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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Amendment of	)	PR Docket No. 93-35
of the Commission's Rules	)	
to Provide Channel Exclusivity	)	RM-7986
To Qualified Private Paging	)	

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EXECUTIVE SUMMARY

The Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("APCP") is pleased that the Commission has initiated this rule making proceeding and proposes to permit licensing of private paging frequencies in the 929-930 MHz band on an exclusive basis for nationwide, regional and local systems. Many of the proposals propounded by APCP in its Petition for Rule Making filed in April 1992, on which this proceeding is based, forms the framework for the Commission' proposals.

Generally, APCP supports the Commission's proposal, except for the proposal to permit multiple frequency coordinating committees to provide coordination for private paging applications. APCP opposes the certification of more than one coordinator to provide coordination in the 929-930 MHz band.

Specifically, APCP supports the Commission's proposal to eliminate the two frequencies pools that currently exist in the 929-930 MHz band, but suggests alternative frequencies for the five frequencies which the Commission proposed to retain for shared use. APCP does not oppose the proposed Table to provide a protection standard for exclusive sites. APCP also maintains its position that eighteen (18) contiguous transmitters sites is the appropriate number of sites to establish exclusivity of a frequency on a local basis in Los Angeles, Chicago, and New York.

Finally, APCP provides comments to the Commission's proposal to require applicants for extended implementation schedules to post

performance bonds, proposes that co-channel licensees on a shared channel be afforded exclusivity on an aggregate basis, seeks clarification of the extent of the nationwide exclusivity, and suggests that the Commission identify those authorizations that are granted exclusivity of a channel.

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Systems at 929-930 MHz	)	

To: The Commission

COMMENTS
OF THE
ASSOCIATION FOR PRIVATE CARRIER PAGING SECTION
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("APCP"), pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, respectfully submits its Comments in response to the Notice of Proposed Rule Making ("Notice") adopted by the Commission in the above-styled proceeding.[1]

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services.

In 1989, the Association for Private Carrier Paging Section was established by Private Carrier Paging ("PCP") providers under

[1] Notice of Proposed Rule Making, PR Docket No. 93-35, adopted February 18, 1993, 58 FR 17819 (April 6, 1993).

the auspice of NABER. Currently, the Association has a membership of over 120 separate private paging companies. This group has been actively involved in a variety of Commission proceedings, including filing Comments in PR Docket No. 88-548 (Frequency Coordination) and PR Docket No. 89-552 (Allocation of 220 MHz). APCP also filed a Petition for Rule Making requesting amendment to the Commission's rules to permit private carrier paging licensees to provide service to individuals. As a result, the Commission initiated a rule making proceeding in response to the Petition proposing to expand the eligibility for use of private carrier paging systems. (PR Docket No. 93-38). Further, APCP has developed committees which have met with Commission officials on several occasions to discuss issues of importance to APCP.

On April 24, 1992, APCP filed a Petition for Rule Making requesting the Commission initiate a rule making proceeding to provide channel exclusivity to private carrier paging licensees on a national, regional and local basis. APCP proposed that channel exclusivity be given a system on a national, regional or local basis dependent upon a defined number of transmitters in the given area.[2] The proposal set forth various transmitter number criteria based on the three categories of systems: (1) local systems could achieve exclusivity (except for the top three markets of Los Angeles, Chicago, and New York) by the construction and operation

[2] APCP also proposed that for a transmitter to be counted for exclusivity purposes, the transmitter must meet certain minimum technical parameters.

of six contiguous[3] transmitters (eighteen contiguous transmitters would be required in Los Angeles, Chicago, and New York); (2) regional systems could achieve exclusivity by the construction and operation of seventy (70) transmitters in no more than twelve (12) contiguous states; and (3) national systems would require the construction and operation of three hundred (300) transmitter sites in any number of locations throughout the United States.

Once either local or regional exclusivity was achieved, APCP proposed a standard mileage separation from co-channel systems of seventy miles from each "exclusive" transmitter site. There were no protection criteria proposed for national systems because no additional systems would be licensed on an exclusive national frequency anywhere within the country.[4]

APCP further proposed that a new local, regional or national system would be afforded protection during the initial eight-month construction period, and continued protection upon construction of the system.[5] However, should the licensee fail to construct the minimum number of transmitters within the eight-month period, exclusivity would be lost. On the other hand, if the licensee was

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[3] APCP proposed to define "contiguous" as a single transmitter site which is no more than twenty miles from at least one other transmitter site in the same system.

[4] On frequencies where licensees established exclusivity, co-channel licensees previously authorized would be grandfathered and could expand their systems within the existing operational area.

