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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of:	)	
	)	Gen. Docket No. 90-314
Amendment of the Commission's	)	ET Docket No. 92-100
Rules to Establish New Narrowband	)	RM-7617, RM-7760, RM-7780,
Renewal Communications Services	)	RM-7860, RM-7997, RM-7978,
	)	RM-7979, RM-7980, PP-4,
	)	PP-36, PP-37, PP-79 and
	)	PP-80

PETITION FOR RECONSIDERATION
OF
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The Association of Private Carrier Paging Section ("APCP") of the National Association Business and Educational Radio, Inc. ("NABER"), by its attorneys, respectfully submits, pursuant to Section 1.106 of the Federal Communications Commission's (the "Commission") Rules, 47 C.F.R. Section 1.106, Reconsideration of Commission's Memorandum Opinion and Order ("MO&O"), issued in reconsideration and clarification[1] of the First Report and Order ("Report and Order") issued in the above-captioned proceeding.

The MO&O was issued in response to Petitions for Clarification and Reconsideration submitted by Mobile Telecommunication Technologies, Inc., Page Mart, Inc. and Paging Network, Inc. for clarification of six (6) aspects of the narrowband PCS rules

[1] The MO&O was adopted on February 3, 1994, released on March 4, 1994 and was published in the Federal Register on March 25, 1994. 59 Fed. Reg. 14115.

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adopted in the Report and Order. The petitions sought clarification or reconsideration of the rules adopted in the narrowband PCS proceeding pertaining to (1) size of service areas; (2) channel plan; (3) limits on holding multiple licenses; (4) eligibility for paging response channels; (5) construction requirements; and (6) service definition.

APCP as a membership section of NABER is primarily comprised of existing paging operators who have an interest in providing advanced messaging services utilizing the spectrum being allocated in this proceeding. APCP members will seek to utilize an allocation of both the newly released available out-bound frequencies as well as the eight (8) 12.5 KHz response only channels to be employed as part of their already existing paging systems. This Petition for Reconsideration addresses the issues pertaining to the Commission's decision regarding the 12.5 KHz response channels to be made available to existing paging licensees.[2]

In the Report and Order, the Commission allocated eight (8) unpaired 12.5 KHz frequencies as response only channels to be employed by existing Part 22 and Part 90 paging licensees. These channels were to be made available based upon service areas defined

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[2] APCP filed comments in this proceeding in response to the Petitions for Clarification and Reconsideration to the Report and Order.

by the 487 Basic Trading Areas ("BTAs").[3] The eight (8) unpaired response only channels were intended to permit existing paging operators to upgrade and provide some acknowledgement and advanced messaging capability as part of their already operating paging systems.[4]

The Commission's original channelization plan for the eight (8) response only channels for existing licensees was addressed in the Petitions for Clarification and Reconsideration of the Report and Order. In this respect, both Page Net, Inc. and Page Mart, Inc. requested that some of the response channels be set aside for licensing based upon service areas larger than those defined by BTAs. Page Mart also requested that eligibility for the paging response channels be limited to existing paging licensees and that the response channels be employed to upgrade existing paging operations.[5] Finally, Page Mart requested a limit on the number of paging response channels that a paging licensee could hold in each service area.[6]

In the MO&O, the Commission agreed to amend its rules and provide that the eight (8) response only channels be made available equally, four (4) on an MTA basis and four (4) on a BTA service

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[3] Report and Order at ¶ 28.

[4] Report and Order at ¶ 20.

[5] MO&O at ¶ 23.

[6] MO&O at ¶ 23.

basis. The Commission agreed to specify that an "existing" paging licensee means a paging licensee authorized under Part 22 or Part 90 as of June 24, 1993, and that an existing paging licensee "must operate at least one base station in the MTA or BTA for which it requests a paging response channel".[7] Finally, the Commission limited the number of response channels a paging licensee may have to two (2) in any given geographic area.[8]

The APCP Section of NABER is in substantial agreement with the clarifications and reconsiderations adopted by the Commission in the MO&O. However, as an organization representative of existing paging licensees APCP wants to bring to the Commission's attention certain concerns and issues reached in the MO&O pertaining to the response only channels which APCP believes need to be revised in order to take into account their real world application.

First, APCP commends the Commission on its decision to provide that four (4) of the eight (8) response channels be allocated based on MTA service areas. From the viewpoint of a great many existing paging operators, the BTA service areas do not represent the way existing paging companies build-out and operate their systems. In this respect, the APCP believes that the Commission should consider inclusion of an allocation for response channels based upon even larger regions which would be more representative of the systems

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[7] MO&O at ¶ 26.

