

# WILEY, REIN & FIELDING

1776 K STREET, N. W.  
WASHINGTON, D. C. 20006  
(202) 429-7000

DAVID E. HILLIARD  
(202) 429-7058

April 11, 1994

FACSIMILE  
(202) 429-7049  
TELEX 248349 WYRN UR

Federal Communications Commission  
Waiver Requests  
P.O. Box 358300  
Pittsburgh, PA 15251-5305

Re: MAP Mobile Communications, Inc.  
Request for Limited Waiver

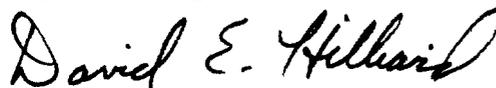
To the Commission:

Transmitted herewith, on behalf of MAP Mobile Communications, Inc., is a request for limited waiver of Section 90.495(a)(1) of the Commission's rules.

Also enclosed is a check for \$105.00, and an FCC Form 155 (Fee Type Code "PDW") for a waiver of the Commission's rules relating to MAP's local exclusivity request.

Should you have any questions concerning this matter, please call me at (202) 429-7058 or Kurt E. DeSoto at (202) 429-7235.

Respectfully submitted,



David E. Hilliard  
Kurt E. DeSoto  
Counsel for  
MAP Mobile Communications, Inc.

DEH:krr  
Attachment

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
 )  
MAP MOBILE COMMUNICATIONS, INC. )  
 )  
Request for Limited Waiver of Section )  
90.495(a)(1)(ii) of the Commission's )  
Rules Regarding Contiguous Transmitters )  

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To: The Private Radio Bureau

**REQUEST FOR LIMITED WAIVER**

MAP Mobile Communications, Inc. ("MAP"), hereby respectfully requests a waiver of Section 90.495(a)(1)(ii) of the Commission's Rules so that it may count non-contiguous areas in demonstrating eligibility for local channel exclusivity on 929.3125 MHz in the Los Angeles - Long Beach, California market.<sup>1</sup> As discussed in greater detail below, MAP's operations from 20 sites in this market provide complete service coverage notwithstanding the mileage separation of these three transmitters. It submits that under these circumstances a waiver is appropriate and in the public interest.

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<sup>1</sup> Amendment of the Commission's Rules To Provide Channel Exclusivity To Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 8318, Appendix A, Section 90.495(a)(1) ("Report and Order"). Because the agency's new rules are subject to reconsideration, and because MAP intended alternatively to seek this waiver, MAP filed a conditional local exclusivity request for the Los Angeles - Long Beach market. See Letter from Garry Morrison, President, MAP Mobile Communications, Inc., to Private Radio Bureau Licensing Division, FCC (Jan. 28, 1994). Attached at Tab B for the staff's convenience is a copy of that filing.

## I. BACKGROUND

MAP Mobile Communications, Inc., entered into the communications business industry over three years ago as a reseller of alphanumeric paging services and has established one of the most sophisticated and reliable computer-assisted mobile communications messaging and dispatch systems in the United States. It now employs competitive and innovative communications services nationwide.

Last year, the FCC decided to grant local, regional, and national exclusivity to PCP operators that meet certain requirements regarding the number and location of transmitters. The FCC's stated purpose was to promote investment in technology and system expansion.<sup>2</sup>

In its Report and Order in this matter, the Commission concluded that to be eligible for exclusivity:

A local system must consist of at least six contiguous transmitters, except in the New York, Los Angeles, and Chicago markets . . . 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.

Report and Order, Appendix A.

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<sup>2</sup> Amendment of the Commission's Rules To Provide Channel Exclusivity To Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 2227, 2229 ¶ 16 ("Notice").

MAP is authorized to operate on 929.3125 MHz at 24 sites in California, 20 of which are in the Los Angeles - Long Beach area. Attached as Tab A is a map of southern California indicating the location and 43 dBu service contour of each transmitter. As shown in that exhibit, these sites create a reliable service area that covers the Los Angeles - Long Beach market. Nevertheless, the sites do not meet the FCC's new requirement that "the combined areas defined by a 12.5 mile radius around each transmitter form a contiguous area . . ."<sup>3</sup> Instead, the proposed facilities create three separate areas. The first set of 10 transmitters<sup>4</sup> forms a contiguous area that is separated by only 4.6 miles from the contiguous area of a second set of 7 transmitters.<sup>5</sup> A third set is comprised of the two facilities in the city of Barstow. The remaining site in this market -- at Palm Springs -- was located for business reasons rather than regulatory reasons at a site greater than 25 miles from another transmitter.

MAP understands that other companies have found themselves in a similar predicament, and at least one company has petitioned the FCC for reconsideration of the

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<sup>3</sup> Report and Order, at Appendix A, Section 90.495(a)(1)(ii).

