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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

JUN 18 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Replacement of Part 90 by Part 88 to )  
Revise the Private Land Mobile Radio )  
Services and Modify the Policies )  
Governing Them )

PR Docket No. 92-235

To: The Commission

DOCKET FILE COPY ORIGINAL

**PETITION FOR PARTIAL RECONSIDERATION OR CLARIFICATION**

AzCOM Paging, Inc. ("AzCOM"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules [47 C.F.R. § 1.429], hereby requests reconsideration or clarification of the Commission's actions in its Report and Order and Further Notice of Proposed Rulemaking (PR Docket 92-235), FCC 95-255, released June 23, 1995, ("Part 90 Rewrite Order") insofar as they subject private carrier paging stations operating at 462 MHz to the same antenna height/power limits applicable to two-way systems licensed under Part 90 of the FCC's Rules. Specifically, in promulgating its Part 90 Rewrite Order, the Commission failed to address AzCOM's timely filed comments. The Commission should instead grant an exclusion for all private carrier paging systems operating at 462 MHz from antenna height/power limitations promulgated in the Part 90 Rewrite Order. In support hereof, the following is shown.

**I. Statement of Interest**

1. AzCOM is licensed to operate private carrier paging ("PCP") stations KHND520, WNUH807, WNQE767, and WNBU491 on the 462.775 MHz one-way paging frequency in the Business Radio Service. AzCOM is currently licensed under these four call signs to provide paging service from fourteen transmitter sites in the State of Arizona, all of which have a height above average terrain ("HAAT") of greater than 590 feet (180 meters). AzCOM's system is engineered to take advantage of strategic transmitter locations and effective radiated power ("ERP") levels of 1300 watts. This is to provide coverage across approximately 60 percent of

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the State of Arizona, which covers 75 percent of the State's population. Due to intense competition for paging customers, state-wide coverage is essential to AzCOM's financial survival and continued ability to provide paging service.

2. AzCOM will be affected in a material and adverse way by the Rules promulgated in the Commission's Part 90 Rewrite Order insofar as they subject private carrier paging stations in the Business Radio Service to the same antenna height/power limits applicable to two-way systems licensed under Part 90 of the FCC's Rules. Specifically, in promulgating its Part 90 Rewrite Order, the Commission failed to address AzCOM's timely filed comments.

## **II. The New Power Limit Should Not Apply to PCP Bands**

3. The antenna height/power limits promulgated in the Part 90 Rewrite Order appear to be designed to provide local service for two-way private land mobile radio systems, which are normally used for intra-company communications. Most two-way communications are accomplished with portables and mobiles operating outside of buildings. Pagers, on the other hand, are generally worn or carried wherever the user goes, including inside of buildings. The antenna height/power tables are based on propagation studies of signal levels necessary to communicate with mobiles operating in average terrain, not within buildings. These tables are therefore inappropriate to determine required signal levels for private carrier paging systems operating at 462 MHz.

4. Paging systems, such as the system operated by AzCOM, have a different need than systems providing only intra-company communications. They have a wide customer base with various service needs, and therefore these licensees need to communicate over larger distances.

5. The continued existence of any paging system depends on providing reliable service. Paging customers expect their pagers to operate in all environments, and they operate within buildings as often, or more often, than outside. Even at power levels far exceeding 500 watts ERP, paging signals have difficulty penetrating buildings.

6. Even though the Rules promulgated in the Part 90 Rewrite Order provide a method of obtaining higher ERP levels, the FCC should not make PCP applicants or operators of existing PCP systems "jump through hoops" to obtain the power levels they need for normal operations. These additional financial and administrative burdens are not imposed upon paging systems operating on other frequencies, which enjoy exclusive use of their channels. Moreover, while offering commercial paging service should per se justify higher ERP levels, the Part 90 Rewrite Order does not indicate that this will be the case.

7. The Rules adopted by the Commission in the Part 90 Rewrite Order would require each PCP applicant to file an engineering analysis to justify their required ERP for satisfactory operation. Surely, this is not the Commission's intention. Common carrier paging systems must also provide an engineering analysis, however, they do so in order to establish service area boundaries and to obtain exclusive use of their channel. Because PCP systems share frequencies, this information is unnecessary and unduly burdensome.

