

**TELOCATOR**



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*The Personal Communications Industry Association*

June 3, 1993

Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street NW  
Washington DC 20554

RE: ET Docket 92-100

Dear Ms. Searcy:

Enclosed please find copies of material we have today provided Byron Marchant in Commssioner Barrett's office, reiterating and positions advocated in Telocator's comments and reply comments in the narrowband portion of the PCS proceedings (ET Docket 92-100).

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Mark J. Golden'.

Mark J. Golden  
Vice President, Government Relations

cc: Byron Marchant

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**JUN - 3 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1019 Nineteenth Street, NW Suite 1100  
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A handwritten number '1' inside a circle, written over a horizontal line.

**TELOCATOR**



*The Personal Communications Industry Association*

June 3, 1993

Byron F. Marchant  
Legal Advisor  
Office of Commissioner Andrew Barrett  
1919 M Street, N. W., Room 844  
Washington, D.C. 20554

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Dear Byron:

Enclosed, for your information, are excerpts from the comments filed in ET Docket 92-100 on the need to allow providers of 900 MHz narrowband PCS offerings to self designate as either common or private carriers.

There are two principal reasons why the option for private carriage is critical:

First, it is necessary to insure that introduction of these new services is not delayed or blocked altogether by states which restrictively enforce entry regulation of common carriers. Several states currently resist or disallow altogether the entry of new, common carrier competitors into the paging marketplace. As you are aware, such entry regulation of private services is preempted under Section 332(b) of the Communications Act.

Second, it is necessary to allow narrowband PCS providers a means of avoiding the costly burden of preparing and filing Federal tariffs for their interstate services, as required by the Court of Appeals November, 1992, action vacating the Commission's tariff forbearance policy for non-dominant common carriers.

Current legislative proposals offer the prospect of achieving regulatory parity for commercial mobile services, such as narrowband PCS. Both the current House and Senate parity language would give the Commission the authority to waive Federal tariffing requirements and (under certain conditions) to pre-empt state entry regulation. It should be pointed out, however, that the legislation is proposed and not yet enacted, and that the regulatory parity provisions do not become effective until one year after enactment. If passed, there would also be further delay of the actual impact of the provisions, as some sort of rulemaking or implementation action by the Commission would likely be necessary.

Allowing self designation would enable narrowband carriers to elect the status which, in their judgement and given their particular circumstances, would best compensate for the current disparities between private and common carrier regulation of mobile services. Self designation is an interim policy, but absolutely critical until such time as a uniform and single set of rules can be established.

As advocated by Telocator in its comments, under self designation, spectrum would be made available without any pre-determined regulatory status. Carriers would be bound to operate under the rules appropriate to which ever designation (private or common carrier) they elected in their application for license. As noted in our comments, there is precedence for such treatment: FM sub-carrier channels and Multipoint Distribution Service (MDS) are already handled in this manner.

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I hope this information is useful in your consideration of this issue.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'M. Golden', written in a cursive style.

**Mark J. Golden**  
**Vice President-Government Relations**

Before the  
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In the Matter of	)	GEN Docket No. 90-314
	)	ET Docket 92-100
Amendment of the Commission's	)	
Rules to Establish New Personal	)	RM-7140, RM-7175, RM-7617,
Communications Services	)	RM-7618, RM-7760, RM-7782
	)	RM-7860, RM-7977, RM-7978
	)	RM-7979 & RM-7980

**REPLY COMMENTS OF TELOCATOR ON 900 MHz  
PERSONAL COMMUNICATIONS SERVICES**

Thomas A. Stroup  
Mark J. Golden  
TELOCATOR, THE PERSONAL  
COMMUNICATIONS INDUSTRY ASSOCIATION  
1019 19th Street NW, Suite 1100  
Washington, D. C. 20036

January 8, 1993

radio eligibles<sup>32</sup> should be rejected. Such a licensing preference is unnecessary and inappropriate. It constitutes an unwarranted set aside and, as such, would limit the number and range of participants in narrowband PCS. Moreover, the use of the spectrum for private, internal purposes, as proposed by UTC, is contrary to the Commission's intention in this proceeding to "ensure that all mobile services are provided . . . to the greatest number of consumers."<sup>33</sup> PCS generally, and narrowband PCS specifically are aimed at a broad public market; this market will not be fully served without the proposed allocation.

