonbusiness purposes are deprived of the demonstrable benefits of competition that are enjoyed by consumers of business paging services.^{16/}

Second, foreclosing the access of PCP companies to retail outlets also will increasingly cut off PCP companies from a substantial number of their traditional business customers. As noted above, it is estimated that nearly 50 percent of all pager sales will take place through retail distribution channels by 1995. Loss of access to one-half of the market -- including that portion of the business customer base that will migrate to retailers -- is likely to cause PCP operators irreparable harm.

^{16/} A lack of competition in the consumer paging market has a particularly severe impact, because individuals with a nonbusiness purpose for paging generally are more price sensitive than business users. See, e.g., Pagers for the Masses, supra, note 9 at 11. ("It appears that a significant portion of [the consumer] market is simply attracted by low prices.")

IV. AMPLE PRECEDENT SUPPORTS THE COMMISSION'S AUTHORITY TO ELIMINATE THE PART 90 ELIGIBILITY RESTRICTION AGAINST INDIVIDUALS WITHOUT BUSINESS PURPOSES.

The Commission should amend its rules and make all individuals eligible to receive paging services from PCP operators. Nonbusiness consumers of paging services would then no longer be confined to the least competitive portion of the paging marketplace. In addition, such an amendment would allow all paging service providers to participate fully in retail distribution channels, which will be the key element of the evolving marketplace for individual paging services.

There is no legal impediment to adopting this pro-competitive policy. Four years ago, in PR Docket No. 89-45, the Commission proposed to take essentially the same step as it does in the instant NPRM. See Amendment of Part 90, Notice of Proposed Rulemaking, 4 F.C.C. Rcd. 2589 (1989). However, it retreated from that position in its Report and Order in that docket, see 6 F.C.C. Rcd. 542, 544 (1991) ("1991 Report and Order"), not because of any question regarding its statutory authority to make the change, but apparently because it concluded that "individuals generally do not have communications needs that cannot be satisfied by existing [common carrier] options." Id.

To the extent that such a conclusion was accurate in 1991, it certainly no longer represents a valid characterization of marketplace conditions. As was detailed

supra, common carriers generally do not provide the same extensive and flexible array of services offered by private carriers such as PageMart; to the extent that some do, the price differential usually is considerable. This should not be surprising. Absent the engine of competition, there is little incentive for common carriers to offer their services to individual at prices remotely related to costs.^{17/}

Moreover, the exponential explosion in demand for paging services outlined above is outstripping the capacity of many of those carriers.^{18/} For obvious business reasons, most common carriers will concentrate their efforts on serving their large commercial customers, leaving individual, nonbusiness consumers in the lurch.

In short, while only two years may have passed since the adoption of the 1991 Report and Order, the marketplace has been substantially transformed. The NPRM properly recognizes the Commission's obligation to reexamine the

^{17/} This situation should be juxtaposed to the case presented in 1991, where, citing in part to PageMart's comments in that proceeding, the Commission found that "all [PCP service] options are currently available to individuals through common carrier systems." 1991 Report and Order, 6 F.C.C. Rcd. 546 n.21. Particularly when price considerations are factored in, that conclusion simply is not true today.

^{18/} As the Commission itself noted in its Exclusivity NPRM, at ¶ 6, "paging companies have occupied much of the available spectrum on common carrier paging channels Common carrier channels . . . have been allotted in virtually all major markets [and] PCP channels at 150 and 460 MHz . . . have become increasingly crowded as well, particularly in urban areas."

wisdom of retaining regulations whose public interest rationale has been undermined by intervening events. See generally Geller v. FCC, 610 F.2d 973 (D.C. Cir. 1979). That certainly is the case here, where individual consumers either are foreclosed entirely from access to many advanced paging services, or must pay grossly inflated rates in order to enjoy the same telecommunications services to which a business user has access at competitive prices.