[5] APCP proposed that existing licensees could demonstrate that they met the exclusivity criteria and obtain the protection criteria for their systems.

authorized more than the minimum number of transmitters and failed to construct all the transmitters within the eight-month period but constructed the minimum number to obtain exclusivity, the licensee would be afforded the protection criteria for only those transmitters actually constructed.

Finally, APCP proposed to permit applicants to request "slow growth" authority for a system. Under this proposal, applicants could request an extended implementation and construction period in which they would retain the protection criteria for an exclusive system. APCP, however, proposed to require the construction of at least thirty (30) transmitter sites within the first eight months, with the remaining sites to be constructed within two years from the eight (8) month anniversary.

Comments received by the Commission in response to the Petition were supportive of APCP's proposalS. Accordingly, the Commission has initiated this rule making incorporating APCP's proposals with some modifications. The more significant modifications are:

1. The Commission proposed to eliminate the two frequency pools[6] and make available thirty-five of the 929-930 MHz frequencies for licensing on an exclusive basis and the remaining five frequencies in the 929-930 MHz band would be available for shared operations;

2. The Commission declined to propose a minimum of eighteen (18) contiguous transmitters to obtain local exclusivity of a frequency in Los Angeles, Chicago, and New York. Instead the Commission sought comments on what an appropriate number would be and whether there

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[6] See 47 C.F.R. § 90.494(a) Table.

are other metropolitan areas that a higher minimum number of transmitters should be required to obtain exclusivity of a channel on a local basis;

3. The Commission modified the definition of "contiguous" to require transmitters to be no more than twenty-five (25) miles apart, and prohibited co-located transmitters from being used for exclusivity purposes;

4. The Commission declined to propose a fixed mileage separation between exclusive co-channel stations and proposed to adopt a Table similar to the Table adopted for 900 MHz common carrier paging systems;

5. The Commission proposed an additional requirement for a licensee to obtain exclusivity of a channel on a regional basis. The Commission proposed that, if a top thirty (30) market is located within the requested region, the licensee must construct and place in operation sufficient contiguous transmitters within such top 30 market to meet the exclusivity requirement of a local system to have the transmitters counted for exclusivity purposes for the regional system;

6. In addition to proposing that a licensee construct and place in operation 300 transmitter sites to obtain nationwide exclusivity of a channel, the Commission proposed that the licensee must provide service in fifty (50) markets and that twenty-five (25) of the markets must be in the top 50 markets, plus the system must operate in at least two markets in each of seven (7) defined regions;[7]

7. The Commission proposed to afford a licensee

8. The Commission proposed that an applicant could only apply for one exclusive frequency at any location at one time. An additional frequency could be obtained only after the initial frequency(ies) is constructed and the system(s) placed in operation; and

9. The Commission proposed to continue the requirement that private paging applications be coordinated, but proposed to permit any of the three certified frequency coordinators above 800 MHz to coordinate these applications.

APCP is pleased that the Commission has initiated a rule making proceeding to consider the licensing of 929-930 MHz private paging frequencies on an exclusive basis for local, regional and national systems. Generally, APCP supports the Commission's proposal, but certain of the modifications to APCP's initial proposals appear to be overprotective and unnecessary. APCP, therefore, takes this opportunity to comment on the Commission's proposal in this proceeding.

II. COMMENTS

A. Elimination of frequency pools

APCP supports the Commission's proposal to eliminate the two frequency pools in the 929-930 MHz band and to allot thirty-five frequencies for licensing on an exclusive basis. Currently, the demand for Pool 2 frequencies for private carrier paging systems is so great that a large number of PCP licensees are being coordinated and granted Pool 1 frequencies through interpool sharing. Therefore, the elimination of the pools reflects the current licensing of the channels and will further the public interest. Additionally, permitting a greater number of frequencies

to be licensed on an exclusive basis should increase the competition within the markets.

However, APCP does not fully agree with the Commission's channel selection for licensing on a shared basis. NABER researched its database concerning the concentration and type of licensing on the five (5) frequencies proposed by the Commission for shared use.[8] Based on the results of this research, APCP concurs with three of the frequencies, 929.0375 MHz, 929.1625 MHz and 929.2625 MHz, being allotted for licensing for shared use.

