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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 9, 1993

Via Hand Delivery

William F. Caton, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **Celpage, Inc. Comments**
ET Docket No. 93-62

Dear Mr. Caton:

Transmitted herewith, on behalf of Celpage, Inc., please find the original and four (4) copies of its Comments in the above-referenced Rulemaking proceeding.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,

Frederick M. Joyce

FMJ/id
enc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of:)
)
Guidelines for Evaluating the) ET Docket No. 93-62
Environmental Effects of)
Radiofrequency Radiation)
Paging Systems at 929-930 MHz)

To: The Commission

REPLY COMMENTS OF CELPAGE, INC.

Frederick M. Joyce
Christine McLaughlin
Its Counsel

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Date: December 9, 1993

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To: The Commission

REPLY COMMENTS OF CELPAGE, INC.

Celpage, Inc., through its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Commission's above-referenced Notice of Proposed Rulemaking ("Notice"), released April 8, 1993.¹ Celpage is primarily concerned that the FCC, when promulgating radiofrequency radiation ("RF") guidelines, expressly preempt contrary state and local RF regulations to the extent that they will impose an unnecessary burden upon FCC licensees, and the development of nationwide communications services. In support of this position, the following is respectfully shown:

I. Statement of Interest.

Celpage is the licensee of Private Carrier Paging ("PCP") and Radio Common Carrier ("RCC") paging facilities, with operations throughout the Commonwealth of Puerto Rico, and the Southeastern United States. In just the brief five years since

¹ By Order of the Commission, the Comment deadline was extended to November 12, 1993, and the Reply Comment deadline was extended to December 13, 1993.

its inception, Celpage has quickly grown to become one of the largest paging companies in Puerto Rico. Throughout that time period, Celpage has been an active member of the Association for Private Carrier Paging ("APCP") and Telocator trade associations, and has previously participated in many FCC rulemaking proceedings pertaining to radio regulation issues.

The rule changes proposed in the FCC's Notice are likely to have an immediate impact on Celpage's radio paging business. Moreover, due to its practical experience in this field, Celpage is well-qualified to comment on the proposed rule changes. Thus, Celpage has standing as a party in interest to file formal comments in this proceeding.

II. Summary of Notice

By the above referenced proposed rulemaking, the FCC is seeking to amend and update the current guidelines and methods used for evaluating environmental effects of RF radiation transmitted from facilities which it regulates. The new guidelines would incorporate into the FCC's Rules the amended guidelines that both the American National Standards Institute (ANSI) and the Institute of Electrical and Electromagnetic Engineers, Inc. (IEEE) adopted on November 18, 1992. See Notice, Pg. 1, Note 1.

The FCC had previously adopted ANSI's 1982 guideline's into the Rules. The adoption of the new guidelines would result in more stringent guidelines for such RF evaluations, with varying

impacts on a variety of radio services, including, but not limited to, AM, FM and TV Broadcast services, common carrier land-mobile services and private-radio land-mobile services.

One example of the issues addressed in the Notice is the 1992 guideline concerning exclusions for low-power devices. See Notice, p. 7. The proposed exclusions would be more restrictive than the 1982 guidelines; the new guidelines would be determined in terms of "radiated power" and not "input power." See Notice, p. 7-8. The Notice also seeks comments on the existing "Categorical Exclusions" under the 1982 guidelines. See Notice, p. 9. The FCC is seeking comment on whether these exclusions should be re-defined in order to ensure compliance with the new RF guidelines.

Other issues which the FCC is seeking comment on are recommendations regarding the maximum permissible exposure from induced and contact RF currents, burdens imposed by the requirements of environmental assessments to be made by the licensees and filed with the FCC at the time of application for a construction permit, license renewal, or other Commission authorization, the effective date of the new guidelines, whether the commission should routinely require more documentation or evidence from applicants who claim compliance with the environmental RF guidelines, measurement procedures and the availability of ex-parte presentations. See Notice, pp. 10-14.

The Notice did not specifically address the issue of Federal preemption of state or local RF regulations. Nevertheless, the

Notice states that "[a]ll relevant and timely comments will be considered by the Commission."

III. The FCC Should Preempt State & Local RF Regulations.

Celpage has had experience with at least one jurisdiction, the Commonwealth of Puerto Rico, that has considered imposing its own RF standards and regulations against FCC licensees. If this is the indication of a trend, it is a most troubling trend for all FCC licensees. Celpage submits that before too long, FCC licensees may become enmeshed in a quagmire of conflicting state and federal RF regulations. To preclude such problems, the FCC should declare that its proposed RF regulations will preempt any and all state and local RF regulations, so as to accomplish the Communications Act's statutory objectives.

a. Example of Conflicting State Regulations.

Puerto Rico's recent sortie into the field of RF standards provides a telling example of the need for a unified, federal RF regulation scheme for the wireless communications industry. The Puerto Rico Legislature and the Puerto Rico Planning Board had expressed an interest in studying radio emissions from communications equipment to determine if it posed a health hazard, and to adopt regulatory standards for RF emissions.

Celpage and its President, Luis G. Romero-Font, provided written comments and oral testimony to the Puerto Rico Senate and House, and written comments to the Planning Board concerning their regulatory proposals. In those comments, Celpage warned

that if the Legislature were to impose regulations upon radio equipment manufacturers that conflicted with FCC regulations, or if the standards for Puerto Rico were stricter than those required by the FCC, the communications industry in Puerto Rico would be adversely affected.