Put simply, there is no public interest rationale that will sustain the status quo. The Commission should follow the wisdom of its earlier decision to eliminate individual eligibility restrictions for the provision of services by SMR licensees.^{19/} In that case, the Commission stated:

We conclude that restricting SMR service to entities presently eligible under Part 90 eliminates an option for individuals . . . needing all available land mobile service communications service alternatives. Presently, these parties must contract with cellular or radio common carrier operators for mobile radio service. These service providers, by virtue of common carrier status may not be able or permitted to meet specialized requirements of certain customers. Also, SMR service often may be obtainable more quickly and less expensively than other services and can provide efficient radio transmission to individuals who previously could not obtain or afford radio service.^{20/}

The very same considerations pertain in the instant case. Eliminating unnecessary restrictions on the

^{19/} In the Matter of Amendment of Part 90, Subparts M and S, of the Commission's Rules, PR Docket No. 86-404, 3 FCC Rec. 1838 (1988).

^{20/} Id. at 1842.

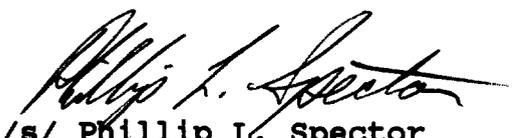
eligibility of individuals to obtain paging service will increase competition, reduce consumer prices, spur further technological development and advance the public interest.

CONCLUSION

Based on the evidence assembled to date in this proceeding, PageMart submits that the public interest would be served by the Commission's adoption of the proposed amendment to Part 90 of its Rules set out in the NPRM.

Respectfully submitted,

PAGEMART, INC.

By:  /s/ Phillip L. Spector

Phillip L. Spector

Paul J. Kollmer

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
Telephone: 202-223-7300
Facsimile: 202-223-7420

Its Attorneys

April 19, 1993

Comments of PageMart, Inc.

PR Docket No. 93-38
RM-8017

APPENDIX

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DIALOG FILE 16: PTS PROMT

Pagers get personal

Clarion-Ledger (Jackson, MS) May 17, 1992 p. C1

The pager industry foresees the use of 20 mil pagers in the United States by 1995 vs 11 mil now in use. The availability of pagers at retail stores and a growing need for people to better manage their time account for the increased use of pagers. The industry is looking at the public-at-large as a market with great potential for growth. MobileComm spokeswoman Jean Coppenbarger said that people at first use the pagers for business purposes, but that nearly 75% of pager users employ them for making personal contacts. 'Time Flies When Your're Not Having Fun' author Michael Fortino says that the pagers are not just for doctors, plumbers and businesspeople on the move anymore.

PRODUCT: *Paging Systems (3662167)

EVENT: *Sales & Consumption (65)

COUNTRY: *United States (1USA)

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S6 40377 MOBILE

S7 11610 PHONES

S8 436 OUTNUMBER

S9 105587 MARKET/TI

S10 2 MOBILE AND PHONES AND OUTNUMBER AND MARKET/TI

?-T S10/3/ALL

10/3/1
03816823

DIALOG FILE 16: PTS PROMT

MOBILE PHONES OUTNUMBER PAGERS, BUT PAGER MARKET STILL GROWING

Exchange May 22, 1992 p. N/A

FULL TEXT AVAILABLE IN FORMAT 9 WORD COUNT: 216

10/3/2
03465920

DIALOG FILE 16: PTS PROMT

Industry Expects Rapid Gains in Digital Cellular Market

Europe: Digital cellular model phones to triple their market penetration by 1996

Journal of the Electronics Industry October, 1991 p. 12
ISSN: 0385-4515
?T S10/9/1

Paging Study Shows More Competition and Consolidation

By Richard D. Lane and John M. Kealey

A recent study of the largest paging companies in the United States shows that the trends of the past will intensify in the future.



A recent study of the largest carriers in the paging industry indicates that consolidation will continue in the 1990s and competition among remaining carriers will intensify.

The study was conducted by the consulting firm KPMG Peat Marwick on behalf of the Paging Leadership Association, a trade association comprised of the large paging companies in the United States. The association resulted from dramatic changes in the paging industry in the 1980s.

By the mid-1980s, the complexion of the paging industry in the United States had changed as a series of acquisitions consolidated the fragmented industry into one driven by large megacarriers (for example, PageNet, Metromedia Paging Services and MobileComm) who came to control a large percentage of the paging market.

These large carriers expressed a concern that the trade organizations that then existed did not provide an adequate forum to discuss issues pertinent to running a megacARRIER operation. As a result, executives of the large paging companies formed the Paging Leadership Association and decided to meet on a semi-annual basis in so-called Paging Leadership Conferences to discuss issues of specific interest to them.

