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

APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules to Permit Private Carrier)
Paging Licensees to Provide)
Service to Individuals)

PR Docket No. 93-38
RM-8017

To: The Commission

COMMENTS OF PAGING NETWORK, INC.

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SUMMARY

Paging Network, Inc. ("PageNet") strongly supports the Commission's proposal to permit private carrier paging ("PCP") providers licensed on the paging-only channels at 900 MHz to serve individuals. PageNet's applauds to Commission's determination to eliminate this restriction on PCP end-user eligibility, and believes it further evidence of the Private Radio Bureau's far-sightedness in formulating its licensing policies. PageNet offers several reasons in support of the Commission's proposal.

First, there is no reason for retaining the current eligibility restriction. Given current paging technology, the restriction on providing PCP service to individuals is not necessary to prevent frequency overuse, degradation of service to existing customers, or similar technological problems. PCP providers have become expert at maximizing

is often precluded or delayed by state entry restrictions. Without a relaxation of the PCP eligibility restrictions, therefore, the structure of the paging marketplace will prevent full utilization of the spectrum available to meet burgeoning consumer demand.

Third, elimination of the eligibility restriction will enable PCP providers to compete fully in the marketplace, taking advantage of new distribution means and mass-merchandising. Pagers are now available in office supply/business stores, electronic superstores, and through mass merchants. However, because these retailers face insurmountable monitoring difficulties to ensure that sales are made solely to qualified users, PCPs are placed at a competitive disadvantage in serving the mass-market. Where PCP services would not be unnecessarily excluded from these outlets, PCP services would become more widely and conveniently available for consumers, a benefit which clearly serves the public interest.

Finally, 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. In sum, an expansion of the Commission's eligibility criteria to include individuals will ensure that the largest feasible number of end-users will be provided with paging services that suit their personal needs at an affordable price.

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COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Notice of Proposed Rulemaking ("Notice") issued in the above-captioned proceeding.¹ The Commission's Notice proposes to amend Sections 90.75(c)(10) and 90.494(a) of the Commission's rules, 47 C.F.R. §§ 90.75(c)(10), 90.494(a), to permit private carrier paging ("PCP") providers licensed on the paging-only channels at 900 MHz to serve individuals. PageNet applauds the Commission's determination to eliminate this restriction on PCP end-user eligibility, and strongly supports the rules as proposed in the Commission's Notice. Further, PageNet agrees with the Commission's assertion that "the existing rule is now of such questionable utility that

¹ Notice of Proposed Rulemaking, Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals, PR Docket 93-38, released March 12, 1993.

the presumption should be against retaining it unless there is a clear affirmative reason to do so." Notice at ¶13.

PageNet is the largest and fastest growing paging company in the United States, providing paging services to over 2 million subscribers through both PCP and radio common carrier ("RCC") systems nationwide. In fact, much of PageNet's recent growth has been on PCP channels, primarily because of the far-sighted licensing policies of the Private Radio Bureau. PageNet believes that the Bureau's instant proposal, permitting PCP providers to service individuals, will facilitate PageNet's ability to offer state-of-the-art paging services to businesses and individuals at the lowest possible cost. Moreover, elimination of the eligibility restriction will serve the public interest by providing increased opportunities for growth in the marketplace and by creating additional communications options, including specialized service and subscription arrangements. PageNet agrees with the Commission's assertion that, without the PCP option, individuals will be arbitrarily denied the ability to compare RCC and PCP alternatives.

I. BACKGROUND

Because Part 90 eligibility is limited to businesses, state and local government agencies, public safety organizations, and other defined entities, private individuals who do not qualify as business licensees are not

eligible for a Part 90 license,² and therefore are not allowed to obtain paging service from a PCP system. The effect of this rule, as the Commission notes (Notice at ¶3), is that individuals seeking paging service for a non-business purpose are prevented from obtaining that service from a private carrier.

