K

ALL-STATE® LEGAL 800-222-0510 EDS11 RECYCLED

MARKET AREA LICENSING OF PAGING

Paging is increasingly a regional, if not nation-wide or even international service. Currently, however, the FCC employs a per-transmitter paging licensing process whereby a paging licensee must assemble a market on an arduous and inefficient, transmitter-by-transmitter basis. Market area licensing would greatly speed and simplify the licensing process for paging and facilitate business planning and growth. It would also further Commission goals of increased speed of licensing, reduced regulatory delay, and encouraging publicly beneficial wide-area service.

In the fall of 1992, PCIA proposed market area licensing of common carrier paging frequencies in the *Part 22 Rewrite* proceeding (CC Docket 92-115). The association renewed that request in the summer of 1994 in our comments in the *Regulatory Parity* rulemaking (GN Docket 93-252).

Market area licensing has been recognized by the industry and Commission staff as the long term solution to what has amounted to a licensing freeze of 931 Mhz paging licenses, due to complications in the assignment processes for these frequencies.

PCIA has been working closely with Wireless Bureau staff on its market area licensing proposal, which we understand will be addressed in a comprehensive paging rulemaking. An *NPRM* has reportedly been "imminent" for many months. We look forward to initiation of the rulemaking.

PCIA PROPOSED MARKET AREA LICENSING SCHEME FOR 931 MHz

May 12, 1995

PCIA outlines below a consensus plan for implementing 931 MHz market area licensing. The proposed market area licensing plan and transition rules are largely based upon the scheme adopted for narrowband PCS, and also share a number of elements in common with the recently released 900 MHz SMR structure.

THE SCOPE OF THE PCIA PROPOSAL

- PCIA believes that market area licensing for 931 MHz channels will provide greater flexibility, reduce the number of licensee filings, minimize processing delays, provide greater parity with narrowband PCS licensees, strengthen carriers' ability to obtain capital by providing licensees with a more understandable package of rights, and break the application logjam in some areas where daisy-chained mutual exclusivity has held up application processing.

- PCIA recognizes that the transition to market area licensing can be problematic, but believes the 800 MHz SMR experience is not indicative of what will occur at 931 MHz, that the use of MTA-based licenses may minimize the transition problems, and that it is possible to balance protection for existing licensees with carriers' needs to create contiguous networks.

- PCIA supports market area licensing *only* for 931 MHz paging channels and does not believe that market area licensing should be extended more broadly to UHF or VHF common carrier paging frequencies or the 929 MHz private carrier paging frequencies.

GEOGRAPHIC MARKET AREAS

- PCIA supports the use of Major Trading Areas for 931 MHz market areas, since MTAs more closely reflect carrier's service areas, provide parity with narrowband PCS, and integrate with the 12.5 kHz response channels. PCIA is reviewing potential consolidation of MTAs in certain areas.

- PCIA supports allowing geographic partitioning of markets whereby a licensee could transfer a region within its market area to another licensee.

- PCIA will seek to negotiate for the right to expand the current Rand McNally PCS license agreement to encompass paging, with costs to be recovered in a special assessment from the membership.

CONSTRUCTION REQUIREMENTS

- PCIA supports construction requirements for 931 MHz market area licensees that parallel the narrowband PCS build out requirements. Licensees would be required to demonstrate that, after five years, they are providing service to: (a) 37.5 percent of the population; or (b) 25 percent of the geographic area of the MTA; and, after ten years, they are providing service to: (a) 75 percent of the population; or (b) 50 percent of the geographic area of the MTA. Service coverage would defined as it is in narrowband PCS.

- Failure to meet the applicable construction requirements would result in loss of exclusive market rights.

- Because an existing grandfathered licensee could, in some instances, preclude a licensee from reaching the necessary coverage requirements, PCIA is considering requiring completion of build-out requirements notwithstanding the existence of other grandfathered licensees as well as providing some potential for future waiver relief.

TRANSITION AND AUCTION PROCEDURES

- Prior to auctioning market area licenses, the Commission would resolve as many pending applications as possible, including many of the mutually exclusive applications in congested areas. At some point, however, any pending applications will need to be dismissed as market area licensing is implemented.