**IV. A REGULATORY FRAMEWORK WHICH ENSURES A LEVEL PLAYING FIELD FOR ALL PROVIDERS IS A CRITICAL ASPECT OF THE COMMISSION'S RESOLUTION OF THIS PROCEEDING.**

As Telocator has argued in this and other mobile services proceedings, it is a fundamental position of the association that like services, competing in the marketplace for the same customers, should be subject to the same regulatory conditions.

Given the existing disparities between common and private carrier regulation<sup>34</sup>, narrowband PCS licensees require the

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<sup>32</sup> UTC Comments at 30.

<sup>33</sup> Notice at para. 6.

<sup>34</sup> Telocator notes that this disparity was further exacerbated by the United States Court of Appeals for the D. C. Circuit's decision on November 13, 1992, in AT&T v. FCC. This action struck down the FCC's longstanding "tariff forbearance" policy for non-dominant common carriers, and may create an obligation for certain common carrier paging and narrowband PCS providers to file Federal tariffs.

flexibility to operate under the regulatory terms and conditions which make the most business sense in their particular market situation. In furtherance of this goal, Telocator has advocated that narrowband PCS licensees should be allowed to self-designate as either private or common carrier services.<sup>35</sup> (Carriers would be bound to operate under the rules appropriate to which ever designation they elected in their application for license.) Other commenters<sup>36</sup> have joined Telocator in urging that the Commission take this approach.

In addition, there is overwhelming support for the Commission's tentative decision that narrowband PCS providers, regardless of regulatory status, should have equal rights to interconnection with the public switched telephone network<sup>37</sup>.

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35 See: Telocator Comments at 16.

36 See: Metrocall Comments at 19-21; Mtel Comments at 5-6; NABER Comments at 3-5; and PageNet Comments at 26. NABER's recommendation that "the Commission permit the PCS providers a choice as whether the system will be operated on a private carrier or a common carrier basis" (NABER Comments at 5) is significant: the association had previously advocated a division of channels between common carriers and private carriers. (See: NABER Comments in RM-7617, Public Notice Rpt No. 1836 (1991))

37 See: Telocator Comments at 16-17. See also: Florida Cellular Comments at 12; Freeman Comments at 7-8; Metrocall Comments at 19; NABER Comments at 5-6; PageNet Comments at 29; SBA Comments at 28; and UTC Comments at 39-40.

*Carbaugh*

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**JUN - 3 1993**

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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Amendment of the Commission's )  
Rules to Establish New Personal )  
Communications Services )  
)  
Paging Network, Inc. )  
)  
Mobile Telecommunications )  
Technologies Corporation )  
)  
Requests for a Pioneer's )  
Preference for Pioneering the )  
Ability for Spectrally Efficient, )  
Cost Effective One-Way Mobile )  
Voice Communications in the )  
930-931 MHz Band )

Gen Docket No. 90-314  
ET Docket No. 92-100

PP-84

PP-37

To: The Commission

**COMMENTS OF PAGING NETWORK, INC.**

**PAGING NETWORK, INC.**

Judith St. Ledger-Roty  
Robert J. Aamoth  
Kathleen A. Kirby

**REED SMITH SHAW & McCLAY**  
1200 18th Street, N.W.  
Washington, D.C. 20036

**Its Attorneys**

**November 9, 1992**

## II. REGULATORY ISSUES

### A. Regulatory Status

The paging marketplace is currently regulated, depending on the frequency used, under the Commission's rules governing common or private carrier services. Advanced paging licensees should be permitted greater flexibility to choose between private or common carrier regulation. In some circumstances, it might be desirable for a carrier to offer advanced paging service on a common carrier basis. In others, private radio service rules might more appropriately govern, depending on the type of service the carrier has determined best serves its needs and the public interest.

The Commission has successfully implemented just such a flexible regulatory approach to other emerging technologies.<sup>26</sup> For example, current FCC policy provides that Multipoint Distribution Service ("MDS") licensees may elect the status under which they will initiate their service

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<sup>26</sup> The Commission authorized the sale of certain identified satellite transponders on a non-common carrier basis in Domestic Fixed Satellite Transponder Sales, 90 FCC 2d 1238 (1982). The Commission based its decision on an analysis of the evolving industry and its need for fixed satellite service ("FSS") flexibility in order to respond to market forces. The Commission also adopted a flexible regulatory approach for the Direct Broadcast Satellite ("DBS") Service. Direct Broadcast Satellites, 90 FCC 2d 676 (1982).

offerings.<sup>27</sup> Applicants are required to select whether they will provide service on a non-dominant common carrier or non-common carrier basis prior to receiving licenses.<sup>28</sup> An MDS provider may elect a different status for each particular channel for which it is licensed and may offer services in some areas as a common carrier, some as a non-common carrier. In addition, MDS licensees may modify their status selection.