8. In the Part 90 Rewrite Order, the Commission has adopted a modified version of the "safe harbor" tables recommended by the Land Mobile Communications Council ("LMCC") for the 150-174 MHz and 450-470 MHz bands. Under these new height/power tables, the maximum service area radius will generally be 25 miles in the 150-174 MHz band and 20 miles in the 450-470 MHz band. In all cases, the maximum allowable ERP will be 500 watts. AzCOM's licensed PCP frequency of 462.775 MHz in the Business Radio Service is among the 450-470 MHz bands.

9. In the Part 90 Rewrite Order, the Commission has adopted Rules which will require applicants proposing a service radius greater than 25 miles in the 150-174 MHz band or 20 miles in the 450-470 MHz band to justify their requests. Frequency coordinators may request additional information from the applicant when needed to permit the coordinator to make a proper frequency recommendation. If the applicant disagrees with the coordinator's recommendation, the Commission will resolve the dispute on a case-by-case basis. Although both

parties will be required to justify their positions with technical data, the applicant will have the burden of persuading the Commission to overturn the coordinator's recommendation.

10. The adopted Rules also permit an applicant to request power/antenna heights in excess of those in the tables. Such requests must be accompanied by an engineering analysis demonstrating that the requested parameters will not produce a signal strength greater than 37 dBu for the 150-174 MHz band and 39 dBu for the 450-470 MHz band at any point along the edge of the service area the applicant requests. This showing must be submitted to the frequency coordinator, who may then recommend an ERP/HAAT appropriate to the applicant's service area. Base stations with a service radius greater than 50 miles will be authorized only on a secondary basis.

11. These changes add unnecessary complexity and expense to the application process for PCP systems operating at 462 MHz, and there is no assurance that the frequency coordinator will approve the ERP level requested by the applicant. Moreover, it also ignores the fact that PCP systems may need higher power than standard coverage calculations indicate, in order to serve pagers in buildings and other areas of poor propagation.

12. The Commission does not appear to have exempted one-way paging systems, including PCP systems operating at 462 MHz, from the height/power limits described above. Although paging frequencies will not be narrowbanded, the new rules do not appear to exempt any PCP frequencies from the height/power limits, except to the extent that existing systems will be grandfathered as currently authorized. The Notice of Proposed Rule Making ("Refarming Notice") which preceded the Part 90 Rewrite Order had proposed such an exemption for *some* PCP channels. See Proposed Rule Section 88.1067, Refarming Notice, PR Docket 92-235, 7 FCC Rcd 8105 (1992). However, an exemption for the 462 MHz frequencies was *never even proposed*, nor was this omission ever explained by the Commission.

**A. In Promulgating the Part 90 Rewrite Order, the Commission has Failed to Address AzCOM's Timely Filed Comments.**

13. In its timely filed comments to the Refarming Notice, AzCOM specifically requested that the Commission retain its existing output power limit of 350 watts on the Business Radio Service paging frequency 462.775 MHz, with no limit on ERP, since the Commission's bases for the antenna height/power limits, as stated in the NPRM, do not apply to non-exclusive use paging frequencies.<sup>1</sup> Comments of AzCOM Paging, Inc. ("AzCOM Comments") at 2. However, despite the importance of these matters to thousands of PCP licensees, neither the AzCOM Comments, nor the substance of the antenna height/power issues raised therein, were addressed by the Part 90 Rewrite Order. AzCOM can take some comfort from the Commission's decision that these Rules will apply only to new stations. The Part 90 Rewrite Order defines a "new station" as "one which is not functionally integrated with an earlier-installed system." Part 90 Rewrite Order at ¶ 69, note 137. Unfortunately, this definition leaves room for uncertainty about whether future system changes will be possible.

14. Adding transmitter sites, as well as moving transmitter sites, is an inevitable outgrowth of any successful radio paging business. This may be done for reasons which include filling in coverage gaps, expanding to gain new customers, expanding in response to existing customer demand, relocating due to loss of a tower site, and relocating because a more desirable transmitter site is found. However, under the Rules promulgated in the Part 90 Rewrite Order, AzCOM and other operators in the Business Radio Service will be required to adhere to the new Part 90 height/power limits to the extent that these changes are not found to be "functionally integrated" with their earlier-installed systems. At a minimum, the new rules should be clarified to confirm that additional transmitters and relocations will not be considered "new" stations. In this regard, the Commission currently assigns a new call sign whenever a PCP licensee applies to add a transmitter site to a system that already has six sites. Indeed,

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<sup>1</sup> A copy of AzCOM's comments in PR Docket 92-235 is attached as Exhibit A

such applicants are required (at Item D1 of FCC Form 600, Schedule D) to check the box for a "new" station license even though the additional transmitter will be directly tied into the existing system. In such instances, the Commission should allow full power operation under the existing Part 90 Rules wherever the applicant indicates in, e.g., Item D4 ("Associated Call Signs") that the proposed sites expand an existing operation. The Commission should also clarify that a license issued pursuant to a transfer of control or assignment of license will not be considered a "new" station.