- The Commission would then release a public notice setting a date for accepting applications by carriers that desire market area licenses and can certify they cover at least 70 percent of a particular license area.

- The Commission would grant market area licenses to those carriers filing applications certifying that they cover 70 percent of a particular license area.

- The Commission would release a second public notice listing all frequencies in all markets available for auction and setting a date for the filing of market and frequency specific short form applications.

- The Commission would release a third public notice listing all applications accepted for filing and noting applications requiring amendment.

- The Commission, after accepting amendments, would release a fourth public notice listing all applications acceptable for filing and setting a date for the payment of deposits, which should be high enough to discourage speculation.

- Any applications for markets that are not mutually exclusive would be immediately granted (subject to usual processing requirements).

- The Commission, after accepting deposits, would release a final public notice listing the mutually exclusive applications for each channel and setting an auction date.

- The Commission would hold, in as few days as possible, an oral outcry auction to license all mutually exclusive market area licenses, progressing from channel to channel, doing each MTA, from the largest MTA to the smallest MTA, within a particular frequency before progressing to the next channel.

GRANDFATHERING RIGHTS

- Existing licensees would have the option of negotiating any division of rights with the market area licensee, including partitioning of the market.

- Existing licensees in markets licensed to another carrier: (1) would have the right to operate their system as it presently exists; (2) would continue to be protected from interference based upon their interference contour; and (3) would be able to make modifications, as long as no interference is caused to the market area licensee, the service contour of the modification remains within the grandfathered interference contour, the grandfathered licensee makes all necessary filings with the FCC, and the grandfathered licensee serves copies of all technical system changes, including minor mods, on the market licensee.

- If a grandfathered licensee reduces its scope of operations in any way, the grandfathered interference contour would be reduced commensurately, and such new areas would then be available to the market area licensee for expansion.

BORDER AREA COORDINATION

- PCIA supports adopting the border area rules for narrowband PCS, which provide for gradual reductions in height and power of operations near border areas.

- PCIA supports, as in narrowband PCS, permitting extensions into other markets only when subject to an agreement with the adjacent market licensee.

- If an adjacent area is not licensed on a market area basis to another licensee, expansions would be permitted subject to the existing filing procedures used for transmitter-by-transmitter licensing.

L

INTERCONNECTION AND RESALE POLICIES

PCIA (then Telocator) was instrumental in getting common carrier mobile services designation as co-carriers, a classification critical to their obtaining vital interconnection to local exchange facilities. When, in 1984, divestiture invalidated all existing interconnection agreements with former Bell System LECs, the association negotiated and implemented the new agreements which are the foundation of current interconnection policies for paging and cellular licensees.

The 1993 legislation which created the category of Commercial Mobile Radio Service also extended these interconnection rights to all CMRS providers. PCIA applauds the Commission's implementation of the CMRS policies, which will ensure all commercial service have appropriate access to the backbone, Public Switched Telephone Network.

PCIA also strongly concurs with the Commission's conclusions in the CMRS interconnection and resale proceeding (CC Docket 94-54) that CMRS-to-CMRS interconnection arrangements should be driven by market agreements rather than regulatory fiat, and that CMRS providers should be under general resale obligations, but that the so-called "reseller switch" proposal should not be imposed.

DUPLICATE

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

RECEIVED
JUN 14 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	CC Docket No. 94-54
Pertaining to Commercial Mobile Radio Services	)	

COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

Mark J. Golden
Vice President -- Industry Affairs
Personal Communications
Industry Association
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036
(202) 467-4770

R. Michael Senkowski
Katherine M. Holden
Jeffrey S. Linder
Stephen J. Rosen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

June 14, 1995

TABLE OF CONTENTS

Page

I. INTRODUCTION AND SUMMARY 2

II. IN THE COMPETITIVE AND EVOLVING CMRS MARKET, AN INTERCONNECTION MANDATE WOULD BE UNWARRANTED AND DETRIMENTAL 5

III. ROAMING ARRANGEMENTS SHOULD BE LEFT TO MARKET FORCES 8

IV. RESALE OBLIGATIONS SHOULD BE EXTENDED ON A QUALIFIED BASIS ONLY TO CATEGORIES OF BROADBAND CMRS PROVIDERS 10

A. There Is No Public Interest Rationale for Imposing Affirmative Resale Obligations Upon Paging and Narrowband PCS Operators 10