In adopting the "elected status" approach, the FCC correctly reasoned that it is often the marketplace that really determines the proposed business relationship between a licensee and its customers. For instance, at its inception, MDS was expected to be predominantly a service for the transmission of data, video teleconferencing and other business information. It evolved, however, into a subscription video entertainment transmission service and different uses in different markets are continually emerging. The same reasoning applies to the provision of advanced paging services. Flexibility in the industry would (1)

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<sup>27</sup> See Multipoint Distribution Service, 2 FCC Rcd 4251 (1987).

<sup>28</sup> As a common carrier, the FCC generally treats an MDS licensee as non-dominant. The Commission forbears from imposing Title II requirements because the complaint process and market forces are sufficient to check a carrier's ability to profitably charge unlawful rates. The Commission's experience with the MDS industry suggests that these carriers do not possess the market power, in a competitive market, to set rates in contravention of Title II. MDS applicants choosing the status of a non-common carrier are subject to the Commission's Part 21 licensing rules (they must file an application for a radio construction permit authorization) and the general provisions of Title III.

provide the best price to the end-user; (2) maximize spectrum utilization; (3) increase innovation; and (4) enhance competition.

To regulate advanced paging on the exclusively common carrier or private carrier basis currently applicable to traditional paging providers would result in less innovation, less diversity and fewer options for consumers. In addition, it could preclude service entirely in markets, like Atlanta, GA, where additional common carrier competition is foreclosed. Instead, the Commission should adopt a flexible regulatory approach to promote the efficient use of the spectrum and to encourage the maximum economic development of paging technology to meet the changing needs of a competitive marketplace. This approach must permit licensees to choose common or private carriage and, in the case of nationwide licensees, to elect to operate as a private or common carrier on a market by market basis.

Regardless of which mode of operation the carrier chooses, it should not be constrained by limitations on user eligibility. The existing private radio rules currently impose just such a limitation prohibiting the use of private carrier paging frequencies by individuals for personal use. See 47 C.F.R. § 90.75(c)(10). This limitation, if applied to AMS, would drastically curtail the ability of carriers to ~~serve existing unmet need for a variety of services.~~ The



serve only to complicate further the process and delay the delivery of services that could be made available to the public immediately. Therefore, Mtel strongly recommends that the Commission proceed separately on the narrowband and broadband services, setting short comment periods to resolve any remaining issues relating to deployment of AMS. A sharply focused separate narrowband proceeding would simplify a complicated process, bringing AMS to the market sooner rather than later.

**II. OPERATING RULES FOR NARROWBAND PCS SHOULD ALLOW SERVICE PROVIDERS THE OPPORTUNITY TO RESPOND TO MARKET DRIVEN DEMAND**

Mtel strongly supports the *Notice's* initial conclusion that the Commission should "propos[e] policies for PCS that respond to the needs of the marketplace."<sup>10</sup> Indeed, the *Notice* recognizes that the faith placed in "competitive markets and service flexibility" for mobile services has been amply rewarded.<sup>11</sup> As discussed below, in the specific context of narrowband PCS services, Mtel believes providers' market responsiveness would be enhanced by allowing licensees to self-designate their regulatory status and by granting licensees' broad technical flexibility in service design. By adopting these proposals, the Commission will ensure that narrowband PCS services are highly competitive and "are provided with the highest quality at low-cost, reasonable rates to the greatest number of consumers. . ."<sup>12</sup>

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<sup>10</sup> *Notice* at ¶24.

<sup>11</sup> *Notice* at ¶2.

<sup>12</sup> *Notice* at ¶6.

Mtel has consistently advocated a self-designation policy for narrowband PCS providers to allow them to elect their regulatory status at the initial application stage.<sup>13</sup> As shown by the wide range of service specific proposals tendered by petitioners in ET Docket No. 92-100, narrowband PCS encompasses a broad range of potential services and the regulatory status appropriate for one of these services may be wholly inappropriate for another. Many offerings, for example, have the ability to be individually tailored to offer features uniquely desired by a single customer, and thus would best be offered as private carriage. At the same time, however, some advanced messaging service providers may desire to offer services as common carriers, either because they wish to resell interconnected telephone service or because they wish to offer messaging services under state tariffing arrangements.<sup>14</sup> Mtel believes that a self-designation policy would best allow each provider to determine the optimum means of delivering a particular, unique service to the public.

