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ATTORNEYS AT LAW

March 9, 1994

Via Hand Delivery

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

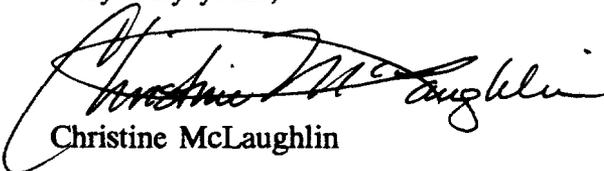
**Re: Amendment of the Commission's Rules to
Provide Channel Exclusivity to Qualified
Private Paging Systems at 929-930 MHz
PR Docket No. 93-35
RM-7986**

Dear Mr. Caton:

Transmitted herewith, on behalf of Celpage, Inc., please find the original and eleven (11) copies of its Comments in Support of Petitions for Reconsideration or Clarification in the above-referenced proceeding.

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

Very truly yours,


Christine McLaughlin

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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:)
)
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

To: The Commission

CELPAGE, INC.
COMMENTS IN SUPPORT OF
PETITIONS FOR PARTIAL RECONSIDERATION OR CLARIFICATION

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Date: March 9, 1994

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SUMMARY OF RESPONSE

Celpage's primary concern is that the Order, by barring existing licensees from qualifying for the "slow growth" option, will penalize the very entities who have invested the most time, energy, and money into developing the 900 MHz PCP spectrum. Celpage does not seek an advantage over "new" PCP applicants, it merely seeks a level playing field for all qualified PCP licensees and new applicants.

With regard to the issue of "multi-frequency" transmitters, Celpage has no objection to allowing those PCP operators the time necessary to transition to single frequency transmitters for purposes of retaining exclusivity.

At the same time, Celpage submits that PCP applicants that did not enter into transmitter sharing arrangements, but who chose to build their own PCP systems, and whose construction periods may have expired prior to adoption of the Order, should likewise be given additional time to retain their exclusivity status. This could be readily accomplished by reinstating and extending the construction periods for certain "grandfathered" licenses that may have expired while the exclusivity rules were under FCC consideration. In appropriate circumstances, PCP operators should be allowed to request reinstatement of those recently expired authorizations.

Finally, Celpage agrees with APCP's proposal to allow high power operations for regional systems.

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To: The Commission

**CELPAGE, INC.
COMMENTS IN SUPPORT OF
PETITIONS FOR PARTIAL RECONSIDERATION OR CLARIFICATION**

Celpage, Inc., through its attorneys, and pursuant to Section 405 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 405, and Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby submits these comments in support of various petitions for reconsideration or clarification of the Commission's Report and Order (the "Order"), in the above-captioned Private Carrier Paging "exclusivity" rulemaking proceeding, FCC 93-479, released November 17, 1993.¹ In support thereof, the following is respectfully shown:

I. Statement of Interest.

Celpage is the licensee of Private Carrier Paging ("PCP") facilities operating throughout the Commonwealth of Puerto Rico, and the Southeastern United States. Celpage has quickly grown to

¹ See, e.g., Petitions for Reconsideration and/or Clarification by Paging Network, Inc.; Bell Atlantic Telephone Companies; First National Paging Company, Inc.; Metrocall, Inc.; MAP Mobile Communications, Inc.; Afro-American Paging; and American Mobilephone, Inc. See also; Petitions for Waiver, PacTel Paging; and Arch Communications, Inc.

become one of the largest paging companies in Puerto Rico. Celpage has also been an active member of the Association for Private Carrier Paging ("APCP") virtually since its inception, and has previously been an active party in numerous FCC rulemaking proceedings pertaining to PCP and RCC paging issues.

Celpage filed Comments in the subject rulemaking proceeding. The rule changes proposed in the FCC's Notice will certainly have an immediate impact on Celpage's PCP business. Moreover, due to its practical experience in this field, Celpage is well-qualified to comment on the advantages and disadvantages of the proposed rule changes. Thus, Celpage has standing as a party in interest to file this response to the subject petitions for reconsideration.

II. Summary of the Petitions.

APCP and several PCP operators have filed petitions seeking reconsideration or "clarification" of some of the PCP exclusivity rules adopted by the Commission in its Order. In particular, APCP's Petition asked the Commission to clarify that: (1) the "slow growth" option should apply to existing licensees as well as "new" applicants; and (2) regional licensees should be allowed to operate at 3500 watts, provided they protect adjacent systems from electrical interference. (APCP Petition at pp. 3, 17).

Celpage supports both of these clarification requests, with certain amplifications, which will be explained herein.