1. The Paging Market Already Is Robustly Competitive With Few Barriers to Entry 11

2. Resale Already Plays an Important Role in the Paging Marketplace 12

3. A Commission Decision Not To Impose Affirmative Resale Obligations on Paging and Narrowband PCS Licensees Is Consistent With Communications Act Requirements 14

B. Mandated Resale of SMR Services Is Not Technically Feasible and Is Not Required by the Public Interest 15

C. Broadband CMRS Providers Should Be Required To Permit Resale in Certain Circumstances 20

V. CONCLUSION 22

Finally, the Commission sought comment on possible proprietary and privacy concerns raised by granting providers access to subscriber databases in order to support roaming.[16] PCIA believes that any proprietary concerns can be resolved in the context of carrier-to-carrier negotiations, during the course of which each carrier can protect its own interests. Furthermore, any customer who desires roaming capabilities necessarily must agree to the disclosure of information necessary to allow the roamed-to system to provide seamless, transparent services. Consequently, disclosure of the subscriber's service profile would not seem to raise significant privacy concerns, and, in any event, would not create any greater concerns than exist in the cellular context.

IV. RESALE OBLIGATIONS SHOULD BE EXTENDED ON A QUALIFIED BASIS ONLY TO CATEGORIES OF BROADBAND CMRS PROVIDERS

The *Notice* tentatively concluded that the existing cellular resale obligation should be extended to all CMRS providers, absent a showing that such an obligation would not be technically feasible or economically reasonable for a specific class of CMRS.[17] In the context of broadband CMRS, PCIA agrees with the Commission that an appropriately structured resale requirement will promote competition, and is therefore in the public interest.[18] PCIA, however, does not support mandatory resale of narrowband PCS, paging, and SMR services.

---

[16] *Id.*

[17] *Id.*, ¶ 83.

[18] *Id.*, ¶ 84.

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

In the Matter of	)	
	)	
Interconnection and Resale Obligations	)	CC Docket No. 94-54
Pertaining to Commercial Mobile Radio Services	)	

COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")[1] respectfully submits its comments regarding the Commission's Second Notice of Proposed Rulemaking in the above-captioned proceeding.[2] The *Notice* seeks comment regarding potential interconnection, roaming, and resale obligations of Commercial Mobile Radio Service ("CMRS") providers.

---

[1] PCIA and the National Association of Business and Educational Radio, Inc. ("NABER") recently completed the merger of their two organizations, and now operate under the PCIA name as a new legal entity. This new PCIA is an international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] FCC 95-149 (April 20, 1995) ("*Notice*").

As discussed below, PCIA agrees with the Commission that the CMRS market is highly competitive, and therefore endorses the Commission's tentative conclusion that interconnection and roaming arrangements should be left to the business judgment of CMRS providers. By encouraging competition, and allowing market forces to shape the types of services offered, the Commission will avoid freezing technology and permit service providers to respond rapidly to consumer demand. PCIA also supports in part the tentative conclusion to extend resale requirements to 2 GHz personal communications services ("PCS") and other broadband CMRS that are functionally equivalent to cellular, but believes that narrowband PCS and specialized mobile radio ("SMR") services should not be subjected to affirmative resale obligations.

I. INTRODUCTION AND SUMMARY

The *Notice* acknowledges the increasingly competitive nature of the CMRS industry and recognizes that consumer demand should compel carriers to enter into interconnection and roaming agreements. Accordingly, it tentatively concludes that the Commission should defer to market forces rather than imposing CMRS interconnection or roaming obligations. At the same time, however, the Commission proposes to mandate a CMRS resale requirement in order to encourage further competition.

PCIA agrees wholeheartedly with the Commission's conclusion that an unfettered marketplace will encourage carriers to offer interconnection and roaming services to their

customers.[3] The CMRS market already is competitive, and competition will only intensify as broadband PCS, narrowband PCS, mobile satellite, and wide-area Enhanced Specialized Mobile Radio ("ESMR") operators begin to provide service. Because it is in the economic interest of CMRS providers to offer the amount and type of interconnection and roaming services desired by their customers, and because no individual carrier will enjoy market power, market forces will assure that subscriber demand for these services is satisfied.