Practically all of the equipment used by Celpage in its communications networks is manufactured in the Continental United States. Assuming, for the sake of argument, that the Legislature or the Planning Board had the legal authority to pass additional RF regulations without violating the FCC's jurisdiction over wireless communications, those regulations would undoubtedly make it more expensive and difficult for Puerto Rico companies to purchase radio equipment.

Despite Celpage's and other communications operators' protests, the Planning Board enacted rules that restrict EMF radiation on all radio transmitters. One of the mandates of these rules requires all FCC licensees to obtain a "Certificate" from the Commonwealth of Puerto Rico permit-issuing authority (the "ARPE") prior to operating any radio transmitter. In addition, these RF rules require FCC licensees to perform extremely complicated, and unnecessary, engineering studies prior to using any new transmitter site, and whenever an additional transmitter is installed at an existing site.

As one could imagine, these regulations impose an enormous expense and compliance burden upon FCC licensees, particularly for multiple-site services such as radio paging and cellular

telephone. If Puerto Rico's example were emulated nationwide, the potential for chaotic and inconsistent RF regulations would be apparent. Moreover, it is almost inconceivable that equipment manufacturers, and their customers, could manage or afford to comply with 51 different sets of RF regulations nationwide.

For multi-state radio communications services, such as paging and cellular radiotelephone, this potential patchwork of different state-promulgated RF regulations would make construction of interstate services prohibitively expensive, and technically difficult, if not impossible.

Moreover, such state regulations would be, in essence, entry barriers for competitive communications services. As such, these regulations may be unlawful under the Communications Act, since certain services, such as Land Mobile Radio Services, are preempted from state and local rate and entry regulations (for example, Puerto Rico's Certification requirements do not distinguish between RCC and PCP services).

Because of these problems that state RF regulations would inevitably cause to the development of interstate communications services, Celpage submits that the FCC should exercise its authority to preempt all state and local RF regulations.

b. FCC has Jurisdiction to Preempt Contrary Regulations.

Though the Communications Act allocates regulatory jurisdiction between federal and state authorities, it cannot be doubted that the FCC may preempt conflicting state regulations

under certain circumstances. For example, the FCC may preempt state regulations when there is evidence that they may "substantially affect the conduct or development of interstate communications." See Diamond International Corp. v. FCC, 627 F.2d 489, 493 (D.C. Cir. 1980). Moreover, the FCC may preempt conflicting state regulations when it is not possible to separate the interstate and intrastate components of the FCC's asserted jurisdiction. See Louisiana PSC v. FCC, 106 S.Ct. 1890, 1902 n.4 (1986). Both circumstances are present here with regard to the need for one unified, federal scheme of RF regulations.

As previously noted, the communications industry would surely be "substantially [adversely] affected" by cumulative or conflicting state RF regulations. It is difficult to imagine how equipment manufacturers, and their customers, could avoid financial hardship and ruin in such a scenario. Puerto Rico's example should serve as an early warning that more than one state may already be considering adoption of just such regulations.

Likewise, the interstate and intrastate aspects of RF regulations cannot be practically separated. The FCC's regulations will govern equipment that is manufactured for distribution to every state and jurisdiction in the Nation. The communications services provided by this equipment often cross multiple interstate boundaries. Assuming that manufacturers, and their customers, were financially capable of complying with multiple sets of RF regulations, the difficulties of enforcing compliance with these myriad RF rules would be extreme.

In short, the continued development of "rapid, efficient, Nationwide and world-wide radio and wire communications services with adequate facilities at reasonable charges" cannot be accomplished with multiple RF regulations throughout the Country. See 47 U.S.C. §151.

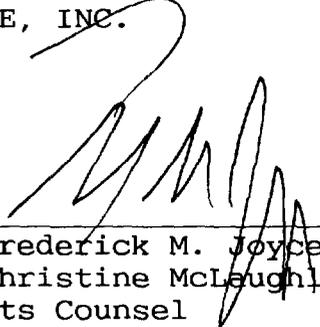
CONCLUSION

For the foregoing reasons, Celpage respectfully submits that the FCC should, in this rulemaking proceeding, expressly preempt all state and local RF regulations.

Respectfully submitted,

CELPAGE, INC.

By: _____


Frederick M. Joyce
Christine McLaughlin
Its Counsel

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Date: December 9, 1993

CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 9th day of December, 1993, copies of the foregoing Reply Comments of Celpage, Inc. were mailed, postage prepaid, to the following:

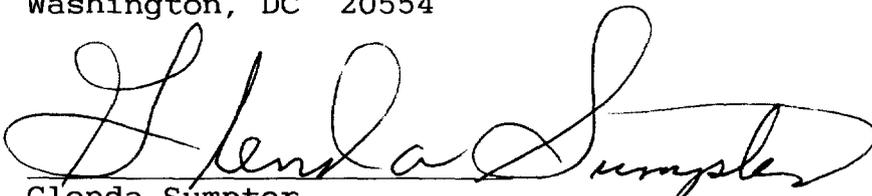
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Glenda Sumpter

* Hand Delivery