III. Summary of Celpage Response.

Celpage echoes the sentiments of those petitioners who

commend the FCC for expeditiously promulgating a comprehensive, new regulatory system for PCP licensees. Celpage believes that the exclusivity rules will help reduce or eliminate interference problems, while encouraging investment in and development of new PCP services, which will provide jobs and services for thousands of Americans.

Celpage's primary concern is that the Order, by barring existing licensees from qualifying for the "slow growth" option, will penalize the very entities who have invested the most time, energy, and money into developing the 900 MHz PCP spectrum. Celpage does not seek an advantage over "new" PCP applicants, it merely seeks a level playing field for all qualified PCP licensees and new applicants.

With regard to the issue of "multi-frequency" transmitters, Celpage has no objection to allowing those PCP operators the time necessary to transition to single frequency transmitters for purposes of retaining exclusivity.

At the same time, Celpage submits that PCP applicants that did not enter into transmitter sharing arrangements, but who chose to build their own PCP systems, and whose construction periods may have expired prior to adoption of the Order, should likewise be given additional time to retain their exclusivity status. This could be readily accomplished by reinstating and extending the construction periods for certain "grandfathered" licenses that may have expired while the exclusivity rules were under FCC consideration. In appropriate circumstances, PCP

operators should be allowed to request reinstatement of those recently expired authorizations.

Finally, Celpage agrees with APCP's proposal to allow high power operations for regional systems.

IV. The Slow Growth Option Should Apply to Incumbent Licensees.

In its original Notice of Proposed Rulemaking in this proceeding, the FCC stated that the underlying premise of the proposed PCP exclusivity rules was to promote investment in technology and system expansion. (Notice at ¶ 16). To accomplish those objectives, the FCC opined that a slow growth option would be "appropriate for PCP services" (Id. at ¶ 31). According to the FCC, "applicants seeking to build a system comprised of more than 30 transmitters could be granted up to three years to construct based on a showing of reasonable need for the extension, a detailed construction timetable, and evidence of financial ability to construct the system." (Id.)

During the rulemaking proceedings, the suggestion of a "performance bond" was added to these proposed eligibility criteria for the slow growth option. Other than these criteria, the FCC never suggested that there would be any eligibility restrictions to the slow growth option. Celpage and other commenters assumed that anyone who met the basic eligibility criteria could request additional time to build a large PCP system. Inexplicably, the final Order stated something entirely different.

The Order stated that "[t]he slow-growth option will be

limited to new applications only. We will not grant requests to extend the construction period for grandfathered licenses."

(Order at ¶ 23, n.43).

No explanation was provided by the FCC for that restriction on the slow growth option. One may reasonably speculate about the FCC's motives, however: the FCC may have assumed that "grandfathered" licensees already had sufficient time to build a regional or nationwide PCP system, hence they would not need the slow growth option. Celpage submits that this is not a fair assumption.

The practical matter is that while many PCP operators may have obtained 900 MHz licenses in anticipation of the adoption of exclusivity rules, few operators could take the risk, or find the financing, to build a regional or nationwide system PCP system without first knowing if or when the FCC would adopt exclusivity rules. Finding financing for an exclusive wide-area paging system is difficult; to do so on a shared PCP frequency is daunting if not impossible for most small to medium sized paging operators.

Though the outcome of this rulemaking proceeding may have been apparent to the Commission, it was obviously a mystery to most members of the paging industry. Consequently, many PCP operators had to either bide their time and allow 929 MHz licenses to lapse awaiting the release of the Order, or, make arrangements with other carriers to share the burden of constructing wide-area systems. (See, e.g., APCP Petition at 4-

6).

While undoubtedly there were some larger carriers who went ahead and built a regional or nationwide PCP system while these rules were still under consideration, there were certainly many more PCP operators like Celpage that could not afford to make such a gambit until they knew what the FCC would do with the 929 MHz frequencies.

Smaller carriers, such as Celpage, now find that the FCC has left them "halfway up the flagpole": though Celpage has been racing to finance and build sufficient transmitters to retain its regional exclusivity status, eight months does not allow any room for margin or for careful design and implementation of such a massive network. And if Celpage manages to construct only 69 transmitters by the night before expiration of its eight month construction period, it will forfeit its exclusivity, and all those efforts will be for naught. Such a disastrous possibility is not at all consistent with the original goals enumerated by the Commission in this rulemaking proceeding.

Paging operators such as Celpage that obtained 929 licenses while the exclusivity rules were under consideration were simply trying to be "ready to go" the moment the FCC released its exclusivity rules. Ironically, the Order would impose a penalty on any legitimate paging operator who made such efforts. Legitimate paging operators who held authorizations prior to October of 1993, would not be given any additional time to build out a large PCP system. New applicants, on the other hand, who

made absolutely no efforts during the past year to license and build a PCP system, could be granted additional time. That disparate treatment of "old" versus "new" applicants seems arbitrary and unfair.