In contrast, regulatory intervention could work great harm at this early stage in the development of the CMRS market. For example, there is considerable risk that mandated interconnection and roaming obligations could freeze technology or dictate the offering of uneconomic or unwanted services. In this regard, the Commission has correctly noted that "the informed business judgment of the CMRS providers and . . . the competitive forces of the CMRS marketplace" almost always allocate resources more efficiently than regulatory intervention.[4] Should this expectation remain unfulfilled in individual circumstances, the Commission can take appropriate remedial measures through the complaint process.

The Commission also should preempt state regulation of interconnection and roaming. CMRS offerings are inherently mobile, and CMRS service areas often transcend state boundaries. Consequently, inconsistent state regulations would hinder the development of a fully competitive CMRS market, delay delivery of service to the public, and frustrate the

---

[3] *Id.*, ¶ 2.

[4] *Id.*

benefits the Commission seeks to obtain by forbearing from unnecessary regulatory intervention.

Finally, PCIA generally agrees with the Commission that a broadband CMRS resale obligation will increase competition.[5] However, given the highly competitive nature of the market and the already existing, extensive role played by resellers in the paging and narrowband PCS market, imposition of a resale obligation should be rejected as unnecessary. Likewise, SMR operators should not be governed by mandatory resale obligations because SMR systems simply will not support meaningful resale as a technical matter.

Two limits on a broadband CMRS resale requirement, however, are warranted. First, new CMRS licensees should not be required to offer resale until experience is obtained with new network technologies and subscriber equipment. Second, as proposed by the Commission, a facilities-based provider should be permitted to deny resale by a facilities-based competitor after the competitor is fully operational. PCIA also agrees that a requirement to allow switch-based resale would be imprudent and counter-productive.

II. IN THE COMPETITIVE AND EVOLVING CMRS MARKET, AN INTERCONNECTION MANDATE WOULD BE UNWARRANTED AND DETRIMENTAL

In the *Notice*, the Commission agreed with the majority of commenters that it is premature to impose a general interconnection obligation on all CMRS providers.[6] The

---

[5] *Id.*, ¶ 3.

[6] *Id.*, ¶¶ 28-29.

Commission pointed out that mandatory direct interconnection is inappropriate because it is impossible to predict the costs and technical nature of interconnection, CMRS providers and end users can interconnect through the LEC landline network, and market conditions do not allow CMRS providers to deny interconnection as an anticompetitive tool.[7] Accordingly, the Commission opted to allow the CMRS industry to provide for interconnection through voluntary arrangements.

PCIA agrees with the Commission that establishment of detailed interconnection obligations would be unnecessary and counterproductive. The CMRS market is poised to explode with diverse offerings of new technologies and services. Given such dynamic conditions, it would be inadvisable for the Commission to adopt restrictive, innovation-stifling regulations based on unproven assumptions regarding the direction of technology, the desires of consumers, and the contours of the relevant product and geographic markets.[8] There is no basis, therefore, for speculating about potential anticompetitive conduct or adopting precatory rules that are tied to specific services and service areas.

Further, in a competitive market, economic forces will allocate resources more efficiently than regulatory intervention. The Commission itself recently has recognized that the influx of a multitude of new PCS entrants will greatly stimulate competition:

---

[7] *Id.*, ¶¶ 29-32.

[8] *Id.*, ¶¶ 33-34.

> PCS activity is undeniably real . . . As the recently-completed auction demonstrates, some of this [PCS] entry is being mounted by large, well-financed entities with long experience and success in the telecommunications business. That field of competitors will be strengthened further upon completion of additional spectrum auctions in the near future.[9]

This competition will encourage CMRS providers to negotiate interconnection agreements allowing them to provide services of the type demanded by their customers. Such tailored agreements will be more efficient than mandated, one-size-fits-all interconnection because they will reflect actual consumer desires.

Even without full-bore competition, the Commission could reasonably expect that CMRS providers would enter into voluntary interconnection agreements. Any provider seeking to deny interconnection would ultimately be frustrated because interconnection can always be achieved through the LEC landline network.[10] In such circumstances, the provider denying interconnection would lose the revenues associated with terminating interconnected calls, creating a powerful incentive to accommodate all reasonable interconnection requests.

