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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FCC 93-479

In the Matter of

Amendment of the Commission's Rules To  
Provide Channel Exclusivity To Qualified  
Private Paging Systems At 929-930 MHz

PR Docket No. 93-35 ✓  
RM-7986

REPORT AND ORDER

Adopted: October 21, 1993

Released: November 17, 1993

By the Commission: Commissioner Barrett issuing a separate statement.

I. INTRODUCTION

1. In this Report and Order, we amend our rules governing private paging service in the 929-930 MHz band to grant channel exclusivity to qualified local, regional, and national paging systems. Private paging systems consisting of six or more transmitters will be entitled to exclusivity in most markets, and larger systems will be eligible for regional or nationwide exclusivity. We are implementing exclusivity on 35 of the 40 private paging channels at 929-930 MHz, while five channels will continue to be assigned non-exclusively. To qualify for exclusivity, licensees will be required to construct their systems within eight months of licensing, with "slow growth" extensions allowed for large systems under some circumstances. Existing systems that meet the new criteria will be granted immediate exclusivity, and all other existing systems will be grandfathered.

II. BACKGROUND

2. Under our existing rules, all private paging frequencies, including those at 929-930 MHz, are assigned on a non-exclusive basis. When we allocated 929-930 MHz to private paging in 1982, we reasoned that channel sharing was feasible in light of then-existing demand for private paging services, and chose to rely on frequency coordination and licensee cooperation to prevent interference and promote efficient channel use.<sup>1</sup> Since that time, however, the paging marketplace has expanded dramatically. Paging services are increasingly being offered on a wide-area basis through regional and nationwide paging systems, and subscribership has been growing at 15 to 20 percent annually. To meet this growing demand, paging companies have occupied much of the available spectrum on common carrier paging channels and on private paging channels below 900 MHz. Historically, 929-930 MHz has been less heavily used than other paging bands. Nevertheless, demand for these frequencies has increased as alternative spectrum grows scarce.

3. On February 18, 1993, we adopted a Notice of Proposed Rule Making in this proceeding, in which we proposed to implement exclusive frequency assignments for qualified

<sup>1</sup> Second Report and Order, One-Way Paging Stations in the Domestic Public and the Private Land Mobile Radio Services, Gen. Docket No. 80-183, 91 FCC 2d 1214 (1982) at para. 32.

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local, regional, and nationwide 900 MHz private paging systems.<sup>2</sup> The Notice was based on a Petition for Rule Making filed by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. (NABER) and supported by numerous 900 MHz private paging licensees.<sup>3</sup> In the Notice, we tentatively concluded that exclusivity would create a more stable and predictable environment for licensees, thus giving them greater incentive to develop and invest in more efficient paging systems. We also tentatively concluded that exclusivity should be implemented while 929-930 MHz was still relatively uncrowded so that congestion could be prevented before it occurred.

4. We have received 21 comments and 12 reply comments in response to the Notice, most of them supportive of the proposal.<sup>4</sup> American Paging, Arch Communications, ITA, Thomas Luczak, Message Center/Beepage, Metrocalls, Metromedia, NABER, PacTel Paging, PageMart, and PageNet generally support the proposal with small modifications. MAP and Metagram support exclusivity but advocate allowing incumbents to expand existing systems before 929-930 MHz is opened to new applicants. Celpage and Porta-Phone argue that we should extend exclusivity to lower band paging licensees as well as 900 MHz licensees. Telocator endorses the proposal, but urges us to commence a broader proceeding addressing the regulatory relationship between private and common carrier paging.<sup>5</sup>

5. Five commenters oppose the proposal, mostly expressing concern that it will give private paging licensees an unfair advantage over common carrier paging licensees. Radiofone argues that granting exclusivity to private paging undermines common carrier paging and violates former Section 332 of the Communications Act.<sup>6</sup> BellSouth and McCaw contend that the proceeding cannot go forward unless we address the broader issue of regulatory parity between private and common carriers. Atlanta Voice Page argues that by addressing only the 929-930 MHz band, the proposal discriminates against lower band PCP licensees. MTel argues that the proposal does not provide sufficient safeguards against warehousing of 929-930 MHz frequencies.

### III. DISCUSSION

#### A. Overview -- Need For Exclusivity

6. Based on the record before us, we conclude that enabling qualified 929-930 MHz paging systems to operate on an exclusive basis is in the public interest for the reasons outlined in the Notice.<sup>7</sup> As demand for 900 MHz paging frequencies increases, continued licensing on a non-exclusive basis threatens to discourage optimally efficient use. Although sharing is

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<sup>2</sup> Notice of Proposed Rule Making, PR Docket No. 93-35, 8 FCC Rcd 2227 (1993) ("Notice").

<sup>3</sup> Petition For Rule Making, RM-7986, filed April 24, 1992.

<sup>4</sup> A list of commenting parties is set forth in Appendix B.

<sup>5</sup> American Paging and PacTel support Telocator's call for a new proceeding.

<sup>6</sup> The comments in this proceeding were filed prior to the recent amendment of Section 332. See para. 7 below.

<sup>7</sup> See Notice at paras. 14-17.

technically feasible, the allotment of air time to multiple licensees imposes significant constraints on the efficiency and quality of service in crowded markets. Moreover, even where no sharing has been necessary in the past, licensees are reluctant to invest in advanced paging technology because of the risk that others will be assigned to the same frequency in the future. Exclusivity will create a more stable, predictable environment that should encourage investment in wide-area, high-capacity paging systems in the 929-930 MHz band.

7. As noted above, some commenters argue that by taking this step, we are blurring the distinction between private and common carrier paging to the disadvantage of the latter. We disagree. First, the distinction between private and common carriage does not turn on whether frequency assignments are exclusive or shared. In fact, numerous private radio services other than paging are already licensed on an exclusive basis. Second, the broader regulatory concerns raised by some commenters have been mooted by the recent amendment of Section 332 of the Communications Act.<sup>8</sup> Under revised Section 332, the regulatory status of each mobile service will be based on whether it is a "commercial mobile service" or a "private mobile service" as defined by the statute.<sup>9</sup> To implement the statute, we have initiated a rule making in which we propose to address the regulatory status of all mobile services.<sup>10</sup> Because we have included the regulatory status of both private and common carrier paging as an issue in that proceeding, we conclude that further discussion of this issue in the instant proceeding is unnecessary.

8. While we do not need to address the regulatory status of private carrier paging in this Order, it should be noted that the actions we take in our Section 332 rule making could affect the regulatory structure we are establishing today for licensing of 929-930 MHz systems. If we decide in that proceeding to reclassify private carrier paging as a commercial mobile service, it may be necessary to modify some of the rules adopted by this Order to accommodate such reclassification, which would take effect three years from the enactment of the new legislation.<sup>11</sup> Whether or not such rule changes are necessary in the future, however, we believe that the rules being adopted today serve the public interest for the reasons stated in this Report and Order.

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<sup>8</sup> Section 332 was amended on August 10, 1993, by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993) ("Budget Act").

<sup>9</sup> See 47 U.S.C. § 332(d).

<sup>10</sup> See Notice of Proposed Rule Making, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, FCC 93-454 (adopted September 21, 1993, released October 8, 1993), 58 Fed. Reg. 53169 (October 14, 1993).

