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FEDERAL COMMUNICATIONS COMMISSION
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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
	)	
TO: The Commission	)	

REPLY TO
OPPOSITION AND COMMENTS
TO PETITION FOR RECONSIDERATION

The Association for Private Carrier Paging ("APCP") section of the National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. Section 1.429 hereby respectfully submits its Reply to the Opposition and Comments filed to its Petition for Reconsideration and Clarification ("Petition") of the Commission's Report and Order in Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz[1] ("Order").

In APCP's Petition for Reconsideration and Clarification, APCP supported the Commission's exclusivity decision and concurred in the reasons cited for its adoption. However, APCP believed that certain details in the implementation process of the Order should be revisited and clarified and therefore sought reconsideration or clarification of the following:

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[1] 8 FCC Rcd 8318, FCC 93-479, released November 17, 1993.

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- an extended implementation schedule for all qualified licensees in order to allow existing licensees an orderly transition period to comply with the Commission's newly adopted multi-frequency transmitter rules; and

- statewide licensing of regional systems wherein state boundaries would define the geographic limits of regional systems, rather than the contours of transmitters within the systems; and

- a rule permitting operation at a maximum effective radiated power ("ERP") of 3500 watts within those regions, along with appropriate provisions to prevent encroachment of systems into co-channel operation sin adjacent states.

Those parties submitting Comments[2] in response to APCP's Petition as well as a number of those other parties who filed their own separate Petitions for Reconsideration[3] to a substantial extent supported the requests made by APCP for modification to the Commission's Order[4]. The Comments of Arch Communications, PacTel Paging, CelPage and American Paging supported all three of APCP's positions. APCP had requested the Commission to reconsider and implement a transition period for existing licensees currently constructed and operating using multi-frequency transmitters who were now required to meet the Commission's newly adopted dedicated

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[2] See Comments submitted by American Paging, Inc. ("American Paging"), Arch Communications Group, Inc. ("Arch"), Celpage, Inc. ("Celpage") and Pactel Paging.

[3] See e.g. Petitions for Reconsideration filed by First National Paging Company, Inc. ("First National") and Paging Network, Inc. ("PageNet").

[4] A number of the issues raised by several of the Petitioners (e.g. Pagenet and First National) have been satisfied in part by the Commission's Public Notice, DA 94-35, released January 10, 1994. Further, special circumstances which involve issues such as those presented by Afro-American Paging may be better addressed by waiver of a rule rather than rule change.

transmitter count rule in order to qualify for exclusivity. To meet this need, APCP proposed that the extended implementation rules adopted in Section 90.497 be reconsidered and changed so that they include existing licensees and not be limited only those new applicants filed after October 14, 1993. APCP pointed out that most incumbent licensees had assumed that they would have the same ability to seek extended implementation authority as new licensees.

Both PacTel and Arch supported APCP[5] and recommended that grand-fathered licensees be accorded extended implementation options in two (2) respects[6]. First, that incumbents seeking additional time to construct authorized facilities be allowed to do so by making the appropriate showing under Section 90.496(a) by being granted an extended construction period for up to three (3) years. Secondly, that incumbents who have constructed their systems on a timely basis utilizing multiple frequency transmitters and who have implemented service to the public throughout their requisite geographic areas be accorded a transition period of at least two (2) years to convert their systems to the use of dedicated transmitters while retaining exclusivity with no bond required.

In its Petition, APCP fully recognized that, to the extent the Commission has a concern as to the good faith intentions of a

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[5] The overwhelming majority of those parties participating in this proceeding have continuously supported the concept of extended implementation for existing licensees as well as new licensees.

[6] See Pactel Comments at p. 9.

paging operator to construct its system, such licensees are prepared, if necessary, to post a bond or an escrow with the Commission to demonstrate their commitment to build out their systems under an extended implementation schedule[7]. Further, APCP recognized the need for a transition period caused by the Commission's requirement that paging carriers who had constructed using multi-frequency transmitters had already demonstrated a substantial commitment in their systems and network and required an orderly period to come into qualification with the Commission's new rules[8]. APCP acknowledges that carriers who are already operating on a regional and/or nationwide basis have clearly demonstrated a commitment to provide service to the public and not to hoard or speculate in frequencies. Accordingly, APCP recognizes that the Commission may accept a separate showing other than a bond or escrow when a shorter period of implementation is used to transition an already constructed and operating system to single dedicated transmitters for purposes of qualifying for exclusivity.

With the exceptions discussed below, most interested parties[9] to the proceeding have recognized the need for the Commission to utilize state borders rather than interference contours to define the protected areas for exclusive regional systems. In its Petition, APCP asserted that the "contour protection" adopted in

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[7] See NABER Petition at p. 9.

[8] See NABER Petition at p. 6.

[9] See e.g. Petition of PageNet, Comments of Arch, American Paging and Pactel.

the Commission's Order be reconsidered and that the Commission adopt instead a rule which defines the limits of exclusive regional systems along the geographical borders of the states that comprise those systems. In this respect, APCP recommended exclusive licensing for qualified regional systems on a statewide rather than transmitter contour basis.

APCP's position was partially opposed by American Mobilephone, Inc. ("AMI")[10]. Specifically, AMI brought to the attention the need to take into account a situation (if the Commission adopts APCP's statewide exclusivity for regional licensees) where a regional licensee does not serve a top thirty (30) market within a state and thereby does not qualify for statewide exclusivity, that such a regional licensee still be allowed to qualify for exclusivity on a less than statewide basis, limited to its actual coverage area in accordance with the transmitter separation criteria set forth in Section 90.495(b) of the Commission's rules. It was not the intention of APCP to disadvantage existing operators who have regional systems that serve less than a statewide area and do not include in their operation the top thirty markets. Accordingly, APCP is not opposed to recognize the refinement to its proposed rule change suggested by AMI. Accordingly, where a regional licensee is exclusive but does not serve in a particular state a top thirty (30) market by reason of not having built out the requisite number of transmitters covering such market, that such

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[10] AMI's position was alternatively styled as comments rather than an opposition if the scope of APCP's request did not prejudice AMI. See AMI Comments, p. 1.

regional licensee's qualified exclusive area still include the area within such state otherwise actually served by its constructed system in accordance with the separation criteria set forth in Section 90.495(b) of the Commission's Rules.

Conclusion

Taken on the whole, the Petitions for Reconsideration and Comments filed thereon seeking clarification and/or modification to the Commission's Order supported the requests made by APCP in its Petition.

WHEREFORE, the foregoing premises duly considered, APCP respectfully requests that the Commission amend the rules adopted in the exclusivity Order in accordance with its comments herein.

Respectfully submitted,
NABER, Inc.

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April 11, 1994

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CERTIFICATE OF SERVICE

I, Sarah Locke, a secretary in the law office of Meyer, Faller, Weisman & Rosenberg, P.C. hereby certify that I have on this 11th day of April, 1994 sent by First Class United States Mail, postage prepaid, a copy of the foregoing "REPLY TO OPPOSITION AND COMMENTS TO PETITION FOR RECONSIDERATION" to the following:

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