<sup>4</sup> This first set includes the facilities at Goleta, Santa Barbara, Ventura (two sites), Santa Paula, Los Angeles, Palmdale, Newhall, Glendale and Long Beach. The 12.5 mile radius of the transmitter at Long Beach is only 0.2 miles from the nearest 12.5 mile radius area of the transmitter at Glendale. As this separation is de minimus, MAP has included the Long Beach transmitter in the first set of transmitters.

<sup>5</sup> The second set includes facilities at San Clemente, Santa Ana, Corona, Edgemont, Sunnymead Crestline, and Victorville. The 12.5 radius area of the transmitter at Victorville is only 0.8 miles from the nearest 12.5 mile radius area of the transmitter at Crestline. As this separation also is de minimus, MAP included the Victorville transmitter in the second set of transmitters.

rules regarding the use of contiguous transmitters.<sup>6</sup> The petitioner has argued, among other things, that the rule is arbitrary and capricious because it was adopted without adequate notice, is not a logical outgrowth of the FCC's proposal, and can be effected with less a stringent approach. It seeks reconsideration of the FCC's decision or, alternatively, asks that the FCC freely grant licensees rule waivers, such as that requested here.

## II. A WAIVER IS CONSISTENT WITH FCC OBJECTIVES AND POLICIES

The court in Wait Radio made clear that waivers may be granted where "the underlying purpose of the rule will not be served, or will be frustrated, by its application in a particular case, and [ ] grant of the waiver is otherwise in the public interest[.]"<sup>7</sup> MAP submits that a waiver is justified in this case.

The Commission adopted Section 90.495(a)(1) to discourage warehousing and speculation by licensees not generally interested in constructing adequate systems.<sup>8</sup> Grant of MAP's waiver request does not give rise to such concerns. As noted above, MAP is a serious operator employing over 550 people in its PCP operations. It entered the market with the intention to construct facilities capable of providing innovative and competitive services. Indeed, it is currently operating over 260 base station facilities in the United States serving over 35 markets. Moreover, MAP has already expended in excess of \$11 million to

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<sup>6</sup> See, e.g., "Petition for Partial Reconsideration," filed December 27, 1993, by Carl N. Davis dba Afro-American Paging.

<sup>7</sup> See, e.g., WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>8</sup> Report and Order, at 8323-24, ¶ 16-17.

support the provision of PCP services, and it is committed to the additional investment required to continue these operations. These facts clearly demonstrate that it is not seeking to warehouse facilities or engage in speculation.

More importantly, the relief requested here is de minimus. MAP complies with the rules in all respects except for the requirement regarding "contiguous" coverage. Indeed, as noted above, MAP narrowly misses complete compliance with this requirement because of a separation of less than 5 miles. As the exhibit depicting MAP's 43 dBu service contour demonstrates, though, the FCC's requirement is not necessary to ensure adequate service in the Los Angeles - Long Beach market.<sup>9</sup>

### **III. A WAIVER WILL SERVE THE PUBLIC INTEREST**

Grant of MAP's waiver also will serve the public interest. First, a waiver will ensure against service degradation. Absent a waiver, MAP would be forced to share the channel with other operators. As the commenting parties to the Notice properly pointed out, and the FCC recognized, sharing is extremely difficult to accomplish.<sup>10</sup> For example, MAP's capacity on the channel would be limited and MAP likely would be restricted from expanding its geographic coverage. As a result, service to the public could be jeopardized.

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<sup>9</sup> In contexts where a predicted contour rather than an arbitrary mileage radius has been employed to define the reliable service area of a paging base station, the Commission has traditionally relied upon the 43 dBu contour. See 47 C.F.R. § 22.504(a) (1992).

<sup>10</sup> See generally Report and Order, at 8319-20.

Second, a grant will foster competition. The limited relief requested here will enable MAP -- an established service provider -- to obtain channel exclusivity necessary for it to compete on an equal footing with other common and private paging carriers who are providing nationwide and regional services throughout the Los Angeles - Long Beach market.

**IV. CONCLUSION**

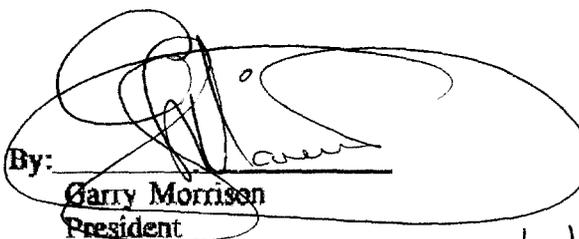
MAP is a legitimate operator that seeks to provide service for the Los Angeles area. It has proposed a system that is consistent with the intent of FCC's policies and objectives and does not "warehouse" channels. MAP therefore respectfully requests a waiver of the rule regarding contiguous coverage so that it is not thwarted in its attempt to provide service in the public interest.