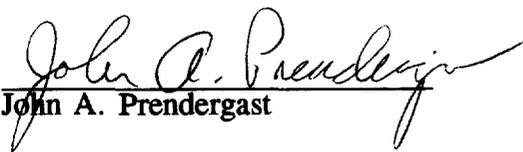
15. However, AzCOM believes that the more appropriate solution is to recognize the fundamental difference between commercial paging operations and mobile operations; and AzCOM therefore respectfully requests that the Commission reconsider its Part 90 Rewrite Order and retain its existing output power limits for all private carrier paging operations, including the current output power limit of 350 watts for paging frequency 462.775 MHz, with no limit on ERP.

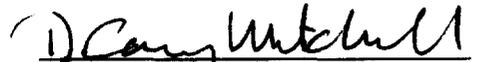
**CONCLUSION**

**WHEREFORE**, for good cause shown, AzCOM requests that this petition be granted and the Commission grant an exclusion for all PCP systems operating at 462 MHz from antenna height/power limitations promulgated in the Part 90 Rewrite Order.

Respectfully, submitted,

**AZCOM PAGING, INC.**

By:   
John A. Prendergast

  
D. Cary Mitchell  
Counsel to AzCOM Paging, Inc.

**Blooston, Mordkofsky, Jackson  
& Dickens**  
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(202) 659-0830

Dated: August 18, 1995

## **APPENDIX A**

**Comments of AzCOM Paging, Inc.  
in PR Docket 92-235**

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In the Matter of )  
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COMMENTS OF AZCOM PAGING, INC.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

AzCOM Paging, Inc. (AzCOM), by its attorneys and  
pursuant to Section 1.415(a) of the Commission's rules,  
submits these comments in response to the Notice of Proposed  
Rule Making (NPRM) released by the Commission in the captioned  
proceeding on November 6, 1992.

INTEREST OF AZCOM

AzCOM is licensed to operate private carrier paging (PCP)  
Stations WNQE767, and WNBU491 on the 462.775 MHz one-way  
paging frequency. AzCOM currently is licensed under these two  
call signs to provide paging service from ten transmitter  
sites located in the State of Arizona, all of which have a  
height above average terrain (HAAT) of greater than 590 feet.  
AzCOM provides state-wide paging service to the major Arizona  
population centers through this network of ten transmitters.  
Due to intense competition for paging customers, state-wide  
coverage is essential to AzCOM's financial success, and  
continued ability to provide paging service.

AzCOM would be affected in a tangible and material way  
by proposed Rule Section 88.1067, and Rule Section 88.429(d),  
and (h), which if implemented would sharply cut allowed

effective radiated power (ERP), thereby drastically constricting the geographic areas served by existing transmitters. Eight of AzCOM's ten transmitters for the above call signs are licensed for an ERP ranging from 1000 watts to 1800 watts. Since they are located at least 590 feet above average terrain, all ten transmitters would be forced to reduce ERP to 5 watts in order to comply with the proposed Part 88 rules cited above. A contours map of AzCOM's currently licensed coverage for the Phoenix, Arizona market, as well as the projected coverage under proposed rules, is attached hereto at Attachment A.

**THE COMMISSION SHOULD RETAIN EXISTING OUTPUT POWER LIMITS**

Currently, the maximum allowed output power on the Business Radio Service paging frequency 462.775 MHz is 350 watts, with no limit on maximum effective radiated power (ERP). 47 C.F.R. §§ 90.75(c)(10), 90.205(b) (1992). This is consistent with the general power restrictions currently applicable to this band. 47 C.F.R. § 90.205(b). Many paging stations, including AzCOM's, achieve an ERP of 1000 watts or more by use of high gain antennas, and further expand service areas through transmitter sites with a significant height above average terrain (HAAT). Due to the heavy demand for good sites, and limited site availability, leases for antenna locations with significant HAAT have become expensive.