One of the initial issues discussed was the lack of a benchmark database of financial and growth statistics to be used in monitoring individual company performance. During the fall meeting in 1988, a majority of the large carriers agreed to develop a multi-year database consisting of

Consolidated Revenue and Expenses (\$ Millions)				
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Revenue				
Equipment Revenue	\$ 38	\$ 46	\$ 68	\$ 95
Operating Revenue	<u>446</u>	<u>584</u>	<u>712</u>	<u>849</u>
Total Revenue	484	630	780	944
Less: Cost of Pagers Sold	<u>\$ 25</u>	<u>\$ 30</u>	<u>\$ 49</u>	<u>\$ 66</u>
Net Revenue Contribution from Operations	\$ 459	\$ 600	\$ 731	\$ 878
Operating Expenses				
Facilities	87	111	148	175
Sales and G & A	235	316	373	438
Other	<u>19</u>	<u>11</u>	<u>6</u>	<u>2</u>
Total	341	438	527	615
Operating Margin†	\$ 118	\$ 162	\$ 204	\$ 263
Capital Expenses	\$ 132	\$ 196	\$ 213	\$ 247

Figure 1. Paging Leadership Association Consolidated Revenue and Expenses.
 † Operating Margin consists of revenues less operating expenses before non-paging corporate allocations from parent, depreciation, interest expense and taxes.
 * 1988 and 1990 data reflect a change of participants during the second half of each year.
 Source: Paging Leadership Association Benchmark Study, Phases I-VII (1988-91)

directly associated with daily paging operations and do not include corporate allocation from the parent entity (where there is one), nor depreciation or interest expenses. The survey participants accounted for an estimated 45% of the pagers in the marketplace at year end 1991.

Highlights

The results of the Paging Leadership Association's survey reflect the operations of most of the nation's large paging carriers but not necessarily the hundreds of smaller ones. Here are some highlights:

- The participating companies experienced annual growth rates of 18% in subscribership and 13% in revenues for 1991, compared to respective growth rates of 17% and 12% for 1990.

- A growing percentage of the companies' revenues came from the sale of equipment and auxiliary services, such as pager protection, information services and pager mainten-

ance. This type of revenue increased from 15% of total revenue in the second half of 1988 to 23% in the second half of 1991.

- Average monthly revenue per pager was \$12.23 for the second half of 1991, a 7% decline from the same period in 1990 and a decline of 13% and 17% from 1989 and 1988, respectively. Equipment sales and other revenues contributed an additional \$3.63 per pager in the second half of 1991.

- Digital numeric pagers are the dominant pager type, with a revenue share of 80% for the second half of 1991 versus 56% for the first half of 1988. The corresponding unit share is 82% versus 54% for 1988.

- Alphanumeric pagers are relatively new to the marketplace but are slowly gaining market penetration with year-end 1991 revenue and unit shares of 6% and 3%, respectively.

- Voice-mail subscribership has increased more than 200% from the beginning of 1989, reaching a pene-

tration level of 4.6% of all pagers.

- Operating margins before capital expenditures, interest, depreciation and non-paging corporate allocations have increased slightly over the past three years to 27.8% of revenue.

- Capital expenditures, predominantly for network and subscriber equipment, continue to absorb a large percentage of revenues (26% for 1991) in response to the rapid growth in subscribership.

- Productivity has increased significantly over the past four years, with an average of 617 subscribers per employee during the second half of 1991 as compared to 425 during the first half of 1988.

More Competition

The Paging Leadership Association study provides an excellent look at the progress the paging industry has made over the past three years. The important question is, of course, "What does the future hold?" We think a look at not only the study data

but also current events within the industry may provide some insight to the future.

Will there be further consolidation in the industry in the future? Absolutely. At the beginning of the study period, January 1, 1988, the study included such industry mainstays as: Graphic Scanning, Cybertel and MCCA. Since 1988, these companies have been purchased by larger competitors.

However, even with a high level of consolidation, the industry remains fairly fragmented. No one competitor has more than about 12% of the market and the number of competitors per market continues to increase.