The other two frequencies proposed, 929.0875 MHz and 929.3375 MHz, should not be allotted for shared use. Frequency 929.3375 MHz is currently authorized a single licensee with at least 115 sites. Similarly, frequency 929.0875 MHz is also licensed to a single licensee with multiple sites reflecting a proposed network system. Rather than allotting these two frequencies, NABER has identified four other frequencies, two of which could be substituted for the aforesaid frequencies. The following frequencies, 929.0625 MHz, 929.2125 MHz, 929.3875 MHz and

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[8] The Commission selected the five frequencies based on its conclusion that the usage of the channels was currently light, but did not indicate when it conducted its analysis of the database. As noted, a number of Pool 1 frequencies have been coordinated by NABER for private carrier paging operations. Therefore, NABER, in response to the Commission's proposal, analyzed its database to ascertain the number of licenses issued or coordinated applications pending for each of the 40 paging-only frequencies in the 929-930 MHz band in the top 60 markets. NABER conducted its analysis to either confirm the Commission's allocation or determine whether a better selection of frequencies would be better. Should the Commission wish a copy of NABER's findings to support NABER's conclusions, NABER would be happy to provide the Commission with access to this information.

929.4375 MHz, are lesser-occupied than the two frequencies selected by the Commission. All four of these channels currently are not licensed nor have been coordinated in more than 40 of the top 60 markets. Accordingly, APCP urges the Commission to substitute two of the four recommended frequencies for the two proposed frequencies, 929.3375 MHz and 929.0875 MHz.

B. Number of contiguous transmitters to obtain local exclusivity of a frequency in Los Angeles, Chicago, and New York

As discussed in APCP's initial petition, it was the consensus of the APCP's Council that a minimum of six (6) transmitters would discourage speculative filing for an exclusive channel on a local basis and is indicative of a intent to provide local coverage. However, in the three top metropolitan markets of Los Angeles, Chicago, and New York, the Council agreed that due to the size of the areas and the population to be served, a minimum of eighteen (18) sites would provide the minimal coverage to such areas. Generally, existing operators in these markets have more than eighteen. Nevertheless, the Council believed that construction and operation of eighteen (18) transmitters would be sufficient to establish a "legitimate" operational intent for local service in these areas. Accordingly, APCP again recommends that the Commission require that in the top three (3) metropolitan areas of Los Angeles, Chicago, and New York, a minimum of eighteen (18) contiguous transmitters be licensed, constructed and placed in operation in order to obtain exclusivity of a frequency.

C. No fixed mileage separation between exclusive co-channel stations

APCP does not oppose the Table that the Commission proposes to adopt to determine the co-channel protection that will be afforded to a transmitter site authorized a channel on an exclusive

applications. NABER, through the efforts of the APCP Council,[10] has implemented a coordination system that decreases the number of licensing disputes that arise due to the shared nature of the paging-only frequencies and increases the efficiency and capacity on the paging-only frequencies. APCP is concerned that the introduction of multiple coordinators will severely hamper the effectiveness of the system, and may result in the increase of licensing disputes as seen prior to the institution of this coordination procedure.

The APCP Council held a series of meetings because of the ever-present and increasing number of licensing disputes that were occurring on the paging-only frequencies. The first step of the process was the development of a questionnaire to be provided to applicants by NABER during the coordination process in order to accurately assess the type of paging system being proposed as well as the approximate amount of airtime on the channel that the new system could be expected to utilize. Where necessary, NABER also solicits information from existing licensees in the area to acquire more up-to-date information on the channel utilization than presently reflected on NABER's database in order to determine whether the channel can accommodate an additional or modified system.

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[10] The members of the APCP Council are a cross-section of the PCP operators throughout the United States and Puerto Rico. Council members include both large and small operators, as well as local, regional and nationwide PCP system operators.

Further, NABER, through its APCP section, has established a three member committee to review cases where disputes have arisen. The committee members, who are volunteers, are APCP members and serve a one-year term on the committee. They review technical information and circumstances involving the paging channel use disputes. This advisory committee makes recommendations consistent with NABER's responsibilities as a frequency advisory committee.

This method of information gathering and review has been successful in decreasing the number of licensing disputes that NABER or the Commission must resolve. APCP is not confident that this system is viable when more than one frequency advisory committee is coordinating private paging applications. Accordingly, APCP cannot support the Commission's proposal to permit multiple coordinators to provide frequency recommendations in the 929-930 MHz band.

Additionally, the Commission must consider the explicit direction of Congress to recognize only representative frequency advisory committees before permitting non-representative committees to issue frequency coordinations.[11] Congress specifically authorized the Commission to utilize non-government advisory coordinating committees in the frequency assignment process for private land mobile radio and fixed services.[12] Further, Congress

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[11]This issue was specifically raised by NABER in PR Docket No. 88-548, and has not yet been addressed in that proceeding by the Commission.