Proposed Part 88 rules would drastically cut allowed ERP for most frequencies according to a sliding scale of HAAT.

According to the draft rules, these general power restrictions would apply to one-way page only frequencies, as well as the more numerous two-way channels largely targeted by refarming. See proposed Rule Section 88.1067, and Rule Sections 88.429(d), and (h). Under these broad brush limitations, the new ERP for all of AzCOM's one-way paging transmitters would be cut to 5 watts. Unlike most of the sweeping proposed changes that have phased in deadlines, the power restrictions would become effective on January 1, 1996. NPRM, 7 FCC Rcd. 8105, 8127 (1992). Implementation of proposed rules would result in a nearly immediate and severe constriction of AzCOM's service areas from existing transmitters, as illustrated by projected contours for the Phoenix, Arizona market indicated on the map at Attachment A. This constriction of contours would result in large gaps in geographic coverage. AzCOM projects it would need to add at least seven new transmitter sites just in the Phoenix area (bringing the total to ten Phoenix transmitter sites) in order to provide the same coverage now attained by three transmitters. See Attachment A, Statement of John Huls.

AzCOM urges the Commission to continue existing power limitations for all private radio page only frequencies. First, Commission action severely restricting power on paging frequencies would lack the basis or purpose necessary to a reasoned rule making, since the stated bases for Part 88 power restrictions do not apply to non-exclusive use paging

frequencies. Second, such restriction of power for paging would contradict general spectrum management goals articulated by the Communications Act of 1934, as amended, as well as contradicting refarming objectives. Finally, the public interest would be served by continuing existing power restrictions, since current rules would further the purpose of paging frequencies.

A. Proposed restrictions on power for paging stations lack basis and purpose.

The Commission based its proposed Part 88 power limitations on the beliefs that there is a widespread problem with "over-powered" systems, and that limiting ERP would facilitate spectrum reuse and exclusivity. NPRM, 7 FCC Rcd. at 8112 - 3. Even if these bases were correct in other contexts, and AzCOM Paging doubts they are, neither basis applies to the one-way shared use paging only frequencies. There is not a widespread problem with "over-powered" paging stations. The NPRM quotes State of California comments citing "a small town of three square miles operat[ing] 250 watt base stations" as support for the questionable proposition that "many current licensees use far more power than necessary." 7 FCC Rcd. at 8112.

However, by its very nature, private carrier paging service requires high power. Much of the dramatic growth in paging has been due to small highly portable pocket or clip units that receive pages almost everywhere the customer goes. High power is necessary to send a paging signal almost

everywhere within a market such as the Phoenix market, or the statewide Arizona market. Many paging customers must receive pages within office buildings, parking garages and other concrete and steel structures requiring high power for building penetration. Moreover, many paging customers also must receive pages while driving in suburbs or at the outskirts of metropolitan areas. Thus, the nature of the paging business requires both intensive and wide area signalling, necessitating high power levels. The Commission should distinguish operational requirements of paging services from those of the prototypical small city with contours extending far beyond its jurisdiction. Paging systems must provide a reliable signal anywhere its customers travel. Thus, the stated basis for proposed Part 88 power restrictions - that many licensees operate at higher power than necessary - simply does not apply to paging.

Additionally, the NPRM noted that the proposed power restriction "is closely tied to our exclusive use overlay proposal . . . ." 7 FCC Rcd at 8113. Thus, the other basis for proposed power restrictions is an attempt to facilitate exclusivity. However, the Commission has not proposed exclusive use for the current Business Radio Service paging frequencies. The absence of exclusivity options in these frequencies is made more conspicuous by the Commission's proposal in Private Radio Docket 93-35 to award exclusive use of other certain paging frequencies. Thus, where the

Commission's conspicuous policy has been to retain shared use of current Business Radio Service paging frequencies, the exclusivity rationale for Part 88 proposals would not serve as a basis for further power restrictions. Since proposed Part 88 power restrictions are premised upon exclusivity, and since the Commission has not seen fit to award exclusivity, there is no reason to restrict power.