<sup>11</sup> In the event that private paging services are reclassified, the legislation provides that paging services utilizing frequencies allocated as of January 1, 1993 for private land mobile services (which includes 929-930 MHz) will be treated as private mobile service until three years after enactment, *i.e.*, until August 10, 1996. Budget Act, § 6002(c)(2)(B).

## B. Configuration of Protected Systems

### 1. Number of Transmitters

#### a. Local systems

9. In the Notice, we proposed to grant local exclusivity to all 900 MHz private paging systems comprised of at least six contiguous transmitters, except in the three largest metropolitan markets, where a larger number of transmitters would be required.<sup>12</sup> The comments support a transmitter-based approach, and virtually all commenters agree that six transmitters is an appropriate threshold. Most commenters also support NABER's original proposal that 18 transmitters be required to obtain local exclusivity in the New York, Los Angeles, and Chicago markets.<sup>13</sup> We conclude that these are reasonable thresholds for obtaining an exclusive local channel assignment. These thresholds should ensure adequate coverage in most markets and should discourage frivolous applications. At the same time, these threshold standards should not unduly favor larger paging systems to the detriment of smaller existing or potential systems. We therefore adopt an 18-transmitter minimum for the three top markets,<sup>14</sup> and a 6-transmitter minimum for all areas outside the top three markets. As proposed in the Notice, a transmitter will be counted towards the minimum only if (1) it is within 25 miles of another transmitter in the system, and (2) it is not co-located with another transmitter being counted toward the minimum on the same frequency.<sup>15</sup>

10. One issue raised by commenters is whether transmitters can be counted towards the minimum if they are not held by a common licensee. Because many paging operators license individual stations through affiliates or subsidiaries, several commenters propose that we allow multiple licensees to aggregate transmitters for purposes of meeting the minimum.<sup>16</sup> We agree

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<sup>12</sup> Notice at paras 19-22.

<sup>13</sup> A few commenters propose more flexible criteria for determining the minimum number of transmitters. See, e.g., American Paging Comments at 6-7 (18 transmitters in top 3 markets, 12 transmitters in Markets 4-20, 9 transmitters in Markets 21-30); Metagram Comments at 3-5 (required number of transmitters should depend on terrain and similar factors affecting signal coverage in particular markets). In our view, however, attempting to tailor the rules more precisely to individual markets would not yield sufficient benefit to justify the added regulatory complexity and administrative burden that would be imposed on applicants and the Commission.

<sup>14</sup> For purposes of this rule making, a "market" is defined as the geographic area specified in Section 90.741 of our rules, which consists of a 37.3 mile (60 kilometer) radius around designated coordinates in each city. Thus, an applicant or licensee who seeks exclusivity within part or all of this area in any of the top three markets must construct a system of at least 18 transmitters.

<sup>15</sup> We will consider multiple transmitters to be co-located if they are situated on a common antenna, building, antenna farm, or similar facility. Licensees are free to install additional transmitters at a single location, but only one such transmitter will be counted towards exclusivity.

<sup>16</sup> See PacTel Comments at 3-4; PageNet Reply Comments at 8.

that this is reasonable so long as all transmitters being counted actually function as part of a single paging system. In other words, we will allow multiple licensees (e.g., affiliates, subsidiaries, joint venture partners) to obtain exclusivity for a single jointly operated system<sup>17</sup> that otherwise meets our criteria, but we will not allow aggregate counting of transmitters in separately operated systems even if they are operated by a common licensee.

#### **b. Regional systems**

11. Our proposal for regional exclusivity called for a system of at least 70 transmitters, not necessarily contiguous, situated in no more than 12 adjacent states. We further proposed that in the top 30 markets, a regional system operator would have to construct enough contiguous transmitters to meet the criteria for local exclusivity in that market.<sup>18</sup> Most commenters support this approach, although some argue that the top-30 market requirement is unduly restrictive.<sup>19</sup> PacTel, however, criticizes our regional proposal as arbitrary and proposes an alternative: the United States would be divided into four regions, and regional licensees would be required to serve 12 to 14 markets in a region.<sup>20</sup>

12. We will adopt our original proposal for the reasons stated in the Notice.<sup>21</sup> Although PacTel's alternative offers certain benefits, it is administratively complex, lacks flexibility, and did not garner significant support from other commenters. Rather than requiring regional licensees to serve predetermined areas, we prefer to afford licensees the flexibility to design regional systems that respond to actual market demand, which may vary significantly from region to region. Therefore, we will place no restrictions on the configuration of regional systems other than those contained in our original proposal.

#### **c. Nationwide systems**

13. The Notice proposed to grant nationwide exclusivity to systems that consist of at least 300 transmitters, provide service to 50 markets, including 25 of the top 50 markets, and serve at least two markets in each of seven regions modelled on the RBOC regions.<sup>22</sup> Commenters generally support these criteria, although some feel the geographic coverage criteria should be strengthened while others regard them as too rigid. PageMart, for example, would require service to five markets in each of the seven regions, while PageNet proposes requiring coverage of 50% of the population in each region.<sup>23</sup> On the other hand, Metagram and Metrocall propose relaxing some of the proposed criteria for nationwide exclusivity. Metagram contends that the 50-market requirement is too high because it undercounts

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<sup>17</sup> Systems that use interconnected terminals to share time on a common frequency but are otherwise operated separately will not be considered "jointly operated" systems.

<sup>18</sup> Notice at para. 24.

<sup>19</sup> See, e.g., Metagram Comments at 6-8; PacTel Comments at 12-14.

<sup>20</sup> PacTel Comments at 7-10.

<sup>21</sup> See Notice at para. 24.

<sup>22</sup> Notice at paras. 25-27.

<sup>23</sup> PageMart Comments at 14; PageNet Comments at 19-20.

"hyphenated" multi-city markets, and both Metagram and Metrocall oppose the regional distribution requirement.<sup>24</sup>

14. We conclude that our original proposal not only strikes a fair balance among the opposing views stated in the comments, but that it also addresses our concerns regarding geographic coverage and the potential for frequency warehousing. The construction and coverage criteria we are imposing will ensure comprehensive nationwide service, while the capital investment required to construct nationwide systems will be sufficient to discourage attempts to warehouse nationwide paging frequencies. At the same time, licensees who meet these criteria do not require more intrusive regulation to ensure that they provide service where the need exists. We are confident that in today's highly competitive paging market, customer demand will provide sufficient incentive for nationwide licensees to eliminate gaps in their coverage.

15. Several commenters urge us to modify our proposal limiting nationwide exclusivity to the continental United States, and request that we include Alaska, Hawaii, and Puerto Rico as well.<sup>25</sup> We will adopt this suggestion, which gives nationwide licensees flexibility to extend service to customers who live in or travel to these locations. Another suggestion by some commenters is that we allow local systems to offer "fill-in" service in unserved areas on nationwide frequencies so long as there is no interference with the nationwide licensee's operations. We decline to adopt this proposed modification. The purpose of nationwide exclusivity is not only to prevent interference with existing operations, but to provide an incentive for future expansion of coverage by nationwide licensees. Allowing local systems to fill in currently unserved areas on nationwide frequencies would eliminate this incentive and foreclose future expansion by nationwide systems.