[12] 47 U.S.C. § 332(b). "[T]he Committee is convinced that frequency coordinating committees not only provide for more efficient use of the congested land mobile spectrum, but also

encouraged the Commission to recognize those frequency coordinating committees for any given service which are most representative of the users of that service.[13] Accordingly, prior to the Commission's certifying a particular frequency coordinating committee for a radio service, the Commission must first determine whether the candidates seeking selection in that radio service are "representative of users in the radio service it proposed to coordinate,"[14] with a "special emphasis ... placed on representativeness..."[15]

The Commission initially recognized NABER as the frequency coordinator for the 900 MHz private paging frequencies in 1982.[16] NABER, at that time, was the only frequency coordinator providing coordination services for this band and was endorsed by the broad cross section of private land mobile users. Subsequently, the Commission affirmed its 1982 decision and certified NABER as the frequency coordinator for the 900 MHz paging channels.[17] Accordingly, the Commission must address this issue prior to adopting such a proposal.

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enable all users, large and small, to obtain the coordination necessary to place their stations on the air." Communications Technical Amendments Act of 1982, Report 97-751, 97th Congress 2d Sess., § 20. p. 47 ("Report").

[13] Id.

[14] See Frequency Coordination Report and Order.

[15]

Further, the Commission's decision to permit multiple coordinators to coordinate applications submitted by applicants seeking to expand Specialized Mobile Radio ("SMR") systems with General Category channels is an example of the difficulties generated by the use of multiple coordinators for one service. The ability to utilize multiple coordinators has resulted in a "race to the courthouse" door mentality and has created adversarial situations between applicants. With the Commission's proposal to permit applicants to license national and regional systems on an exclusive basis, the problems seen in the coordination of single site systems may increase significantly if multiple coordinators were allowed. APCP is concerned that multiple coordinators will result in delays in the application process and result in an administrative oversight burden to the Commission to resolve "coordinating" conflicts. Accordingly, APCP recommends that the Commission retain the existing coordination requirements.

E. Miscellaneous Proposals/Comments

1. Financial Requirement/Performance Bonds As Requirement for Slow Growth Authorization

APCP concurs with the Commission's proposal to require an applicant for slow growth authorization to implement a large system (one with more than thirty (30) transmitters) to demonstrate the financial ability to construct the system. However, APCP also again proposes that in addition to this showing that the licensee further demonstrate its intent to construct its system by requiring a minimum of thirty (30) transmitters be constructed within the first eight (8) months. APCP is concerned that without either a

physical demonstration of the intent and ability to build out a system or some other significant penalty attached to a failure to substantially construct a proposed system under a slow grow authority, the extended implementation provision may be abused. APCP believes that to deter speculation that the licensee must meet a minimum construction threshold to maintain its exclusivity of a channel for the longer period of time.

The Commission also seeks comments on the imposition of performance bonds underwriting the construction of the system to ensure only bona fide applicants obtain slow growth authority. APCP does not oppose this proposal. The difficulty with the implementation of a performance bond is the determination of the cost or value of the system to be implemented. To permit the licensee to determine the construction cost of a system may encourage a licensee to place a low value on the cost of construction. APCP believes that the Commission, in order to set a minimum bond amount, must be able to justify the amount. Accordingly, APCP recommends that the basis of the performance bond be based upon the maximum monetary forfeiture that the Commission could impose for either misrepresentation/lack of candor or miscellaneous violations[18]. APCP makes this recommendation not to penalize an applicant, but to provide a basis by which the Commission can prescribe an appropriate amount for a performance bond.

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[18] See Policy Statement, Standards for Assessing Forfeitures, 56 FR 37665 (August 8, 1991).

2. Existing Co-Channel Licensees Establishing Exclusivity of a Channel on a Local Basis

The Commission proposes to allow existing licensees to achieve exclusivity of a channel based on its existing, constructed stations. However, this proposal appears to permit only individual licensees to achieve such exclusivity and does not address where a channel is currently shared by multiple licensees and aggregately these licensees meet the criteria for exclusivity of the channel on a local basis. APCP urges the Commission to allow existing co-channel licensees of a PCP channel to achieve exclusivity of a channel on an aggregate basis for purposes of licensing the channel to an additional applicant. In other words, if two licensees combined have six contiguous transmitters (outside of one of three top markets) authorized on a co-channel basis, these transmitters would be required to be protected by future applicants as if each existing licensee had achieved exclusivity of the channel. This procedure would be similar to exclusivity afforded to co-channel licensees of shared channels in the 800/900 MHz band allocated to the private land mobile radio services.[19]

3. Clarification of Exclusivity on National Basis

APCP proposed that a licensee could obtain exclusivity of a channel on a nationwide basis with the licensing and construction of a minimum of 300 transmitters, which the Commission incorporated into its proposed rule. APCP notes that in the proposed Section 90.495(a)(3), the language reads that "a nationwide system must

[19] See 47 C.F.R. § 90.633(b).

consist of 300 or more transmitters in the continental United

WHEREFORE, the Association for Private Carrier Passenger Safety