---

[9] *Petition of the State of California To Retain Regulatory Authority Over Intrastate Cellular Service Rates*, FCC 95-195, ¶ 33 (May 19, 1995) (denying California's request to continue regulating cellular rates).

[10] *See Notice*, ¶ 30. In the *Notice*, the Commission expressed concern that CMRS providers might refuse to terminate calls originated by other CMRS providers, even if those calls are passed through the LEC network. *Id.*, ¶ 34. Such a scenario is unlikely because it is not technically possible to determine the originating CMRS carrier, and even if it were possible to do so, it would not be in the terminating carrier's economic interest to refuse to terminate such calls. Not only would the terminating carrier forego revenues, but it would create severe dissatisfaction among its own subscribers.

In the unlikely event that individual providers (including, but not limited to, LEC-associated CMRS providers) would unreasonably deny interconnection,[11] the Commission can act through the complaint process. Any interconnection-related complaints should be considered in light of the statutory standards imposed by Sections 201 and 202 of the Communications Act and the obligation of CMRS providers, as co-carriers, to negotiate interconnection agreements in good faith.

Finally, the Commission seeks comment on whether it should preempt state-imposed interconnection obligations.[12] PCIA supports preemption of state statutes and regulations that frustrate the FCC's policy of allowing the market to shape CMRS interconnection. Because of the inherently mobile nature of CMRS, and the large, market-based service areas that often cross state boundaries, preemption is vital to the success of the Commission's well-conceived free market approach to interconnection.

III. ROAMING ARRANGEMENTS SHOULD BE LEFT TO MARKET FORCES

The *Notice* tentatively concluded that monitoring roaming developments is preferable to imposition of a roaming obligation.[13] As with interconnection, PCIA agrees with the

---

[11] *Id.*, ¶ 43.

[12] *Id.*, ¶ 44.

[13] *Id.*, ¶ 56. The Commission also stated that, because of the importance of roaming to mobile telephony, it will take any steps necessary to support roaming after appropriate study of the technical issues involved. *Id.*, ¶ 54. Finally, the Commission expressed both the hope that the marketplace will resolve issues such as location data base sharing, and the willingness to regulate if necessary to assure users timely access to roamer services. *Id.*, ¶¶ 55-56.

Commission that roaming arrangements are best left to the business judgment of CMRS providers. Such deference to market forces is grounded in the reasonable assumption that CMRS carriers will be willing to negotiate roaming arrangements to accommodate customer demand.[14]

Indeed, the willingness of the industry to negotiate roaming agreements absent Commission intervention has been demonstrated in the cellular context, where private negotiations have created seamless roaming for millions of subscribers. Because the CMRS market is much more competitive today than it was at the advent of cellular roaming, and the industry has the cellular model upon which to base its new roaming agreements, it is likely that expanded CMRS roaming arrangements can be quickly consummated. In fact, work already is being done to extend existing roaming agreements to new services.

The Commission also requested comment on the relationship between direct physical interconnection and cross-service roaming.[15] If the air interfaces for two systems are compatible, there is no need for direct physical interconnection. All that is required is a means of querying each system's subscriber database. Moreover, because IS-41 signalling, data clearinghouses, and automatic user validation are in widespread use, there is less need for the direct exchange of data between CMRS providers.

---

[14] Regulatory forbearance is particularly prudent with respect to cross-service (*e.g.*, cellular to PCS) roaming, where several technical obstacles might impede compliance with an inflexible mandate. In the absence of regulatory intervention, roaming capabilities can logically evolve between technologically similar services, and then be adapted to disparate services.

[15] *Id.*, ¶ 59.

A. There Is No Public Interest Rationale for Imposing Affirmative Resale Obligations Upon Paging and Narrowband PCS Operators

The *Notice* specifically seeks comment on "whether resale obligations are unnecessary for paging operators and whether permitting restrictions on the resale of paging services would violate the just and reasonable standard of Section 201(b), and the non-discrimination provisions of Section 202(a)."[19] As detailed below, in light of the highly competitive nature of the marketplace, the ease with which new entrants may participate in the market, and the existing level of resale in the paging industry, there is no need to alter the current regulatory environment in which paging services are provided by imposing affirmative resale obligations. Moreover, a Commission decision not to subject paging and narrowband PCS to resale requirements is fully consistent with the provisions of the Communications Act.