[8] MO&O at ¶ 26.

employed by many paging carriers today. However, in reaction to the Commission's decision to allow four (4) MTA's and four (4) BTA's, the APCP membership was particularly concerned with the Commission's qualification requirement that an existing paging licensee have at least one base station constructed and in operation in the MTA or BTA in order to qualify to be licensed for the response channel in that area.

The response channels are intended to provide an opportunity for already existing paging operators to add an advanced messaging or response component to their existing systems. Accordingly, it should be the licensee's existing area of coverage which defines the service areas that qualifies it to be combined with the newly made available response only channels. Mandating that the location of a transmitter be the qualifying factor to obtain a response channel compared to the area of coverage of an operating system may prove to be unworkable in many cases and prevent legitimate operators from taking advantage of the response only channels as a means to upgrade their systems. This is a particular problem where a carrier does not need a MTA service area for its entire system, but wants to combine either a MTA with a BTA or several BTAs in order to cover its existing system's operating footprint.

It is clear that the area of coverage of existing paging operations may cross over into more than one BTA and that a transmitter may not be located within a BTA currently being served

by the operating system. Adoption of a rule that requires that the location of a transmitter be the determinate factor for eligibility for such service area, does not take into account the real world operation of existing paging carriers. Accordingly, APCP requests that the Commission reconsider its proposal in Section 99.130 to require that the area of existing coverage of the licensee requesting such a channel be included within the service area for which the licensee requests such a channel. By doing so, the Commission will be recognizing the already existing areas of operation and service of the licensee and not impose artificial determinations for transmitter locations based on newly imposed trading areas.

A second issue which needs clarification in Section 99.130 relates to the licensing date requirement of June 24, 1993 and the requirement that such licensees operate one base station within the service area. The requirement that the response channels availability be limited to those paging licenses issued by June 24, 1993 is not problematic. However, it is unclear as to whether or not this date is applicable in determining the area of operation for service area purposes. It seems appropriate that the licensing qualification by June 24, 1993 can be established, but the same carrier may have expanded or constructed its system into adjacent areas licensed after June 24, 1993 and prior to the auction of the response only channels. Such a carrier (initially licensed by June

23, 1993) should be able to include such existing coverage area for purposes of obtaining response only channels in order to make its entire system compatible and competitive even if constructed or put into operation after June 24, 1993. Such an approach would serve to recognize the legitimate operating needs of existing carriers and enable them to bid on response channels which serve their actual licensed and constructed systems.

APCP is also concerned as to the Commission's decision to limit the total number of response channels which a carrier may be licensed for within a service area to two. The Section agrees that such a limitation is valid as it relates to the initial auctioning of frequencies and should serve as a protective measure against the hoarding of such channels by a few carriers. However, the long term applicability of such a limitation in light of the realities of the business marketplace will create problems necessitating either rule change or a policy of liberal rule waiver.

As carriers place the response only channels in use under varying technical configurations, different backbone and user equipment will be utilized by different carriers. At the time various paging licensees merge or are acquired, licensees may hold and have invested substantive sums in developing their own response channel capabilities. When combined with merged or acquired companies, the result may be that a license will end up with more than two (2) response channels in a particular service area. This

result should not be an impediment to the completion of such transactions.

Unlike situations where the Commission allows a reasonable period of divestment, the customer base of the merged entities may use two (2) different response formats and therefore have a legitimate need for holding more than two (2) such licenses in a particular service area. To the extent the Commission permits the consolidation of paging frequencies where construction timetables are met, it must recognize that any response only channels tied with existing systems will have to follow along as an integral part of the systems operation. The Commission therefore should provide that such a limitation should not result in unnecessary change out of existing customers even if a divestment period were allowed. APCP supports the rule in the initial phases of the auction, but requests that the Commission remove its continued existence to allow the orderly working of the marketplace in the future. This can be done by recognizing the future need for waivers of the rule in such cases, or by placing a time period, (e.g., five (5) years) after which the limitation would no longer be applicable. Without such relief, there will be an immediate need by carriers to petition the Commission for a rule waiver in order to prevent the limitation from interfering with normal and expected business developments that will occur amongst various carriers in the industry.

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Conclusion

WHEREFORE, the Association of Private Carrier Paging Section of the National Association of Educational Radio, Inc., hereby respectfully requests that the Commission consider the above-said Petition and act in a manner in accordance with the views expressed herein.

Respectfully Submitted,

NATIONAL ASSOCIATION OF BUSINESS AND EDUCATIONAL RADIO, INC.

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