With regard to technical regulations, Mtel strongly agrees with the *Notice's* initial conclusion that narrowband PCS providers should be regulated under "a technical framework that will permit significant flexibility in the design and implementation of PCS systems, devices and services."<sup>15</sup> Specifically, Mtel supports the conclusion that technical regulations for 900 MHz PCS services should be limited to "antenna height, radiated power

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<sup>13</sup> See, e.g., *Petition for Rulemaking of Mtel* at 21-24, RM-7978 (November 12, 1991).

<sup>14</sup> Under state tariffing arrangements, for example, carriers do not have to enter into a separate contractual agreement with each prospective customer, thus reducing administrative costs to provide service. In addition, carriers enjoy limited tort liability under most common carrier tariffs.

<sup>15</sup> *Notice* at ¶105.

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

NOV - 9 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of the Commission's ) Gen. Docket No. 90-314  
Rules to Establish New )  
Personal Communications ) ET Docket No. 92-100  
Communications )

To: The Commission

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COMMENTS  
OF  
NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.

JUN - 3 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. Section 1.415, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making ("Notice") adopted by the Federal Communications Commission in the above-captioned proceeding.<sup>1</sup>

I. BACKGROUND

NABER is a national, non-profit, trade association

Commission proposes to allocate spectrum in the 900 MHz band for advanced paging and messaging services and seeks comments on the regulatory structure of these new services designated as PCS.

## II. COMMENTS

The Notice addresses a number of regulatory issues necessary to establish PCS. These comments primarily focus on (1) the regulation of PCS providers as either private carriers and/or common carriers and (2) the regulation of the proposed advanced paging messaging services in the 900 MHz band.

### A. Regulation as Private Carrier/Common Carrier

The proposed Section 99.13 language defining the eligibility to hold a license in the PCS only excludes from eligibility foreign governments and agents of foreign governments. NABER concurs with the eligibility requirements proposed by the Commission and urges the Commission to regulate PCS providers as private carriers, or alternatively allow the licensee to choose whether to operate the system as a private carrier or a common carrier.

The Commission is concerned that provision of PCS not be delayed by regulatory hurdles or be imperiled by a lack of consumer interest because of high costs and unreasonable rates. To permit PCS to become a viable, attractive service to the consumer and to encourage the development of PCS, the Commission must provide PCS licensees the utmost flexibility

in constructing and operating these systems and reduce the regulatory burdens imposed by federal as well as state and local regulators on the licensee.

NABER therefore encourages the Commission to regulate PCS licensees in the same manner as the private carriers as a means to reduce the regulatory burdens on licensees and permit the greater flexibility in service offerings by the PCS provider. Treatment of PCS providers as a private carrier would reduce the regulatory burdens on the PCS providers because the Communications Act exempts the private carrier service provider from local and state entry and rate regulations.<sup>4</sup>

As the Commission recognized in the Notice, the distinction between regulation of the common carrier and the private carrier rests on the resale of interconnect services for profit.<sup>5</sup> The private carrier licensee is prohibited from reselling interconnect service on a for-profit basis whereas the common carrier may resell the interconnect service for profit. As long as PCS providers are assured of access to the public switch telephone network (PSTN) for interconnect, on the same basis and regardless of the licensee's designation as a common carrier or private carrier, the prohibition from reselling interconnection on a for-profit basis should not impede the development of PCS.

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<sup>4</sup> See 47 U.S.C. § 132(d).

<sup>5</sup> See 47 U.S.C. § 132(c).

However, should PCS providers want or need to resell interconnect service for profit to make the system or business viable, then the Commission, under the Communications Act, must treat these providers as common carriers. In such event, NABER recommends that the Commission permit the PCS providers a choice as whether the system will be operated on a private carrier or a common carrier basis.