## 2. Multi-Frequency Transmitters

16. Many commenters raise the issue of whether licensees should be allowed to count the same transmitter for exclusivity purposes on more than one frequency. In part because of the shared frequency environment, many private paging licensees have developed systems that use "frequency-agile" transmitters capable of transmitting on multiple frequencies. One option, advocated by Arch, PacTel, PageNet, and others, would be to allow licensees to count these transmitters on each operating frequency, so that an operator could qualify for multi-channel exclusivity based on a single set of transmitters.<sup>26</sup> Another option, advocated by PageMart, would be to allow licensees to use frequency-agile transmitters, but to "count" each such transmitter on only one of its operating frequencies.<sup>27</sup>

17. We prefer the latter approach. The primary purpose of requiring a minimum number of transmitters is to discourage warehousing and speculation by ensuring that licensees make a significant capital investment to build a qualifying system. If we were to allow repeated

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<sup>24</sup> Metagram Comments at 9; Metrocall Comments at 6.

<sup>25</sup> NABER Comments at 15-16; PacTel Paging Comments at 11; American Paging Reply Comments at 7.

<sup>26</sup> See Arch Comments at 3-4; Thomas Luczak Comments at 2-3; PageNet Comments at 14-15; American Paging Reply Comments at 2-3

<sup>27</sup> PageMart Comments at 8-10.

"counting" of the same transmitter, licensees could claim multi-channel exclusivity with no more investment than is required to earn single-channel exclusivity. To prevent the potential hoarding of multiple frequencies, we believe paging operators seeking more than one exclusive frequency should be required to meet a higher investment threshold. Therefore, we will allow multi-frequency transmitters to be counted only once for exclusivity purposes. A licensee using multi-frequency transmitters may qualify for exclusivity on two frequencies, however, by constructing twice the number of transmitters required to obtain one channel.<sup>28</sup>

### C. Scope of Protection

18. We proposed in the Notice to protect qualified local or regional systems by applying minimum separation standards to placement of subsequent co-channel systems. We proposed to calculate the required separation based on the antenna height and transmitter power of the respective systems, using the same height/power table that is used for 930-931 MHz common carrier paging systems.<sup>29</sup> Virtually all commenters support this approach, but some also urge us to increase the maximum effective radiated power (ERP) for private paging licensees from 1000 watts, the current limit, to 3500 watts.<sup>30</sup> These commenters note that nationwide common carrier paging licensees are already allowed to operate at 3500 watts, that non-nationwide 931 MHz licensees may also operate at 3500 watts within pre-existing service areas, and that we have recently proposed to allow non-nationwide licensees to use 3500 watts outside their pre-existing service areas as well.<sup>31</sup>

19. We conclude that the separation standards proposed in the Notice should be adopted as the basis for co-channel protection, and that the current ERP limit of 1000 watts will be retained for local and regional systems. If we were to allow local and regional systems to operate at higher power under the new rules, the resulting minimum separations between co-channel stations would leave less room for entry by new systems. We are also not persuaded that our pending common carrier power proposal automatically justifies a similar increase for private paging systems. That proposal is premised on the nature of the common carrier paging market, which has matured to the point where demand for 931 MHz frequencies is largely confined to expansion of existing systems.<sup>32</sup> At 929-930 MHz, contrastingly, we believe

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<sup>28</sup> For example, a system comprised of 12 dual-frequency transmitters would qualify for local exclusivity on both frequencies provided that all other geographic and technical criteria are met. Similarly, a nationwide licensee may obtain exclusivity on two frequencies based on a system of 600 dual-frequency transmitters. As discussed below, however, a non-grandfathered applicant seeking to construct a multi-frequency system will initially be assigned only one frequency pending construction and operation of the system.

<sup>29</sup> Notice at para. 23.

<sup>30</sup> See, e.g., American Paging Comments at 9-10; Celpage Comments at 11-12; PacTel Paging Comments at 17-18; PageNet Comments at 15-17.

<sup>31</sup> See Report and Order, Height and Power Increases in the Public Mobile Service, 4 FCC Rcd 5303 (1989), modified on recon., 5 FCC Rcd 4604 (1990); Notice of Proposed Rule Making and Order Granting Petition For Waiver, CC Docket No. 93-116, 8 FCC Rcd 2796 (1993).

<sup>32</sup> See Notice of Proposed Rule Making and Order Granting Petition For Waiver, 8 FCC Rcd 2796 (1993) at para. 3.

opportunities for new entry continue to exist, which would be diminished by increasing power limits at this time. This does not apply, however, to 929-930 MHz frequencies occupied by licensees who qualify for nationwide exclusivity. Because there will be no opportunity for new entry on these frequencies, we are increasing the maximum ERP for nationwide licensees to 3500 watts.<sup>33</sup>

#### **D. Channel Allotment**

20. In the Notice, we proposed to make 35 of 40 channels available on an exclusive basis, while five channels would continue to be licensed on a shared basis. We further proposed to eliminate the division of 929-930 MHz into separate pools for commercial and non-commercial service. Thus, commercial and non-commercial applicants would be equally eligible to apply for all channels.<sup>34</sup> The comments uniformly support these proposals. NABER and American Paging, however, suggest that two of the five frequencies that we proposed to designate for shared use should be replaced by other, less heavily occupied frequencies.<sup>35</sup> No other party objected to the alternative frequencies proposed by NABER.

21. After review of our licensing records, we have decided to designate four of the five originally proposed frequencies (929.0375, 929.0875, 929.1625, and 929.2625) for shared use, but to substitute 929.0625 for 929.3375 as the fifth shared frequency. Based on applications coordinated and filed prior to the Notice, we have recently licensed American Paging to construct a wide-area system on 929.3375, making it less suitable for designation as a shared frequency. Current licensing on the other four frequencies, however (including 929.0875, the other frequency questioned by NABER), is relatively light and consists primarily of small, local systems that would not qualify for exclusivity in any event. Of the alternative frequencies proposed by NABER, 929.0625 appears to be the least heavily used, providing ample capacity for additional shared use without prejudice to existing licensees.

#### **E. Prerequisites for Exclusivity**

##### **1. Construction Period**

22. The Notice proposed to grant applicants' requests for exclusivity conditioned on construction of a qualified system within 8 months of licensing. For a system of more than 30 transmitters, we proposed to allow applicants to request an extension of up to three years based on a showing of need, a construction timetable, and evidence of financial ability to construct the system, or, alternatively, a performance bond.<sup>36</sup> Most commenters support these proposals, but some parties differ on whether the slow-growth provisions are reasonable. Arch proposes to extend the slow-growth period to four years for nationwide systems, while American Paging

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<sup>33</sup> Although we will allow nationwide licensees to operate at higher power, this does not affect their obligation to cooperate and avoid interference with grandfathered licensees who continue to share their frequencies.

<sup>34</sup> Notice at paras 28-29.

<sup>35</sup> American Paging Comments at 4-6; NABER Comments at 6-8.