1. The Paging Market Already Is Robustly Competitive With Few Barriers to Entry

In undertaking action mandated by Congress in adopting Section 332 in 1993,[20] the Commission previously found that "the paging industry is highly competitive."[21] As PCIA

---

[19] *Id.*, ¶ 87.

[20] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §§ 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993).

[21] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1468 (1994) (Second Report and Order) ("*CMRS Second Report and Order*").

stated last year in these proceedings,[22] there were approximately 2,400 paging companies operating throughout the United States on radio common carrier ("RCC") channels alone, serving 19.8 million subscribers on a highly competitive basis. By the end of 1994, the number of subscribers had grown to 24.5 million.

The industry is composed of hundreds of operators with fewer than 1,000 customers, and many more mid-sized companies with only a few thousand pagers in service. While there are some large carriers operating in the marketplace, consolidation is a relatively recent phenomenon and no individual company has more than 18 percent of the paging market. Only five companies have more than 5 percent of the market. Traditional radio common carriers ("RCCs") and private carrier paging companies ("PCPs") already compete in this marketplace. These paging services recently were joined by new services offered through 900 MHz narrowband PCS systems and will also compete with future services to be offered via low earth orbit satellites.

Further, the Commission appropriately recognized that "[c]urrent technology permits literally tens of thousands of pagers per market to be served by a single channel, and recent advances are increasing paging channel capacity dramatically. As a result, there is a huge capacity for paging, and relatively easy entry into this market, especially for private carrier paging providers."[23] Increased retail marketing of pagers, resale, and other non-direct

---

[22] Comments of the Personal Communications Industry Association, GN Docket No. 93-252, at 8 (filed June 20, 1994).

[23] *CMRS Second Report and Order* at 1468.

forms of distribution have further intensified the competitive nature of the paging industry. Indeed, this intense competition has driven paging rates downward, and per pager monthly revenues have steadily declined.[24] As the Commission itself has summed up, "[t]he combination of high capacity, large numbers of service providers, ease of market entry, and ease of changing service providers results in paging being a very competitive segment of the mobile communications market."[25]

2. Resale Already Plays an Important Role in the Paging Marketplace

As noted above, reseller participation in the paging marketplace is one factor in the highly competitive nature of this industry. Paging Network, Inc. ("Pagenet") pointed out in earlier comments in this docket that "resale is already a part of the vast distribution chain for paging services."[26] Resale permits facilities-based operators to expand the marketing of their services to reach a broader segment of the public without having to rely solely on their own marketing infrastructure and personnel. In addition, resale provides a ready means for licensees to establish regional offerings (should their business plans so require) while necessary FCC authorizations are obtained and new facilities are constructed.

---

[24] Monthly per pager revenues dropped 50 percent between 1987 and 1992 (from an average of $25.80 per month in 1987 to $12.79 in 1992).

[25] *CMRS Second Report and Order* at 1468.

[26] Comments of Paging Network, Inc., CC Docket No. 94-54, at 12 (filed Sept. 12, 1994).

The existing level of resale has been reached in the absence of any Part 22 or Part 90 rule comparable to the requirement imposed by Part 22 on cellular licensees.[27] As a business matter, individual paging operators have concluded that permitting (and in some cases promoting) resale of their services is a reasonable way to maximize use of their facilities and soundly operate their businesses.

Should a paging operator decide, as a business matter, not to permit resale of its services, a reseller would have plenty of alternative means for implementing its business plans.[28] As the Commission found over a year ago, there are at least five, and as many as nineteen, operators in each market[29] -- and that number of competitors will only increase with the launch of new services now being authorized and those that may be established in the future. Also, resellers can seek their own facilities-based authorizations. There thus is ample opportunity for potential service providers, specifically including resellers, to participate in the paging marketplace.

---

[27] *See* 47 C.F.R. § 22.901(e) (1994).

[28] This decision might be made, for example, in light of system capacity limitations, the operator's own marketing plans, or the particularized nature of the carrier's offerings.