This increase in the number of competitors per local market is the critical trend. Historically, although no one carrier dominated the U.S. paging industry, most large markets were dominated by one to three carriers, while many metropolitan areas below the top 15 were dominated by one carrier. Given current or continued expansion activities by many of the major carriers, this local market domination appears to be over.

During the 1980s, the trend toward more local competition was true primarily in the top 15 markets due to PageNet's expansion activities. However, many more companies are now opening new markets, and PageNet is now entering second-tier markets where there may not be room for it without someone leaving. For example,

- PacTel recently entered Seattle and Portland.

- McCaw entered Dallas.

- PageNet opened in Atlanta, Dallas and most major markets in Ohio.

- PageMart has entered most major markets in the United States.

Paging is an extremely competitive business, but the events of the last 18 months may signal more intense competition that may lead to more consolidation. For example, in Dallas two years ago, the major carriers with significant presence were Graphic Scanning (now BellSouth), Metromedia Paging Services and Pactel Paging. Since that time, the following carriers have entered the market: McCaw, PageMart, and PageNet.

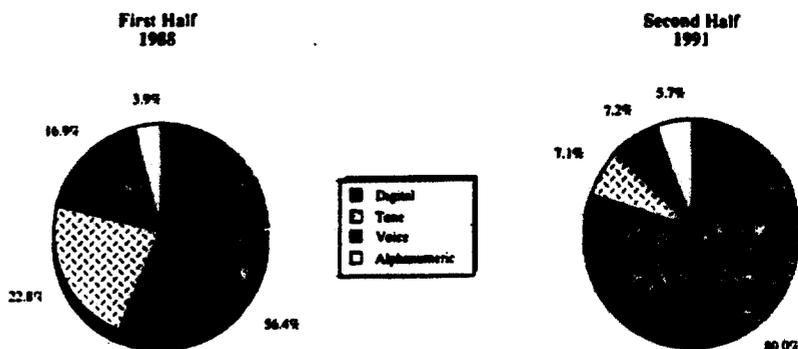


Figure 2—Revenue Mix by Pager Type

Source: Paging Leadership Association Benchmark Study, Phases I-VII (1988-91)

Paging is a growing industry and Dallas is an excellent market but this level of increased competition has to have an impact. That impact, we believe, will be more price competition and, ultimately, more consolidation.

Enhanced Services

Will the number of enhanced services increase in the future? Absolutely. The better question is, "Which services will emerge in the future of this segment of the wireless communications industry?"

We predict that in the future the industry will no longer view paging, cellular, SMR (specialized mobile radio) and data networks as separate businesses but rather as products within the wireless communications industry.

Paging began as an alert service with tone-only function. There was an opportunity in the market to provide a simple, economical and portable method for one person to provide information to another person without knowing where the receiving party was.

However, the information provided has evolved from a simple tone page to full text messages. The receiving party no longer needs to be a person; we can now page things, such as electronic billboards. But the basic foundation has not changed from a simple, economical and portable method of providing information.

Paging carriers will continue to meet this market need. In addition, they continue to enhance the infor-

mation content and versatility of paging services. The result will be that traditional paging carriers will capture a portion of the data network market. How? By continuing to develop the alphanumeric market and possibly by deploying the advanced messaging services (AMS) proposed by a number of carriers.

The key question is not whether the paging industry will expand its product offering to include enhanced data; the key question is whether the industry can do so competitively. The current paging networks will need to be upgraded to handle large quantities of data. In addition, as paging companies move up the product chain, they will collide head on with the financial and technical behemoths of the cellular, mobile data and computer industries.

Advanced data services are attracting competitors who today are not competing in traditional paging markets, such as AT&T, DEC, IBM and TRW. The data network market is also attracting the cellular counterparts of some traditional paging companies: Ameritech, McCaw, PacTel, Southwestern Bell and US WEST.

Should the paging companies worry about the need to upgrade their network? Of course, but no more than they worried about upgrading the networks from analog to digital or 512 baud to 1200 baud or 2400 baud. This new upgrade may be much more significant—the jury is still out—but it is business as usual to upgrade technology in a

technology-based industry.
Price Competition

Capital for the Future
Will there be more capital available to

distribution channels.
Paging carriers have been forced
to focus on costs. They have success-