<sup>36</sup> Notice at paras. 30-31.

suggests five years.<sup>37</sup> PageNet advocates shortening the slow-growth period to 18 months, a position opposed by Message Center and PageMart.<sup>38</sup> MTel opposes any slow-growth option.<sup>39</sup> PacTel supports slow-growth, provided that licensees are not allowed to extend the ordinary 8-month limit by obtaining license modifications.<sup>40</sup> In general, commenters support imposing a bond requirement on slow growth applicants, either in the form of a performance bond, as suggested in the Notice,<sup>41</sup> or a forfeiture bond.<sup>42</sup>

23. We adopt the 8-month construction requirement as proposed, and further adopt PacTel's proposal that the 8-month period remain tied to the original licensing date even if subsequent license modifications are granted. With respect to slow-growth extensions, we conclude that a three-year maximum is appropriate, but we emphasize that extensions may be shorter where a three-year period is not justified.<sup>43</sup> To obtain an extension, a slow growth applicant must state the reasons why an extension is needed and provide a construction timetable demonstrating that the extension period requested is reasonable. The applicant must also provide a construction cost estimate<sup>44</sup> and must either place a sum equal to the estimate in an escrow account or obtain a performance bond payable in that amount.<sup>45</sup> As construction of the system proceeds, the licensee may draw from the escrow account or reduce the bond amount

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<sup>37</sup> Arch Comments at 4-6; American Paging Reply Comments at 5.

<sup>38</sup> PageNet Comments at 9-11; Message Center Reply Comments at 2; PageMart Reply Comments at 12.

<sup>39</sup> MTel Comments at 7-8.

<sup>40</sup> PacTel Comments at 15-17.

<sup>41</sup> Notice at para. 31 n.46.

<sup>42</sup> See, e.g., PacTel Paging Comments at 15-17 (advocating forfeiture bond based on Section 503 of the Communications Act).

<sup>43</sup> The slow-growth option will be limited to new applications only. We will not grant requests to extend the construction period for grandfathered licenses.

<sup>44</sup> In its petition for rule making, NABER estimated the average cost of constructing a 900 MHz paging system to be \$20,000 per transmitter. Petition for Rule Making, RM-7986, at 9 n.16. A slow-growth applicant who establishes an escrow fund or obtains a bond equal to \$20,000 for each proposed transmitter and who otherwise meets our slow-growth criteria will be presumed to qualify for an extension. An applicant whose request is based on a cost estimate lower than \$20,000 per transmitter will not receive this presumption and must submit an itemized statement demonstrating that the reduced estimate is reasonable.

<sup>45</sup> If a performance bond is used, the surety on the bond must be a surety company deemed acceptable within the meaning of 31 U.S.C. § 9304 *et seq.* (see, e.g., Department of the Treasury Fiscal Service, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsuring Companies, 57 Fed. Reg. 29356 (1992)). The bond must name the United States Treasury as beneficiary in the event of the licensee's default.

to reflect costs incurred.<sup>46</sup> If the licensee fails to construct all or part of the proposed system within the slow-growth period, the escrow balance or the outstanding principal on the bond will be paid to the United States Treasury.

24. As proposed in the Notice, construction deadlines will be strictly enforced, and licensees who fail to construct will forfeit their protected status and be barred from applying for any new authorization in the same area for one year. Nevertheless, if an applicant constructs fewer sites than proposed in its application, but the constructed system still qualifies for protected status, exclusivity will be extended to the constructed system.<sup>47</sup> PageNet argues that slow-growth licensees should forfeit all exclusivity rights to discourage applicants from deliberately filing overreaching proposals and then underbuilding.<sup>48</sup> In light of the financial commitment required of slow-growth applicants, however, we do not believe such an "all-or-nothing" sanction is required.

## 2. Technical Standards

25. In the Notice, we proposed that PCP systems comply with certain technical standards to qualify for exclusivity.<sup>49</sup> The comments uniformly support these proposals. Accordingly, we adopt the standards set forth in the Notice: to count towards exclusivity, transmitters in local, regional, and nationwide systems must be capable of at least 100 watts output power,<sup>50</sup> must have simulcast capability, and must in fact be operated as part of a single operating system.

## 3. Loading Requirements

26. We did not propose loading requirements in the Notice, based on our tentative conclusion that such requirements are impractical and burdensome.<sup>51</sup> This view is supported by the majority of comments.<sup>52</sup> We continue to believe that loading requirements are not workable in this context, and we therefore will not adopt a loading standard.

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<sup>46</sup> The amount by which the escrow or bond is reduced for partial construction may not exceed the originally estimated construction cost of that portion of the system, even if the licensee's actual cost was higher.

<sup>47</sup> Unconstructed licenses will be subject to forfeiture and reassignment. As proposed, we will apply our finder's preference rules to PCP licensees who obtain exclusive frequency assignments and then fail to construct or operate their systems as proposed.

<sup>48</sup> PageNet Comments at 9-11.

<sup>49</sup> Notice at para. 32.

<sup>50</sup> This does not mean that transmitters must actually be operated at 100 watts. So long as each transmitter has 100 watt capability, the licensee may operate at any appropriate power within the limits set forth in Section 90.494(f).

<sup>51</sup> Notice at para. 33.

<sup>52</sup> Only two commenters, MTel and PageNet, advocate loading standards, and neither presents a specific proposal. MTel Comments at 6-7; PageNet Reply Comments at 14.

#### 4. Exclusivity on Multiple Channels

27. To prevent hoarding of multiple frequencies, we proposed to limit applicants to one exclusive frequency assignment at a time at any location. Licensees would be allowed to apply for a second exclusive frequency in the same area only upon completion of construction and commencement of operation of a qualified system on the initial frequency.<sup>53</sup> Most commenters agree that assignment of a second frequency should be conditional on actual use of the initial frequency.<sup>54</sup> Several commenters also seek assurance that our multi-frequency rules will not preclude them from using frequency-agile transmitters to qualify for a second frequency.<sup>55</sup>

28. We adopt the proposal substantially as set forth in the Notice. Applicants will be assigned a single frequency pending construction and commencement of operations, at which point they may apply for a second frequency in the same area (assuming a second frequency is available). A licensee who proposes to construct a system with frequency-agile capability will also be authorized initially on one channel only. Once such a system is constructed and operational, the licensee may obtain authorization for a second frequency (again assuming availability) provided it meets our multi-frequency transmitter criteria discussed in Part III.B.2. above, i.e., the system contains twice the number of transmitters required to obtain one exclusive channel.<sup>56</sup>

#### F. Application to Existing Systems

29. Our proposal for treatment of existing 900 MHz private paging systems provided that exclusivity would be granted to all incumbent systems that qualified for protection under the new rules. In addition, all incumbent systems would be grandfathered regardless of whether they qualified for exclusivity.<sup>57</sup> The rights of incumbents would be based on their existing authorizations, whether constructed or unconstructed, as of the effective date of the rules. With respect to applications for new transmitter sites once the new rules are in effect, we proposed that incumbents and new licensees would be treated equally, except that a preference would be

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<sup>53</sup> Notice at para. 34.

<sup>54</sup> See, e.g., Arch Comments at 3-4; MAP Mobile Comments at 8 n.13; Message Center/Beepage Comments at 3. Only Celpage and Metagram argue that licensees should be restricted to one exclusive frequency under all circumstances. Celpage Comments at 9-10; Metagram Comments at 14.

<sup>55</sup> See Arch Comments at 3-4; Luczak Comments at 3; PageMart Comments at 10-12; PageNet Reply comments at 9.