In 1989, the Commission examined whether to enlarge the class of eligible PCP end-users to include both individuals and the federal government.³ In its Report and Order issued in 1991, the Commission elected not to extend end-user eligibility to include individuals. The Commission reasoned that, at the time, there was not a sufficient showing of need for paging services by individuals that could not be satisfied by existing options.⁴

The Commission initiated the instant rulemaking proceeding in response to a petition filed by the Association for Private Carrier Paging Section of the National

² The Commission in 1988 lifted the prohibition on service to individuals for the Specialized Mobile Radio Services. See Report and Order, Amendment of Part 90, Subparts M and S of the Commission's Rules, PR Docket

Association of Business and Educational Radio, Inc. (NABER).⁵ In its Notice, the Commission concludes that the rapid growth in demand for paging services suggests that individual users would benefit from being able to choose between private and common carrier paging alternatives. (Notice at ¶ 7.) Moreover, the Commission suggests that allowing individual access to PCP services would remove an unnecessary barrier to the ability of PCP systems to compete fully in the paging marketplace. Id. Finally, the Commission sees no countervailing benefit to the public from retaining the current rule. Id. As demonstrated below, an examination of the paging marketplace provides ample evidence to support each of the Commission's conclusions, thus warranting expansion of the list of PCP eligibles to include individuals.

II. DISCUSSION

A. THERE IS NO REASON FOR RETAINING THE CURRENT RULE

As the Commission recognizes, given current paging technology, the restriction on providing PCP service to individuals is not necessary to prevent frequency overuse, degradation of service to existing customers, or similar technological problems (Notice at ¶ 12). PCP providers have become expert at maximizing spectrum utilization and serving

⁵ PageNet is a member of APCP and filed Comments in support of NABER's Petition. See Comments of Paging Network, Inc., RM-8017, filed July 23, 1992.

more users more efficiently. Indeed, PCP services can be analogized to the Specialized Mobile Radio 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.⁶

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 eligibles seems entirely consistent with Commission policy and Congressional intent to provide the greatest number of communications services to the largest feasible number of end-users.

B. EXPANDING THE ELIGIBILITY CRITERIA WILL FACILITATE THE COMMISSION'S GOAL OF PROVIDING THE GREATEST NUMBER OF COMMUNICATIONS SERVICES TO THE LARGEST FEASIBLE NUMBER OF END-USERS

1. Skyrocketing Consumer Demand Has Created the Need for More Paging Options

The Commission is correct in its assertion that the demand for paging services has increased dramatically since last it visited the need to expand Part 90 eligibility to individuals. The mobile communications industry has made great strides in recent years. While consumers of paging services were once primarily doctors and service contractors, as word has spread about the value and convenience of pagers,

⁶ See Specialized Mobile Radio Services, 64 RR 2d 1042, 1047 (1988).

paging services have become attractive to a different and broader audience. Individuals are increasingly discovering that pagers are easy to use, relatively cheap and serve a variety of purposes.

Indeed, consumers are incorporating paging services in the conduct of their daily life. Pagers are used by parents to keep in touch with their children, by expectant spouses to maintain contact with one another, by patients awaiting vital organ transplants to establish a lifeline with their doctors or medical center, and by the elderly or infirm to enable them to enjoy a level of independence while maintaining a connection to their families or caretakers. PageNet's customers value paging service for its tremendous time saving and stress reduction attributes.

2. Elimination of the Eligibility Restriction Will Create Additional Opportunities for Growth in the Paging Marketplace

Given this skyrocketing demand, it is vitally important to the consumer to allow PCPs to enter the market for individual subscribers. PCPs represent additional opportunities for growth in a market characterized by rapid expansion. Without a relaxation of the PCP eligibility restrictions, this rapid expansion will occur within a market structure which prevents full utilization of the spectrum available to meet burgeoning consumer demand.