Therefore, neither of the stated bases for proposed Part 88 power restrictions apply to AzCOM's paging frequency. The first sentence of proposed Rule Section 88.1067, lacks the "basis and purpose" necessary to reasoned rule making. See 5 U.S.C. § 553(c); Independent U.S. Tanker Owners Committee v. Dole, 809 F.2d 847, 852 (D.C. Cir. 1987). As requested below, this rule should be replaced with current requirements found in Rule Section 90.205(b), that output power for paging stations is limited to 350 watts, with no limit on ERP.

B. Restricting power on paging frequencies contradicts spectrum management goals, and reforming objectives.

Section 1 of the Act sets out purposes for Congressional delegation of authority, including making "available, so far as possible, to all people of the United States a . . . radio communication service with adequate facilities at reasonable charges . . ." 47 U.S.C. § 151. Likewise, when affirming authority to regulate the Private Land Mobile Services, Congress charged the Commission with considering whether its actions will "reduce the regulatory burden upon spectrum

users" and "provide services to the largest feasible number of users." 47 U.S.C. § 332. Finally, the Commission recently was reminded in another context to take into account the "far-reaching economic, social or personal consequences" of its action. McElroy Electronics Corporation v. F.C.C., No. 91-1545, slip op. at 30 (D.C. Cir. April 23, 1993).

Proposed severe restrictions on power for paging stations contradict the above congressional and judicial mandates. Requiring AzCOM to more than triple the number of transmitter sites, while significantly devaluing investment in current high HAAT sites, would almost certainly require substantial increases in price charged for paging service, and possible loss of service where it is not possible or cost effective to establish additional sites. This would contradict the Commission's mandate to ensure universal service at reasonable charges. See 47 U.S.C. § 151. Proposed onerous power restrictions would contradict the policy of reducing regulatory hurdles and providing private radio service to "the largest feasible number of users." See 47 U.S.C. § 332. Likewise, where these concerns are summarily dismissed in a footnote stating, "[s]ystems requiring greater geographic coverage could build additional sites," NPRM at note 39, the Commission has not considered the "far-reaching economic, social or personal consequences" of its proposed action. See McElroy Electronics, supra.

Moreover, proposed power restrictions on paging frequencies contradict the purposes of refarming, which is to promote more efficient use of the PLMR bands below 512 MHz. NPRM, 7 FCC Rcd. at 8105. Rather than enhancing efficiency, proposed power restrictions on paging stations actually would reduce it. Reducing AzCOM's contours, and requiring construction of new transmitters would not encourage new licensees to use the channel, either within AzCOM's existing service area, or geographically adjacent to it. The frequency would not get any greater use outside of AzCOM's existing contours, since that area is sparsely populated, and does not have the customer base to support a paging operation. Moreover, raising the cost of providing paging service in Phoenix, Arizona only would discourage new entrants into that market. Thus, it would be less likely that the frequency would get any greater use within AzCOM's existing service area. The proposed power restriction actually introduces spectrum inefficiency.

The Commission recently recognized that "introducing these new [power restrictions] would be difficult." Private Radio Bureau Clarifies Key Refarming Issues, Public Notice (Mimeo No. 31969, released March 1, 1993) at page 4. The Commission recognized that special provisions for wide area and rural needs may be appropriate and solicited industry input on this issue. Id. As noted above, paging systems inherently need wide area coverage. Moreover, much of

AzCOM's paging service extends into rural areas. It is respectfully submitted that a wide area or rural power exception would be appropriate, indeed necessary to the continued profitability of paging services such as AzCOM.

Since the proposed power restrictions for paging stations contradict congressional intent, and regulatory purposes, they should be abandoned.

C. Retaining existing power limits would be in the public interest.

Perhaps the best response to the proposed power restrictions on paging stations is, "if it's not broken, don't fix it." The paging services surely rank among the most vibrant and competitive of all land mobile services. In particular, the public interest has been well served by the introduction and remarkable success of private carrier and internal use paging that can be licensed on 462.775 MHz. This success argues in favor of retention of the status quo, absent any dramatic efficiencies that hypothetically might be gained from change. Yet no efficiency gains are projected in private carrier paging. As noted above, restricting ERP in this frequency would generate inefficiency, not any gains in spectrum usage. Moreover, with the exception of onerous power restrictions, none of the other major refarming initiatives has been proposed for this frequency. For example, the Commission does not propose to split the frequency's bandwidth, nor is exclusivity proposed. Only the

power restriction has been proposed, which would make less efficient spectrum use.