<sup>56</sup> See para. 17, *supra*. The multi-frequency requirements are the same for grandfathered systems, except that we will not withhold exclusivity on the second frequency pending construction of the system. For example, if a licensee is currently operating or authorized to construct a 12-transmitter dual-frequency system that meets our local exclusivity criteria, it will be protected on both frequencies to the extent of that authorization. On the other hand, a 6-transmitter dual frequency system is only entitled to exclusivity on one frequency, although operations on the second frequency will be grandfathered.

<sup>57</sup> Notice at paras. 35-36.

granted in favor of expansion of existing systems in mutually exclusive situations.<sup>58</sup>

30. The vast majority of commenters support grandfathering of all systems in place and granting exclusivity to those systems that already meet the criteria set forth in the new rules. PacTel, PageMart, and PageNet express concern, however, about whether protection should be extended to licenses based on applications filed since the adoption of the Notice.<sup>59</sup> MAP and Metagram propose that incumbents be allowed time to build out their systems before new systems are licensed, after which incumbent exclusivity would be based on actual construction.<sup>60</sup> This concept is opposed by Arch, Metromedia, and PageNet, who argue against any tilt in favor of incumbents with respect to future expansion rights.<sup>61</sup> American Paging goes further and proposes that exclusive licensees be allowed to move non-exclusive grandfathered systems to shared frequencies provided the new entrant pays the cost of relocation.<sup>62</sup>

31. We conclude that our original proposal constitutes the simplest and fairest way to balance the interests of incumbents and new entrants. In our view, incumbents who are already operating or constructing systems that meet the new exclusivity criteria should be afforded protection against new co-channel systems in their service areas, but the rules should not require any incumbent, regardless of size, to relocate, change frequencies, or otherwise curtail previously authorized construction or operations.<sup>63</sup> Therefore, all incumbent licensees will be grandfathered with respect to their existing systems, and those who meet our criteria will be granted exclusivity.<sup>64</sup> It should be emphasized that this protection is only against new co-channel licensing: to the extent that grandfathered licensees are currently sharing frequencies with each other, they must continue to comply with the obligations of mutual cooperation and non-interference that have applied previously.<sup>65</sup>

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<sup>58</sup> *Id.* at para. 37.

<sup>59</sup> PacTel Comments at 22, Reply Comments at 15; PageMart Reply Comments at 11-12; PageNet Reply Comments at 19-20.

<sup>60</sup> MAP Comments at 6-8; Metagram Comments at 15-18.

<sup>61</sup> Arch Reply Comments at 10-11; Metromedia Reply Comments at 7-9; PageNet Reply Comments at 19-20.

<sup>62</sup> American Paging Comments at 8-9.

<sup>63</sup> Of course, this does not preclude co-channel licensees from voluntarily entering into relocation agreements.

<sup>64</sup> Licenses granted based on applications filed prior to the Sunshine Notice date for this Report and Order, i.e., October 14, 1993, will be treated as incumbent licenses entitled to grandfathered status.

<sup>65</sup> PageNet raises the question of how our grandfathering rules apply to a situation where incumbent Licensee A has qualified for nationwide exclusivity, but has not yet established a presence in a market where incumbent Licensee B has qualified for local exclusivity on the same frequency. PageNet Reply Comments at 4-6. Should that situation arise, we will require the two licensees to share the frequency if and when Licensee A enters that market. We emphasize, however, that this applies only to grandfathered systems. A non-grandfathered nationwide licensee may not encroach on an area where another

## G. Future Licensing

32. With respect to future expansion, we will process all future applications for 900 MHz paging licenses on a first-come, first-served basis, regardless of whether the applicant is adding transmitter sites to an existing system or establishing a new system. Applications for new licenses will be accepted only if the resulting system qualifies for exclusivity under our rules and does not violate our minimum separation standards with respect to other systems that have previously qualified for exclusivity on the same frequency.<sup>66</sup>

33. In the event of simultaneously filed mutually exclusive applications, we will grant a dispositive preference, as proposed in the Notice, in favor of an application to expand an existing system over an application to construct a new system.<sup>67</sup> Thus, where an existing licensee files to obtain an exclusive frequency for expansion of its system, other entities simultaneously applying to construct new systems in the same area will not be eligible to compete for that frequency and such applications will be dismissed as unacceptable for filing. Although this eligibility restriction may result in the licensing of fewer competing paging systems in a given area, we find it to be in the public interest for several reasons. First, the restriction will tend to encourage development of systems that cover a larger area over those that cover a smaller area.<sup>68</sup> Because increased coverage allows customers greater mobility without loss of access to service, we believe that wider-area systems are generally more beneficial to paging customers and more responsive to the rising demand for paging services. Second, allowing existing licensees to expand their service area will result in broader coverage for existing users of those systems, whereas authorizing a new competing system would prevent such users from obtaining expanded coverage without subscribing to both services. Third, by encouraging expansion of existing systems, the restriction will promote rapid access to wide-area service for new users as such systems reach new areas, whereas applicants who have yet to construct any portion of their systems would generally require more time to make wide-area service available.<sup>69</sup>

34. At the same time, we decline to adopt the suggestion of some commenters that existing licensees be afforded an extended period in which to expand their systems before

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licensee has previously qualified for local or regional exclusivity.

<sup>66</sup> Consequently, grandfathered licensees may not add stations to their existing systems in areas where a co-channel licensee has qualified for exclusivity. Even where expansion is not allowed, however, we will allow grandfathered licensees to make minor modifications needed to maintain an existing system (e.g., relocation of a transmitter upon expiration of site lease).

<sup>67</sup> Notice at para. 37.

<sup>68</sup> We emphasize, however, that this restriction does not benefit only large systems. For example, a licensee with an existing local system will be entitled to preference over an applicant who submits a conflicting proposal to build a new larger system.

<sup>69</sup> The Commission's authority to set threshold eligibility restrictions of this type is well-established. See, e.g., United States v. Storer Broadcasting, 351 U.S. 192 (1956); Hispanic Information & Telecommunications Network, Inc. v. FCC, 865 F.2d 1289 (D.C. Cir. 1989).

applications for new systems are accepted. Such a preference, in our view, would impose too severe a disadvantage on new applicants and could delay the advent of service in areas where new applicants are prepared to provide service but expansion by existing licensees is unlikely to occur.

35. With respect to simultaneous mutually exclusive applications where no party is entitled to a preference, we have proposed to select licensees by competitive bidding pursuant to the legislation recently enacted by Congress as part of the Omnibus Budget Reconciliation Act.<sup>70</sup> We are not adopting specific bidding procedures at this time, however, but will defer action on mutually exclusive applications until the conclusion of our pending rule making on competitive bidding procedures.<sup>71</sup>

#### H. Lower Band PCP Systems

36. In the Notice, we declined to propose the implementation of exclusive licensing for private paging systems operating below 900 MHz. We noted that different operating conditions and greater congestion on these frequencies made exclusivity more problematic and difficult to implement than at 900 MHz. Nevertheless, we sought informal comment on how to promote efficient use of lower band paging frequencies.<sup>72</sup>

37. Most commenters respond that issues relating to the lower bands are beyond the scope of this proceeding and should be addressed separately.<sup>73</sup> Some lower band licensees argue, however, that adopting exclusivity at 900 MHz without addressing lower band issues could lead to inconsistent regulation and increased lower band congestion.<sup>74</sup> Some parties also contend that lower band exclusivity is feasible because congestion is not severe except in a few major markets. Several alternatives to exclusivity are suggested, including caps on frequency sharing, mandatory interconnection of terminals, and encouraging migration to less crowded frequencies.<sup>75</sup>

38. In our view, the regulation of private paging below 900 MHz remains outside the scope of this proceeding. The comments confirm that operating conditions in the lower bands are significantly different from those at 900 MHz. Because of better signal propagation characteristics and lower operating costs, the lower bands are highly sought-after in major

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<sup>70</sup> See 47 U.S.C. § 309(j) (added by the Budget Act, § 6002(a), 107 Stat. 312, 387 (1993)).