First, because common carrier frequencies at 900 MHz are already allocated in most of the top markets, there

are impediments to growth in major urban MSAs. Moreover, capacity constraints are impeding satisfaction of the escalating consumer demand for paging. Many existing common carrier systems, particularly in large cities, are severely loaded, resulting in significant delays in paging message delivery. In remote markets, individual mobile communications requirements are not being fully met because of limited service options.

Second, expansion of common carrier services is often precluded or delayed by state entry restrictions. Often, these entry restrictions limit the number of competitors to a market, or significantly delay service start-up. Many states require that common carrier paging providers obtain state certification prior to providing service to the public. For instance, in North Carolina and Georgia, 99% of the territory is certificated and closed to additional entry by common carriers. In contrast, PCP providers are not subject to entry barriers.

As a result of relaxation of the PCP eligibility restrictions, therefore, the individual end-user wins. He is presented with a choice of paging providers, and reaps the benefits of increased service options.

3. Elimination of the Eligibility Restriction Will Enable PCP Providers to Compete Fully in the Marketplace

Until recently, the majority of pagers were leased from paging company offices. Now, as consumers demand ready availability, the paging industry is engaging in new marketing techniques -- manufacturers, carriers, and retailers are concentrating their efforts on merchandising pagers to retail consumers. Pagers are now available in office supply/business stores, electronic superstores and through mass merchants. Thus, potential subscribers may now be offered unprecedented convenience. Consumers can become paging subscribers simply by making a purchase at their nearby K-Mart.

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 should the Commission's current rules remain in effect. The current eligibility restrictions prevent PCP operators from fully utilizing these widespread distribution channels for private paging equipment because they create a practical nightmare for retailers. The essence of mass merchandising is selling product to the public at large, yet these retailers face insurmountable monitoring difficulties to ensure that sales are made solely to qualified users. In formulating their expansion plans, PCP operators have to take into

consideration the fact that some forms of distribution may not be available to them, i.e., many retailers, both specialized communications dealers and mass-market retailing chains, may opt not to carry PCP products in order to preclude selling to ineligible customers.

This puts 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 the marketing of paging equipment and services. In fact, industry estimates indicate that the retail channel will account for 30-40% of the paging market within 5 years.⁷ Maintaining the eligibility restriction precluding service to individuals would only serve to relegate PCP operators to utilizing outmoded direct sales methods of distribution which require a large and costly sales force. Moreover, it will be tough for PCPs to attract capital investment where operators are excluded from a retail market which comprises such a high percentage of total pager sales.

Eliminating the prohibition on individual non-business use would eliminate the disincentive for retail outlets and distributors to resell PCP services. Therefore, PCP services would not be unnecessarily excluded from mass merchandising outlets regardless of the size of the non-business market. As a result, PCP services would become more

⁷ "Pagers' Popularity Booming," HFD, December 31, 1991, at 92 (quoting Motorola's Paging Group U.S. marketing manager).

widely available for consumers, a benefit which clearly serves the public interest.

4. **Elimination of the Eligibility Restriction Would Stop the Anticompetitive Abuses Which Reduce**

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," and threaten to institute proceedings against PCP competitors seeking sanctions for violation of the eligibility restrictions.⁸ 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, a continued prohibition on service to individuals would deprive eligible users of needed service.

C. 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

⁸ See, e.g., Opinion Letter, distributed by a common carrier paging operator in its sales efforts to a retailer, Comments of PageMart, Inc. in RM-8017 (filed July 23, 1992) at Attachment 1.

system designs, technology, and marketing techniques to develop PCP spectrum to the maximum extent. The current restriction undermines full utilization of PCP frequencies and slows carrier migration to the 929 MHz band. Removing this eligibility restriction 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 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 offer end-users a viable option.

III. CONCLUSION

As the Commission has aptly recognized, consumer demand for paging services has skyrocketed 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 agrees with the Commission's assertion that individuals as well as non-business consumers should be able to take advantage of these increased options. An expansion of the Commission's eligibility criteria to include individuals will 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, there is no countervailing benefit to the public for retaining the current rule.

Respectfully submitted,

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