- 7 -

In accordance with 47 C.F.R. § 1.2002 of the Commission's Rules, 47 C.F.R. § 1.2002 (1992), MAP Mobile Communications, Inc., hereby certifies that it, its officers and directors, and any party with a 5 percent or greater interest in this request for waiver are not subject to a denial of the Federal benefits requested herein pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a).

Respectfully submitted,

MAP MOBILE COMMUNICATIONS, INC.

By:   
Garry Morrison  
President

840 Greenbrier Circle - Suite 202  
Chesapeake, VA 23320

4/8/94

April 8, \_\_\_\_\_, 1994

Of Counsel:

David E. Hilliard  
Kurt E. DeSoto  
of  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
202-429-7000  
202-429-7049 fax)

**TAB A**



**TAB B**

DUPLICATE

RECEIVED

JAN 28 1994

NABER

WILEY, REIN & FIELDING

1776 K STREET, N. W.  
WASHINGTON, D. C. 20006  
(202) 429-7000

DAVID E. HILLIARD  
(202) 429-7058

January 28, 1994

FACSIMILE  
(202) 429-7049  
TELEX 248349 WYRN UR

National Association of Business  
and Educational Radio  
Attention: 929 MHz Exclusivity  
1501 Duke Street  
Alexandria, VA 22314

Licensing Division  
Private Radio Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17326

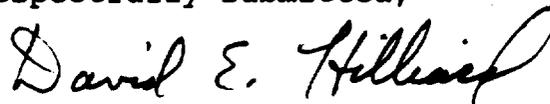
Re: MAP Mobile Communications, Inc.  
PCP Local Exclusivity Request/929.3125 MHz  
for Los Angeles-Long Beach, California

To: NABER

Transmitted herewith, on behalf of MAP Mobile Communications, Inc., is its request for local exclusivity to operate on 929.3125 MHz in the Los Angeles-Long Beach, California market.

Should you have any questions regarding this matter, please call me at (202) 429-7058.

Respectfully submitted,



David E. Hilliard  
Counsel for  
MAP Mobile Communications, Inc.

DEH;krr

**MAP MOBILE COMMUNICATIONS, INC.**

840 Greenbrier Circle, Suite 202  
Chesapeake, Virginia 23320  
Telephone (804) 424-1191  
Facsimile (804) 523-2577

January 27, 1994

National Association of Business  
and Educational Radio  
Attention: 929 MHz Exclusivity  
1501 Duke Street  
Alexandria, VA 22314

Licensing Division  
Private Radio Bureau  
Federal Communications Commission  
1270 Fairfield Road  
Gettysburg, PA 17326

Re: PCP Local Exclusivity Request/929.3125 MHz  
Los Angeles-Long Beach, California

To NABER and the Commission:

In accordance with the FCC's Report and Order in PR Docket No. 93-35,<sup>1</sup> and its Public Notice, DA 93-1411, dated November 19, 1993, this is to request local exclusivity on frequency 929.3125 MHz in the Los Angeles-Long Beach, California market.

As shown in the attached materials current as of January 22, 1994, MAP qualifies for local exclusivity pursuant to new Section 90.495 of the Commission's rules. Section 90.495(a)(1) requires local systems to "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

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<sup>1</sup> Amendment of the Commission's Rules to Provide Channel Exclusivity To Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 8318 (1993).

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 . . . ."<sup>2</sup> Section 90.495(a)(4) states that "no transmitter may be counted 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."<sup>3</sup>

MAP holds base station authorizations for 19 non co-located transmitters in the Los Angeles market based on applications filed at the FCC prior to October 14, 1993.<sup>4</sup> Each of the transmitters is capable of at least 100 watts output power, can be simulcast, and will operate as part of a single system for which exclusivity is sought.

MAP has determined, however, that the combined areas around its transmitters are not contiguous as defined by the Commission's new rules. MAP understands that this rule was not initially proposed in the FCC's exclusivity proceeding and is therefore the subject of a petition for reconsideration.<sup>5</sup> Indeed, this rule serves to preclude exclusivity for legitimate service providers that relied on the agency's proposals. As this aspect of the rule is not "final," MAP hereby

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<sup>2</sup> Section 90.495(a)(1).

<sup>3</sup> Section 90.495(a)(4); see also Section 90.495(e).

<sup>4</sup> MAP also holds authorizations for transmitters on 929.3125 MHz at other locations near Los Angeles that do not currently qualify for local exclusivity. Those authorizations have not been considered in this request. MAP expects to receive only "grandfathered" status for those facilities unless it can subsequently obtain exclusivity. In addition, MAP holds or will hold authorizations based upon applications filed after October 14, 1993. Those authorizations also have not been considered.