<sup>71</sup> See Notice of Proposed Rule Making, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, FCC 93-455 (adopted September 23, 1993, released October 10, 1993).

<sup>72</sup> Notice at paras. 38-39.

<sup>73</sup> See, e.g., NABER Reply Comments at 5-6; PacTel Paging Reply Comments at 15-16; PageMart Reply Comments at 4.

<sup>74</sup> See, e.g., Celpage Comments at 7-9; Atlanta Voice Page Letter Comments at 1. Atlanta Voice Page argues that our proposal benefits only larger PCP operators who can afford the high operating costs at 900 MHz, while smaller operators will be penalized.

<sup>75</sup> See Message Center Comments at 4-7; Porta-Phone Comments at 4-5.

markets, even in a shared environment. We believe that this will continue to be the case after exclusivity is implemented at 900 MHz and are therefore not persuaded that similar action is required in the lower bands. Even assuming that lower band congestion were to merit remedial action in the future, the operational differences between 900 MHz and the lower bands suggest that such issues can and should be dealt with independently. We therefore decline to address these issues further in this proceeding.

## I. Frequency Coordination

39. In the Notice, we proposed to continue relying on frequency coordination in the assignment of exclusive frequencies, but to allow 900 MHz paging applicants to select from among competing coordinators.<sup>76</sup> Most commenters strongly oppose allowing more than one coordinator to offer coordination service and favor retaining NABER as the sole coordinator. These parties praise NABER's coordination efforts and contend that multiple coordinators will create confusion and delay in the licensing process.<sup>77</sup> ITA, on the other hand, supports our proposal, arguing that it is prepared to offer coordination services and that the problems predicted by opponents of the proposal are exaggerated.<sup>78</sup>

40. After consideration of the numerous comments on this issue, we conclude that NABER will continue as coordinator for this service, but that additional coordinators will be authorized if certain conditions are met. During the initial implementation and commencement of licensing under this Order, we find that the transition of 900 MHz paging from shared to exclusive frequency assignments presents unique considerations that weigh against immediately authorizing multiple coordinators without additional certification steps. First, as noted above, the Commission is relying on NABER's existing data base and computer capabilities to determine the exclusivity rights of incumbents. Second, because each application that is filed with the Commission will affect the possible placement of future stations, future licensing requires the creation, maintenance, and constant updating of the coordination data base to reflect pending applications. We are prepared to introduce additional coordinators into this process, however, once we are assured that they are capable of developing such a data base and exchanging data base information instantaneously with other coordinators. We believe this objective is achievable, and that any coordinator that can demonstrate that it is capable of meeting these conditions should be allowed to offer coordination services to applicants. In furtherance of this objective, we delegate authority to the Chief of the Private Radio Bureau to develop specific standards for those who wish to provide coordination service at 929-930 MHz and to authorize coordination as soon as possible by those who demonstrate the ability to meet those standards.

## J. Conditional Operation

41. Our current rules for 929-930 MHz generally allow private paging applicants to operate under a conditional permit upon filing of an application with the Commission, provided that the application is accompanied by evidence of frequency coordination and that certain other

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<sup>76</sup> Notice at para. 40.

<sup>77</sup> See, e.g., American Paging Comments at 11; Celpage Comments at 13-14; PageMart Comments at 16-17.

<sup>78</sup> ITA Reply Comments at 5-12. ITA is joined in its reply comments on this issue by the Council for Independent Communications Suppliers.

conditions are met.<sup>79</sup> Because we are continuing to require coordination of all 900 MHz private paging applications, we will continue to allow conditional operation under the conditions specified in the rules. We are making one minor modification to these conditions, however, to allow conditional operation of 929-930 MHz stations located above "Line A," i.e., within 250 miles of the Canadian border. Previously, we did not allow conditional operation of such stations because applications above Line A on these frequencies required coordination with Canada to protect certain Canadian fixed stations.<sup>80</sup> In July 1992, however, the Commission and Canada's Department of Communications agreed that such coordination was no longer necessary at 929-930 MHz.<sup>81</sup> We have received a petition from PageNet requesting that we amend our conditional permit rules to conform to this agreement.<sup>82</sup> Although this matter was not raised in the Notice in this proceeding, we consider this to be a minor and non-controversial matter in which the public is unlikely to be interested. Accordingly, we find good cause to conclude that notice and comment is unnecessary.<sup>83</sup> Therefore, we are amending our rules to allow conditional operation of 929-930 MHz stations above Line A, provided all other requirements of our rules are met.

#### K. Transition Procedures

42. To facilitate the transition from shared to exclusive licensing, we are implementing the following procedures. Within thirty days of the effective date of this Order, any incumbent licensee that believes it qualifies for exclusivity based on existing construction or authorizations shall submit a request for designation of exclusive status to NABER.<sup>84</sup> The request shall provide information demonstrating that the licensee's paging system qualifies for exclusivity under the criteria set forth in this Order. NABER will review all submissions, confirm that they meet our exclusivity criteria, and forward confirmed requests to the Commission for final review, approval, and entry into our licensing data base. Once this process is complete, we will begin processing new applications. New applicants will be required to provide the exclusivity information described above as part of their application. Further details of these procedures will be provided by Public Notice.

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<sup>79</sup> See 47 CFR § 90.159(b).

<sup>80</sup> See Interim Coordination Considerations for the Band 929-932 Mhz, dated September 14, 1993.

<sup>81</sup> Letter from Robert W. McCaughern, Deputy Director General, Engineering Programs Branch, Department of Communications, Government of Canada, to Bruce Franca, Deputy Chief Engineer, Office of Engineering and Technology, dated July 22, 1992.

<sup>82</sup> Petition for Rule Making, Temporary Licensing of Private Carrier Paging Stations Above Line A (filed August 9, 1993).

<sup>83</sup> See 5 U.S.C. § 553(b)(B). Accordingly, we are dismissing PageNet's rule making petition as moot.

<sup>84</sup> Applicants who have filed applications prior to October 14, 1993 but have not yet received a license grant may submit the request as a modification to their applications.

#### IV. CONCLUSION

43. This action is a significant step in meeting the public's demand for competitive and innovative paging services. By enabling 929-930 MHz licensees to earn exclusivity, it prevents frequency congestion and provides incentives for licensees to invest in superior technology. The new rules also encourage the successful development of local, regional, and nationwide paging systems, thereby balancing the interests of small and large paging operators alike. For these reasons, we adopt the proposal set forth in our Notice as modified in this Report and Order.