Without knowing the individual circumstances of these licensees and applicants, the FCC cannot fairly judge which ones are entitled to additional time. That is the fundamental infirmity of footnote 43: it assumes, without record evidence, that "new" applicants are inherently entitled to more time to build regional or nationwide PCP systems than all other entities.

The facts are quite to the contrary: now that financial institutions are aware that PCP channels can be deemed "exclusive," they are more likely today to lend financial assistance to PCPs than they were just a few months prior to the adoption of the Order. Moreover, the time "advantage" that could be gained from having received a PCP license just prior to the adoption of the Order, as opposed to someone who received their grant shortly thereafter, is insignificant.

In any event, not all "new" applicants would qualify for the slow growth option; also, some applicants would need less time than others. There is no reason why the same analysis should not apply to "incumbent" or "grandfathered" licensees. Not every incumbent licensee will request additional time to construct a larger PCP system, but some may legitimately require additional time.

The slow growth prerequisites, including cost estimates, a

bond, and a construction timetable, should automatically filter out many frivolous extension requests. For those who do request additional time in good faith, however, the FCC should evaluate the particular facts of the request, and grant such additional time as the facts warrant (the Order expressly states that the FCC may determine that only brief extensions will be justified in some cases; see Order at ¶ 23).

For these reasons, Celpage concurs with those petitioners who have asked that the FCC clarify that both "new" and "old" licensees will be eligible to request the slow-growth option.

V. Rule Waivers Would be Appropriate.

If the FCC will not reconsider the Order to clarify that incumbent licensees are eligible to request the slow growth option, then the FCC should consider rule waiver requests from those incumbent licensees that will need extensions of time to construct regional or nationwide paging systems. Celpage agrees with those petitioners who have asked the FCC to consider granting waivers of the eight month construction period, in appropriate circumstances.

The complexities and difficulties of designing and building regional and nationwide paging systems are myriad. Transmitter site leases must be negotiated with dozens of different site owners; equipment must be delivered to various parts of the country throughout varying weather and topographical conditions. Once the equipment is finally delivered, trained personnel must be ready to install it. After installation of the equipment,

"real world" operating problems become apparent: intermodulation problems, coverage problems, building access problems, and other problems all conspire to wreak havoc on the best laid plans of paging operators. New sites have to be located to cure the discovered problems; license modifications must be filed to authorize new locations.

Absent a waiver of the FCC's Rules, all of these feats must be accomplished in a brief eight month time-frame. That is simply not a realistic regulatory expectation. Eight months may be adequate time to build a simple base to mobile private radio system, but it is barely enough time to build the sort of quality paging system that the FCC expects to be constructed by regional and nationwide PCP operators (indeed, the FCC should consider amending the Rules to extend the eight month construction period for PCP stations to 12 months; that would be consistent with Part 22 of the Rules, and a more realistic construction timeframe for commercial paging systems).

While some PCP operators may be able to struggle to meet the eight month deadline, that deadline serves only to encourage hastily constructed systems, which will then have to be modified, at additional expense to the operators, and with additional paperwork at the FCC. Celpage submits that a sounder alternative would be this: to have a generous policy toward waiving the eight month construction deadline for any PCP operator that demonstrates a good faith effort to build a system consisting of more than 30 transmitters.

It should not be too administratively burdensome for the FCC to develop broad standards for reviewing such waiver requests. On the other hand, the refusal to grant additional time to construct could force many PCP licensees to build at inappropriate locations; that in turn will require subsequent modifications of license authorizations. Consequently, there should be a net savings in administrative time and paperwork if the FCC were to adopt a generous policy toward extending construction periods for larger PCP systems.

VI. Reinstating Expired Licenses.

APCP's Petition states that many of its members may require "an orderly transition period" during which they can replace operational multi-frequency transmitters with single frequency or exclusive use transmitters, to preserve exclusive status. (APCP Petition at 5-6). Celpage has no objection to APCP's recommendation. If that recommendation is adopted, however, it ought to be adopted in a manner that is equitable to those "single use" transmitter licensees whose authorizations expired while the subject exclusivity rules were under consideration.

Unless some provision is made for those "single use" transmitter licensees, the transition period recommended by APCP will likely penalize the licensees who have made the greatest investment in 900 MHz PCP operations. Those licensees have endeavored to build dedicated facilities at each licensed site themselves, rather than relying on inter-carrier agreements that would allow them to utilize other licensees' dual-frequency

transmitters; those licensees may lose much of their investment if they are not granted a "transition period." That result is unfair.