Therefore, the public interest would be served by continuation of the very competitive market in paging under current power limitations.

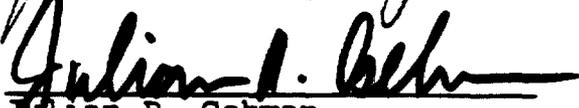
WHEREFORE, it is respectfully requested that the first sentence of proposed Rule Section 88.1067 be changed to read, "With the following exceptions, maximum output power on paging frequencies is limited to 350 watts, with no limit on effective radiated power."

Respectfully Submitted,

AZCOM PAGING, INC.

By

  
John A. Prendergast

  
Julian P. Gehman  
Its Attorneys

Blooston, Mordkofsky, Jackson  
& Dickens  
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(202) 659-0830

Filed: May 28, 1993

**ATTACHEMENT A**



## STATEMENT

I, John Huls, President of Signal Communication Services, Inc. of Phoenix, Arizona, have 12 years experience in the Radio Telecommunication industry, including the design of numerous paging and Specialized Mobile Radio (SMR) systems located throughout the United States. I have prepared the foregoing contour map for three transmitters of call sign WNB491, operated by AzCOM Paging, Inc. As such, I have the knowledge to advise the Federal Communications Commission on the following matters:

1. The contours represented on the foregoing map were calculated using an eight radial, 43 Dbu signal level, Carey Propagation Curves. Digitized, 3 second terrain data was used. This is a standard calculation in the paging industry.

2. The Existing Contours were calculated with currently licensed effective radiated power (ERP) of 1400, 1125 and 1425 Watts for transmitter locations one, two, and three respectively of Station WNB491. The Restricted Proposed Part 88 Contours were calculated with an ERP of 5 Watts, as would be required by proposed Rule Section 88.1067 since all three locations have a height above average terrain (HAAT) of greater than 590 feet.

3. The contours represented on the foregoing map show street level coverage for both Existing Contours, and the Restricted Proposed Part 88 Contours. The corresponding contours for penetration inside buildings in the Phoenix area would be smaller.

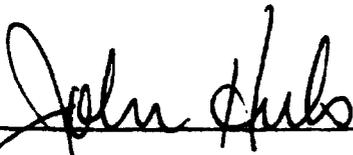
4. Based upon the foregoing contours map, I estimate that in order to comply with the proposed Rule Section 88.1067 power restrictions, AzCOM Paging would have to place and additional seven transmitters in the Phoenix Area to duplicate its existing coverage for Station WNBU491.

5. It is vitally important AzCOM's paging signals reach business customers located inside parking garages, office buildings and hospitals in the Phoenix area. In order to accomplish this with the proposed power limitations, additional transmitters would have to be placed in the Phoenix Area, just to boost inside coverage, and not to expand coverage in any geographic area.

**DECLARATION**

I, John Huls, President of Signal Communication Services, Inc., P.O. Box 63501, Phoenix, Arizona, 85082 hereby declare under penalty of perjury under the laws of the United States, except with regard to those facts of which official notice may be taken, that the foregoing statement is true and correct to the best of my knowledge.

Dated, this 27th day of May, 1993.

  
\_\_\_\_\_  
John Huls

## CERTIFICATE OF SERVICE

I, Elizabeth A. Ebere, hereby certify that I am an employee of Blooston, Mordkofsky, Jackson & Dickens, and that on this 18th day of August, 1995, I caused to be hand-delivered, a copy of the foregoing **Petition for Partial Reconsideration or Clarification of AzCOM Paging, Inc.** to the following:

Chairman Reed Hundt  
Federal Communications Commission  
1919 M Street, NW Room 814  
Washington, DC 20554

Commissioner James Quello  
Federal Communications Commission  
1919 M Street, NW Room 802  
Washington, DC 20554

Commissioner Andrew Barrett  
Federal Communications Commission  
1919 M Street, NW Room 826  
Washington, DC 20554

Commissioner Rachelle Chong  
Federal Communications Commission  
1919 M Street, NW - Room 844  
Washington, DC 20554

Commissioner Susan Ness  
Federal Communications Commission  
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Regina Keeney, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2925 M Street, N.W., Room 5002  
Washington, D.C. 20554

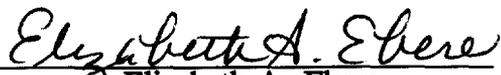
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Elizabeth A. Ebere