#### V. FINAL REGULATORY FLEXIBILITY ANALYSIS

44. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

##### A. Need and purpose of this action.

45. This Report and Order amends Part 90 of the Commission's rules to provide channel exclusivity to qualified private paging systems on certain channels at 929-930 MHz. This change will promote the efficient use of paging channels by encouraging investment in new paging technology and the development of more efficient paging systems providing local, regional, and nationwide service.

##### B. Summary of issues raised by public comments in response to the Initial Regulatory Flexibility Analysis.

46. Only one party, Radiofone, filed comments responding to the Initial Regulatory Flexibility Analysis (IRFA).<sup>85</sup> Radiofone argues that we have not adequately addressed the impact of our proposal on small paging systems and that exclusive licensing will preclude small business entry at 900 MHz.

##### C. Significant alternatives considered and rejected.

47. Radiofone proposes no alternative means of addressing small business issues other than outright rejection of our proposal. We disagree with the contention that such issues have not been addressed in this proceeding and find this Order to be fully consistent with our small business policy objectives. As discussed in the IRFA, this action does impose certain conditions on the licensing of smaller 929-930 MHz paging systems,<sup>86</sup> but these requirements are not unduly burdensome. The new rules contain significant benefits for small businesses by protecting dozens of small existing systems in place, allowing many such systems to obtain exclusivity, and creating opportunities for expansion and new entry by small business licensees.

#### VI. ORDERING CLAUSES

48. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r), and 332(a), Part 90 of the Commission's Rules, 47 CFR Part 90, IS

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<sup>85</sup> Radiofone Reply Comments at 8-9.

<sup>86</sup> See IRFA (Notice, Appendix B).

AMENDED as set forth in Appendix A below.

49. IT IS FURTHER ORDERED that this Report and Order will be effective thirty days after publication in the Federal Register.

50. IT IS FURTHER ORDERED that PageNet's Petition for Rule Making, filed August 9, 1993, is DISMISSED as moot.

51. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

52. For further information regarding this Report and Order, contact David L. Furth, Private Radio Bureau, Policy and Planning Branch, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

*William F. Catena*

**APPENDIX A**

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 90 -- PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for Part 90 continues to read as follows:

**Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.**

\* \* \* \* \*

2. Section 159 is amended by revising paragraph (b)(1) to read as follows:

**§ 90.159 Temporary and conditional permits.**

\* \* \* \* \*

(b) \* \* \*

(1) For applicants proposing to operate below 470 MHz, that the proposed station location is south of Line A or west of Line C as defined in § 90.7; for applicants in the one-way paging 929-930 MHz band, that the proposed station location is west of Line C as defined in § 90.7.

\* \* \* \* \*

3. Section 175 is amended by revising paragraph (c) to read as follows:

**§ 90.175 Frequency coordination requirements.**

\* \* \* \* \*

(c) For frequencies in the 929-930 MHz band. A statement from the coordinator recommending the most appropriate frequency. For applications under Section 90.495, the coordinator's statement must verify that the proposed system meets the requirements of that section.

\* \* \* \* \*

4. Section 494 is revised to read as follows:

**§ 90.494 One-way paging operations in the 929-930 MHz band.**

(a) The following frequencies are available to all eligible Part 90 users for one-way paging systems on an exclusive basis as provided under Section 90.495:

929.0125	929.3125	929.4875	929.6625	929.8375
929.1125	929.3375	929.5125	929.6875	929.8625
929.1375	929.3625	929.5375	929.7125	929.8875
929.1875	929.3875	929.5625	929.7375	929.9125

929.2125	929.4125	929.5875	929.7625	929.9375
929.2375	929.4375	929.6125	929.7875	929.9625
929.2875	929.4625	929.6375	929.8125	929.9875

(b) The following frequencies are available to all eligible Part 90 users for one-way paging systems on a shared basis only and will not be assigned for the exclusive use of any licensee.

929.0375	929.0625	929.0875	929.1625	929.2625
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(c) All frequencies listed in this section may be used to provide one-way paging communications to persons eligible for licensing under subpart B, C, D, or E of this part, representatives of Federal Government agencies, and individuals. The provisions of § 90.173(b) apply to all frequencies listed in this section.

(d) Licensees on these frequencies may utilize any type of paging operation desired (tone only, tone-voice, digital, tactile, optical readout, etc.).

(e) There shall be no minimum or maximum loading standards for these frequencies.

(f) Except as provided in paragraph (g) of this section, the effective radiated power and antenna height for base stations providing one-way paging service in the frequency band 929-930 MHz must not exceed 1 kilowatt (30 dBw) and 304 meters (1000 feet) above average terrain (AAT), or the equivalent thereof determined from the following table:

Antenna height (AAT) [meters/(feet)]	Effective radiated power (ERP) (watts)
Above 1357 (4500)	65
Above 1205 to 1357 (4000 to 4500)	70
Above 1056 to 1205 (3500 to 4000)	75
Above 904 to 1056 (3000 to 3500)	100
Above 762 to 904 (2500 to 3000)	140
Above 609 to 762 (2000 to 2500)	200
Above 457 to 609 (1500 to 2000)	350
Above 304 to 457 (1000 to 1500)	600

(g) Stations operating as part of nationwide paging systems under Section 90.495(a)(3) may operate at a maximum effective radiated power of 3500 watts.

\* \* \* \* \*

5. Section 90.495 is added to read as follows:

**§ 90.495 Channel exclusivity for local, regional, and national paging systems.**

(a) Applicants for commercial or non-commercial private paging stations in the 929-930 MHz band are eligible for channel exclusivity based on the minimum separation standards provided in this section. To qualify for exclusivity, applicants must construct and operate a local, regional, or nationwide paging system that conforms to the following criteria:

(1) A local system must consist of at least six contiguous transmitters, except in the New York, Los Angeles, and Chicago markets, as defined in Section 90.741 of our rules, where 18 contiguous transmitters are required. For purposes of this section, transmitters will be considered contiguous if:

(i) each transmitter is located within 25 miles (40 kilometers) of at least one other transmitter in the system;

(ii) the combined areas defined by a 12.5 mile radius around each transmitter form a single contiguous area; and

(iii) no transmitter is co-located with any other transmitter being counted as part of a local system for purposes of this section.

Transmitters will be considered co-located for purposes of this section if they are situated on a common antenna, building, antenna farm, or similar facility.

(2) A regional system must consist of 70 or more transmitters, not necessarily contiguous as defined in paragraph (a)(1) of this section, located in no more than twelve adjacent states in the continental United States. In each of the top thirty markets listed in Section 90.741, no transmitter may be counted as part of a regional system under this paragraph unless it would also qualify as part of a local system under paragraph (a)(1) of this section.

(3) A nationwide system must consist of 300 or more transmitters in the continental United States, Alaska, Hawaii, and Puerto Rico, and must provide service to at least 50 markets listed in Section 90.741, including 25 of the top 50 markets and two markets in each of the following regions:

(i) Region 1 -- Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont

(ii) Region 2 -- Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia

(iii) Region 3 -- Illinois, Indiana, Ohio, Michigan, Wisconsin

(iv) Region 4 -- Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee

(v) Region 5 -- Arkansas, Kansas, Missouri, Oklahoma, Texas

(vi) Region 6 -- Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming

(vii) Region 7 -- California, Nevada

(4) No transmitter may be counted as part of a local, regional, or nationwide system under this section unless it is capable of at least 100 watts output power, has simulcast capability, and is to be operated as part of the paging system for which channel exclusivity is sought. Transmitters that are part of a single paging system need not be

licensed to a single entity to comply with this requirement.

