

DOCKET FILE COPY ORIGINAL

RECEIVED

OCT 17 1994

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)	
)	GEN Docket No. <u>90-314</u> ✓
Amendment of the Commission's Rules)	ET Docket No. 92-100
To Establish New Narrowband Personal)	
Communications Services)	

**PETITION FOR RECONSIDERATION OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") herewith submits its petition for reconsideration of the Second Memorandum Opinion and Order in the above-captioned proceeding.¹ In the *Second MO&O*, the Commission modified the rules governing the eligibility for the "response channels" in the narrowband Personal Communications Service ("PCS") based on a petition for reconsideration filed by the National Association of Business and Educational Radio ("NABER").² As discussed below, PCIA supports the Commission's action, but requests the Commission to adopt one further modification that would explicitly allow existing operators licensed on a market area basis to be eligible for response channels in any overlapping BTA or MTA. PCIA's requested modification is in the public interest since it will simplify carriers' task of matching response channels with existing operations and reduce administrative verification requirements.

¹ New Narrowband Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100 (Aug. 25, 1994) [*Second MO&O*].

² Petition for Reconsideration of the National Association of Business and Educational Radio, Inc., Gen. Docket No. 90-314, ET Docket No. 92-100 (filed Apr. 25, 1994).

No. of Copies rec'd _____
List ABCDE _____
OJH

INTRODUCTION

In its order allocating spectrum for new narrowband Personal Communications Services ("PCS"), the FCC allocated eight 12.5 kHz response channels for use by existing paging licensees to upgrade their systems to two-way operation.³ On reconsideration of this decision, the Commission elected to license half of the response channels using Randomly Basic Trading Areas ("BTAs") and half using Major Trading Areas ("MTAs").⁴ The FCC also clarified that eligibility for these channels was limited to paging licensees authorized under Part 22 or Part 90 as of June 24, 1993, that operated at least one transmitter in the proposed BTA or MTA market area. Finally, the Commission limited the number of response channels any single entity could own in any geographic area to two.

In response to a petition for further reconsideration by NABER, the *Second MO&O* recently adopted by the Commission modified certain aspects of the rules governing use of the response channels. First, eligibility for a response channel has now been extended to all licensees operating a transmitter within 20 miles of an MTA or BTA. Second, the *Second MO&O* allows all Part 22 and Part 90 licensees authorized as of the deadline for filing FCC Form 175 applications to qualify for response channels. Third, the order sunsets the multiple ownership limits for response channels after a period of two years.

³ New Narrowband Personal Communications Services, 8 FCC Rcd 7162 (1993) [*First R&O*].

⁴ New Narrowband Personal Communications Services, 9 FCC Rcd 1309 (1994) [*MO&O*].

ARGUMENT

While PCIA supports the changes adopted by the Commission in the *Second MO&O*, it believes the objectives of the order would be furthered by allowing market area licensees to qualify for response channels throughout their license areas. As discussed below, the Commission is gradually progressing to exclusive market area licensing in the paging and messaging services. While the existing transmitter-based eligibility rules for response channels are thus consistent with some of the existing services, such rules are not well tailored for the next generation systems the Commission seeks to promote.

PCIA notes that market area licensing has already been adopted for use in narrowband PCS, including the response channels.⁵ Provisions also exist for private carrier paging ("PCP") systems in the 929-930 MHz band to obtain exclusivity on a local, regional, or national basis.⁶ Moreover, the FCC recently indicated that it would look favorably upon a petition for rulemaking by PCIA seeking market area licensing for 931-932 MHz common carrier paging systems.⁷ Market area licensing for narrowband systems has generally been favored to provide greater flexibility to licensees, to eliminate unnecessary filings, and to reduce administrative burdens. As the Commission transitions to greater use of market area licensing, however, eligibility rules based solely on individual transmitter licensing rules will be increasingly outmoded and difficult to manage. Accordingly, PCIA believes it would be

⁵ *First R&O*, 8 FCC Rcd at 7167; *MO&O*, 9 FCC Rcd at 1311-12.

⁶ Channel Exclusivity for Qualified Paging Systems At 929-930 MHz, 8 FCC Rcd 8318 (1993).

⁷ Revision of Part 22 of the Commission's Rules, CC Docket No. 92-115, FCC 94-201 (Sept. 9, 1994) at ¶11.

consistent with general industry trends to adopt eligibility provisions for response channels that are also tailored to market area based licensees.

Specifically, PCIA suggests revising the current regulations to make any market area based licensee eligible to file for a response channel in any BTA or MTA where there is overlap with the licensees' paging market area. In particular, PCIA suggests the following revision to Section 24.130 of the Commission's rules:

(a) The channels listed in paragraphs (b) and (c) of this section are available to licensee of conventional one-way paging base stations licensed pursuant to Part 22 or Part 90 of this chapter as of the application filing deadline for the paging response channels. Eligibility for response channels shall be based on the authorized service area of each existing paging licensee. ^For licensees authorized on a fill-in basis, this ~~This~~ service area is defined as the area within a 32.2 kilometer radius of the licensee's base stations or, in the case of "F," "G," "H," or "K" class stations under Sections 22.502(c) and 90.495(b)(1) of this chapter, as the area that is within the service area radius specified in Section 22.504(b)(2) of this chapter. ^For licensees authorized on an exclusive market area basis, this service area is defined as the market area authorized to the licensee. Existing paging licensees are eligible to bid for any response channel in any BTA or MTA which encompasses an authorized base station or which is partly or wholly overlapped by a licensee's service area. . . .

Because the market areas for PCP systems are not confined to the response channel MTAs and BTAs and because market areas have not yet been defined for 931-932 MHz carriers, an overlap rule is necessary to ensure that licensees are eligible for response channels throughout their service areas. At the same time, the proposed revision retains the "brightline" test established by the Commission for eligibility.⁸

⁸ *Second MO&O* at ¶9.

CONCLUSION

For the foregoing reasons, PCIA respectfully requests the Commission to further reconsider the response channel eligibility rule. While the changes adopted in the *Second MO&O* will benefit the paging industry generally, PCIA believes that adopted the further modification described herein will contribute to a more forward-looking rule as the Commission expands the use of market area licensing for paging frequencies. At the same time, the modification preserves an administratively simple brightline test for eligibility. Accordingly, PCIA believes the rule modification is in the public interest and urges the Commission to adopt the proposal prior to the auctions of response channels.

Respectfully submitted,

**PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION**

By: 
Mark J. Golden
Personal Communications
Industry Association
1019 19th Street, N.W.
Washington, D.C. 20036
(202) 467-4770

Dated: October 7, 1994