**B. Interconnection**

The Commission seeks comments on the regulation of interconnect services to the PCS provider. NABER supports the Commission's proposal to explicitly confirm that PCS licensees have a federally protected right to interconnection with the PSTN whether PCS be classified as a private or common carrier service. NABER agrees with the Commission's determination that PCS providers should be able to obtain a type of interconnection that is reasonable for the particular PCS system and on no less favorable terms as offered by Local Exchange Carriers ("LEC") to any other customer or carrier. Further, NABER concurs with the Commission's assessment that state and local regulation of kinds of interconnect to be provided to PCS should be preempted. Finally, NABER does not oppose the Commission's proposal to permit state and local regulation of interconnect rates provided such rates do not discriminate between private carrier and common carrier providers and provided that the Commission will revisit its

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

	)	<b>GEN Docket No. 90-314</b>
	)	<b>ET Docket No. 92-100</b>
<b>In the Matter of</b>	)	
	)	<b>RM-7140, RM-7175, RM-7617</b>
	)	<b>RM-7618, RM-7760, RM-7782</b>
<b>The Amendment of the Commission's</b>	)	<b>RM-7860, RM-7977, RM-7978</b>
<b>Rules to Establish New Personal</b>	)	<b>RM-7979, RM-7980</b>
<b>Communications Services</b>	)	
<b>Section II - Narrow Band PCS</b>	)	<b>PP-35 through PP-40, PP-79</b>
	)	<b>through PP-85</b>

**To: The Commission**

**NARROW BAND PCS  
(900 MHz SERVICES)**

**COMMENTS OF  
METROCALL OF DELAWARE, INC.  
A PRIVATELY HELD RADIO COMMON CARRIER**

**November 9, 1992**

- Equal rights to interconnection with the Public Switch Network.

Metrocall agrees with the Notice proposal that PCS carriers, regardless of regulatory status, should have a federally protected right to interconnection with the PSTN. Metrocall further believes that new PCS carriers should have interconnection that is reasonable for the particular PCS system and "no less favorable than that offered by the LEC to any other customer or carrier".

- Flexible regulation services provided.

Metrocall believes the Commission should limit itself to licensing, enforcement, equipment certification, and the adoption of standards developed by the industry and limiting interference access services.

These policies would ensure full and fair competition for new and existing PCS service providers. If the Commission succeeds in establishing a level playing field for competitive providers of PCS, which must include a provision for true "Net Income", providers will have a strong incentive to offer attractive services and prices, because any customer will have numerous service options from which to choose.

- Further comments on regulatory status (NPR Section 94-98)

In order to provide the widest flexibility to the PCS service providers, and minimize unneeded delay to sort out the mostly artificial legal and regulatory significance of designation of a carrier as common or private, we suggest the applicant select carrier status as permitted by the

FCC in the MMDS services. Common carrier status may be significant if the PCS carrier is the only service (monopoly) in a marketplace, or is a unique type of service. Common carrier regulatory status becomes unimportant if the market is highly competitive, with many similar services, competing on an even playing field. In this case, the market will be adequately "regulated" by the marketplace. It will be an efficient and innovative marketplace. In a truly competitive marketplace common carrier status, with state oversight, tariff filings result in added cost, administrative burdens, delay, and add NO benefit to the service provider or the public. In a competitive market the public (service users) make absolutely no distinction between common or non-common carriers (eg. paging and MMDS). Experience shows the principle concerns are price and availability. Secondly, they are interested in the benefits and features of the equipment and service. True market driven commerce requires quick response to changes in price, services, and equipment offerings. Imagine having a government entity trying to process daily tariff changes, or regulate entry and offerings of an airline (since deregulation) or of a UPS or Federal Express type of business. In a truly competitive market with multiple and unrelated systems operators application of common carrier status can only delay and impair the free market functioning. Common carrier status has not even assured economic viability of carriers from each other nor from private carriers. It is clear

to Metrocall that the national communications policy in competitive (non monopolistic) services should be to work toward the elimination of the regulatory distinction of common carrier and private carrier. The carrier status confers no practical advantage, but does create confusion in regulation, giving different advantages and disadvantages to each in such a way that neither is better or worse, just different rules, licensing processes, administrative staffs, and in the end provide the same services to the public (e.g paging, MMDS), with no measurable difference in the marketplace to the user. Metrocall strongly supports the removal of all distinctions of rules and regulations of providers in competitive services, and suggests that the FCC work toward common rules for licensing, even to encouraging amendment to the Communications Act when and if needed to arrive at a common, simplified, level playing field for all providers. Along this path, the commission should keep the best features of private and common carrier licensing schemes, and eliminate the worst. This would "up average" both private and common carrier treatments under the rules, while reducing regulations and a false idea that in practice in these mass market competitive services make any real or significant end user differences.

**B. Technical standards for PCS should be left to Industry Standards Group**

Metrocall supports the Commission's tentative conclusion that the public is best served if PCS is subject to minimal technical regulation at this time.