(5) Frequency-agile transmitters may be counted no more than once for purposes of this section. A licensee using frequency-agile transmitters may qualify for exclusivity on a second frequency by constructing twice the number of transmitters required to obtain exclusivity on a single frequency, provided that all other requirements of this section are met.

(6) The provisions of this section apply solely to the frequencies listed in Section 90.494(a).

(b) If a paging licensee qualifies for exclusivity under paragraph (a) of this section, no co-channel authorization may be granted to another applicant except in compliance with the separation requirements set forth in this paragraph.

(1) The following table of heights and powers is used to classify all 929-930 MHz paging stations:

Average antenna height above average terrain [meters/(feet)]		Station class					
1206-1526	(4001-5000)	G	G	F	E	F	F
862-1205	(2826-4000)	H	G	G	F	F	F
610-861	(2001-2825)	K	H	H	G	F	F
427-609	(1401-2000)	L	K	H	G	G	G
304-426	(1001-1400)	L	L	K	H	G	G
177-303	(581-1000)	L	L	L	L	K	H
0-176	(0-580)	L	L	L	L	L	L
		125	250	500	1000	1860	3500
		Effective radiated power (watts)					

(2) The minimum distance between each co-channel station and each transmitter in a system qualified for local or regional exclusivity under paragraph (a) of this section is determined by the following table:

Station Class	Minimum separation between co-channel stations [kilometers/(miles)]					
L	112 (70)					
K	120 (75)	125 (78)				
H	128 (80)	133 (83)	138 (86)			
G	163 (101)	168 (104)	173 (107)	187 (116)		
F	223 (139)	227 (142)	233 (145)	247 (154)	275 (171)	
	L	K	H	G	F	
	Station class					

(3) No co-channel authorization will be granted in the continental United States,

Alaska, Hawaii, or Puerto Rico on any frequency assigned to a nationwide paging system as defined in paragraph (a)(3) of this section.

(4) The separation standards set forth in this section do not apply to the placement of co-channel stations that have been authorized on or prior to October 14, 1993 or that are subsequently authorized based on applications filed with the Commission on or prior to October 14, 1993.

(c) A proposed paging system that meets the criteria for channel exclusivity under paragraph (a) of this section will be granted exclusivity under this section at the time of initial licensing. Such exclusivity will expire unless the proposed system (or a sufficient portion of the system to qualify for exclusivity) is constructed and operating within eight months of the licensing date. If exclusivity expires for failure to construct a qualified system:

(1) the licensee may operate constructed stations, but such operation will be secondary to that of any licensee who qualifies for exclusivity under this section; and

(2) the licensee may not apply for any new station authorization in the previously proposed service area for one year from the expiration of exclusivity.

(d) Applications for channel exclusivity may request no more than one frequency in each location to be served. No applicant or affiliate of an applicant may apply for an additional frequency in an area that is the subject of the applicant's prior application unless the system proposed in the prior application has been constructed, is operating, and meets the criteria set forth in paragraph (a) of this section.

(e) Paging licensees may obtain channel exclusivity for stations that have been authorized on or prior to October 14, 1993, or for stations that are subsequently authorized based on applications filed with the Commission on or prior to October 14, 1993, by showing that such stations constitute part of a paging system that meets the criteria set forth in paragraph (a) of this section.

(f) Applications for stations will be deemed mutually exclusive if they are filed on the same day for the same frequency and if the grant of both applications would violate the separation standards set forth in paragraph (b) of this section. Where a 929-930 MHz licensee applies to add a station or stations to a system that has previously qualified for exclusivity under paragraph (a) of this section, applicants who are seeking to construct new systems in the same area and whose applications are mutually exclusive with the licensee's application will be deemed ineligible and such applications will be dismissed as unacceptable for filing.

\* \* \* \* \*

6. Section 90.496 is added to read as follows:

**§ 90.496 Extended implementation schedule.**

For applications filed with the Commission after October 14, 1993, a period of up to three years may be authorized for construction and commencement of operations if the proposed system to be constructed qualifies for channel exclusivity under Section 90.495(a), is comprised of more than 30 transmitters, and the applicant submits justification for an extended implementation period.

(a) The justification must include reasons for requiring an extended construction period and a proposed construction schedule (with milestones). The applicant must also provide a construction cost estimate and must certify that within 30 days of the grant of its application, it will either place a sum equal to the estimate in an escrow account or obtain a performance bond payable in that amount. An applicant who proposes to establish an escrow fund or obtain a bond equal to \$20,000 for each proposed transmitter and who otherwise meets our slow-growth criteria will be presumed to qualify for an extension. An applicant whose request is based on a cost estimate lower than \$20,000 per transmitter will not receive this presumption and must submit an itemized statement demonstrating that the reduced estimate is reasonable.

(b) A licensee who elects to place funds in escrow as provided in paragraph (a) of this section must provide the Commission with the name of the financial institution that holds the escrow account and the account number. A licensee who elects to post a performance bond as provided in paragraph (a) of this section must use a surety company deemed acceptable within the meaning of 31 U.S.C. § 9304 *et seq.* (see, e.g., Department of the Treasury Fiscal Service, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsuring Companies, 57 Fed. Reg. 29356 (1992)), and the bond must name the United States Treasury as beneficiary in the event of the licensee's default. The licensee must provide the Commission with a copy of the performance bond, including all details and conditions.

(c) As construction of the system proceeds, the licensee may draw from the escrow account or reduce the bond amount to reflect costs incurred, except that the amount of any reduction amount may not exceed the originally estimated construction cost of that portion of the system, even if the actual cost was higher. The amount of the reduction is subject to review and modification by the Commission. If the licensee fails to construct all or part of the proposed system within the extended construction period, the escrow balance or the outstanding principal on the bond will be paid to the United States Treasury.

(d) If an extended construction schedule is authorized under this section, channel exclusivity under Section 90.495 will be extended for the duration of the construction period.

(e) Authorizations under this section are conditioned upon the licensee's compliance with the submitted extended implementation schedule. Failure to meet the schedule will result in loss of authorizations for facilities not constructed and loss of exclusivity as provided in Section 90.495(c).

**APPENDIX B**

**Parties Filing Comments In PR Docket No. 93-35**

**Comments**

**American Paging  
Arch Communications  
Atlanta Voice Page  
BellSouth  
Celpage  
ITA  
Luczak, Thomas  
MAP Mobile Communications  
McCaw  
Message Center Beepers/Beepage  
Metagram  
Metrocall  
MTel  
NABER  
PacTel Paging  
PageMart  
PageNet  
Porta-Phone  
Radiofone  
Telocator**

**Replies**

**American Paging  
Arch Communications  
BellSouth  
ITA/CICS  
Message Center Beepers/Beepage  
Metromedia  
MTel  
NABER  
PacTel Paging  
PageMart  
PageNet  
Radiofone**