<sup>5</sup> See, e.g., Amendment of the Commission's Rules To Provide Channel Exclusivity To Qualified Private Paging Systems at 929-930 MHz, "Petition for Partial Reconsideration," filed on December 27, 1993, by Carl N. Davis aka Afro-American Paging.

Federal Communications Commission  
January 27, 1994  
Page 2

submits this exclusivity request on a conditional basis pending the outcome of the FCC's reconsideration proceeding or, if necessary, the grant of a request for waiver.

As requested in the "929 MHz Exclusivity Request" Form prepared by NABER, attached is: (a) a list of the call signs and site names for each transmitter associated with this request; (b) a report regarding the operational status of the facilities as of January 22, 1994; (c) the region and market number of each transmitter; and (d) a list of the transmitters that operate on more than one frequency. MAP contemplates initially constructing facilities at certain sites with multi-frequency transmitters, but will transition to single-frequency transmitters.

In accordance with 47 C.F.R. § 1.2002 of the Commission's Rules, 47 C.F.R. § 1.2002 (1992), MAP Mobile Communications, Inc., hereby certifies that it, its officers and directors, and any party with a 5 percent or greater interest in this request for exclusivity is not subject to a denial of the Federal benefits requested herein pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853(a).

**Federal Communications Commission**  
**January 27, 1994**  
**Page 3**

Should you have any questions regarding this request, please call me at (804) 424-1191 (facsimile (804) 523-2577) or our FCC counsel David E. Hilliard, of Wiley, Rein & Fielding, at (202) 429-7058 (facsimile (202) 429-7207).

**Respectfully submitted,**



**Garry Morrison**  
**President**

**GM/krr**

## 929 MHZ EXCLUSIVITY REQUEST

NABER will be the acting frequency coordinator for 929 MHz Exclusivity requests. Recent action in PR Docket 93-35 will require that eligible entities file a formal request for exclusivity via NABER to the Commission's Licensing Division. This form is designed as a guide for preparation of such filings. Please answer each of the following questions in detail. If additional pages are required, or if separate format is used, please be sure to enclose this NABER form on top of your filing.

**APPLICANT INFORMATION:**

Name MAP MOBILE COMMUNICATIONS, INC.  
 Address 840 GREENBRIER CIRCLE, SUITE 202  
 City/State/Zip CHESAPEAKE, VA 23320  
 Telephone (804) 424-1191

**TYPE OF EXCLUSIVITY REQUEST:**

Type: Specific Frequency: 929.3125 MHZ  
 Nationwide  
 Regional  
 Local

**CONTACT TO BE REACHED REGARDING THIS FILING:**

Name DAVID HILLIARD/KURT DESOTO  
WILEY, REIN & FIELDING  
 Telephone (202) 429-7250/429-7058  
 Fax (202) 429-7207/7049

ON A SEPARATE SHEET OF PAPER, PLEASE PROVIDE A LIST OF ASSOCIATED ENTITIES (NAME/ADDRESS/PHONE) THAT HAVE LICENSES OR HAVE FILED APPLICATIONS REFERENCED IN THIS EXCLUSIVITY REQUEST.

If this is a regional or local exclusivity request, please provide a description of area to be serviced:

**LOCAL EXCLUSIVITY IN THE LOS ANGELES-LONG BEACH CALIFORNIA MARKET AS DEFINED UNDER SECTION 90.741 OF THE COMMISSION'S RULES**

Please fill in the following information in the table provided:

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. A list of existing call signs.</li> <li>2. If applications are pending at FCC, and were filed prior to October 14, 1993, provide FCC File Numbers.</li> <li>3. A list of call signs of stations that have not been made operational.</li> </ol> | <ol style="list-style-type: none"> <li>4. If available, provide NABER control numbers.</li> <li>5. A list of transmitters that have more than one 929 MHz frequency (licensed/pending) operated by the above entity(ies) identified above.</li> <li>6. Use additional page provided if necessary.</li> </ol> |
|---|--|

TX #	CALL SIGN	SITE NAME	REGION	MARKET	OPERATIONAL?	ADD'L FREQ.
1	WPDH501	VENTURA, CA	7	2	NO	929.5375/9875
2	WPDH501	EDGEMONT, CA	7	2	NO	929.5375/9875
3	WPDH501	CRESTLINE, CA	7	2	NO	929.5375/9875
4	WPDH501	PALMDALE, CA	7	2	NO	929.5375/9875

PLEASE RESPOND TO ALL QUESTIONS, AND SEND COMPLETED REQUEST TO:

NABER, Attn: 929 MHz Exclusivity, 1501 Duke St., Alexandria, VA 22314

NABER will forward the request to the FCC after review.