Celpage is an example of a PCP operator that, from the outset, intended to build its network by itself, with the expectation that it could qualify for "slow growth" if necessary. The FCC's decision to deny the slow growth option to "grandfathered" licensees has thus had a particularly harsh impact on Celpage and similarly situated carriers.

Celpage did not have an inter-carrier agreement, which would have allowed it to preserve more of its PCP licenses while the FCC was addressing this rulemaking proceeding. Instead, Celpage was forced to allow many PCP licenses to expire, while awaiting the FCC's decision on exclusivity. Unless consideration is made for the plight of licensees such as Celpage, they will have to refile for these authorizations and wait for them to be processed before constructing the "expired" sites.

These "do it yourselves" have thus been hit particularly hard by the Order. They will have to return to the coordination process, and the FCC's processes, to reinstate authorizations that they fully intended to construct the moment the FCC gave the "green light" on exclusivity. The result will be an unfortunate and unnecessary waste of time, money and FCC resources.

The sounder alternative would be, under certain circumstances, to allow grandfathered licensees such as these to request reinstatement of certain license authorizations that

expired while the exclusivity rules were under consideration. The FCC could allow a PCP license to be reinstated if the grandfathered licensee could show that a given authorization was intended to be part of a planned regional or nationwide system, which is already under construction. The licensee would be required to accept the reinstated license exactly as it was originally issued (otherwise, reinstatements could be used as a means of circumventing the license modification rules).

As a practical matter, reinstatements will probably apply to only a small number of legitimate operators, who are already constructing regional or nationwide systems. The savings in administrative processing time and in speeding service to the public, however, could be enormous if the FCC were to allow reinstatement of these authorizations. Accordingly, Celpage requests that the FCC allow PCP licensees who are building regional or nationwide networks to request reinstatement of those licenses that expired while this rulemaking was pending, so long as the subject license will be part of the regional or nationwide network.

VII. High Power Option for Regional Systems.

Celpage agrees with the high power proposal for regional systems that is set forth in APCP's Petition. (APCP Petition at pp.17-19). High power transmitters could be feasible even if the FCC does not agree with APCP's proposal to have statewide boundaries for regional PCP systems. At the "borders" between co-channel systems, the licensees will be required to cooperate

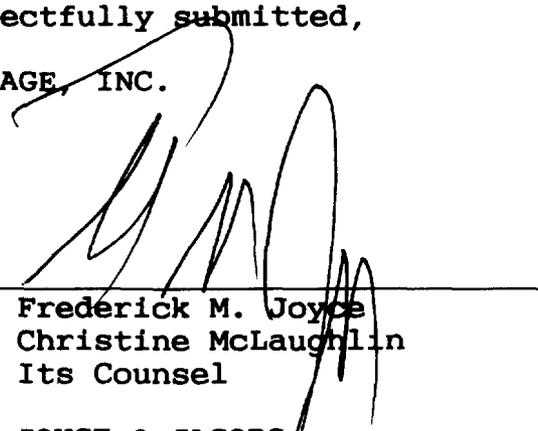
to avoid co-channel interference. The FCC could condition the grant of a high power authorization on that regional licensee's consent to reduce power in response to interference complaints.

CONCLUSION

Celpage concurs with the petitioners who request that the Commission clarify or reconsider its Order in the PCP exclusivity rulemaking proceedings, in accordance with the foregoing comments.

Respectfully submitted,

CELPAGE, INC.

By: 

Frederick M. Joyce
Christine McLaughlin
Its Counsel

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Date: March 9, 1994

CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 9th day of March, 1994, copies of the foregoing Comments in Support of Petition for Reconsideration or Clarification were mailed, postage prepaid, to the following:

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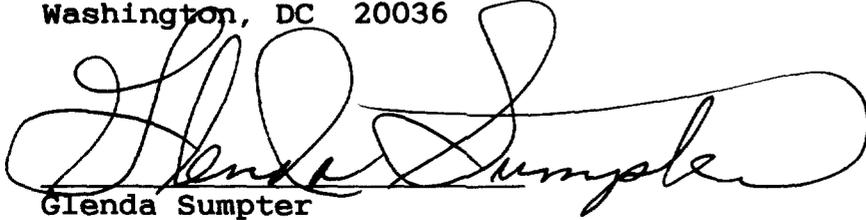
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A large, stylized handwritten signature in black ink, appearing to read "Glenda Sumpter". The signature is written in a cursive, flowing style with large loops and a long horizontal tail.

Glenda Sumpter

* Hand Delivery