[29] *CMRS Second Report and Order* at 1468.

3. A Commission Decision Not To Impose Affirmative Resale Obligations on Paging and Narrowband PCS Licensees Is Consistent With Communications Act Requirements

Section 201(b) of the Communications Act requires carrier charges, practices, classifications, and regulations to be "just and reasonable."[30] Section 202(a) prohibits carriers from engaging in any "unjust or unreasonable discrimination" in charges, practices, classifications, regulations, facilities, or services.[31]

These statutory directives can be accomplished without Commission imposition of rules specifically requiring paging operators to permit resale of their services.[32] The Communications Act proscribes only those practices and classifications that are "unjust and unreasonable" and only "unjust and unreasonable" discriminations. What actions are just or unjust, or reasonable or unreasonable, necessarily must be determined by the associated circumstances.

The competitive environment of the paging marketplace, along with the opportunities for entry, should afford carriers greater flexibility under the Communications Act in their handling of resale service arrangements. This marketplace provides paging operators with

---

[30] 47 U.S.C. § 201(b).

[31] 47 U.S.C. § 202(a).

[32] The Commission itself has previously determined that Sections 201(b) and 202(a) of the Act do not absolutely require carriers always to permit resale. *See Notice*, ¶ 62 (citing *Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies*, 6 FCC Rcd 1719, 1724 (1991) (Notice of Proposed Rule Making and Order); *Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies*, 7 FCC Rcd 4006, 4008 (1992) (Report and Order), *aff'd sub nom.* Cellnet Communications v. FCC, 965 F.2d 1106 (D.C. Cir. 1992).

substantial economic incentives to permit resale in many circumstances. Any denial of resale thus would likely be due to unique facts. Such cases would best be handled on an individualized basis, where the service provider can show that its actions are consistent with the Section 201(b) and 202(a) mandates.

* * * * *

In sum, paging is a highly competitive market where resale already exists. The nature of the marketplace renders unnecessary any affirmative resale obligations. Because the marketplace already is functioning so successfully, there is no practical or legal need to impose resale requirements.

B. Mandated Resale of SMR Services Is Not Technically Feasible and Is Not Required by the Public Interest

The Commission has requested comments on the technical implications of imposing mandatory resale obligations on SMR operators.[33] Past Commission decisions have reflected two rationales for applying resale obligations to carriers. First, the carrier controls a bottleneck facility, thus preventing or stifling competition and facilitating price discrimination.[34] Second, a new service featuring several licensees is coming on line, and

---

[33] *Notice*, ¶ 87.

[34] *Resale and Shared Use of Common Carrier Services and Facilities*, 60 FCC 2d 261 (1976), *recon.*, 2 FCC 2d 588 (1977), *aff'd sub nom.*, *AT&T v. FCC*, 572 F.2d 17 (2nd Cir.), *cert. denied*, 439 U.S. 875 (1978); *Cellular Communications Systems*, 86 FCC 2d 469 (1981), *modified*, 89 FCC 2d 58 (1982), *further modified*, 90 FCC 2d 571 (1982), *appeal*

the Commission wishes to minimize the advantages accruing to the first authorized licensees, while limiting the time period for such mandatory resale to encourage each licensee to complete construction.[35] Neither situation exists in the case of Specialized Mobile Radio. SMR operators: (1) do not have market power; (2) offer a limited interconnect service; (3) do not control a bottleneck; and (4) have customers with access to many alternatives for service.[36]

The limited capacity of SMR systems mandates a high degree of user management by SMR operators. Assignment of "home" channels (in LTR format SMR systems) and control channels (in Motorola format systems), customer programming of group identification codes, and dedication of certain channels for interconnect traffic must be carefully managed by the system operator. Mandatory resale obligations can thwart the best efforts of small SMR businesses to manage effectively their customer bases, and unscrupulous competitors could even use resale obligations to upset the delicate user balance that each operator must maintain to operate an efficient system. While it is relatively simple and non-intrusive to add a user

---

dismissed sub nom., United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

[35] *Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies*, 6 FCC Rcd 1719 (1991) (Notice of Proposed Rule Making and Order).

[36] While the Commission may wish to view the implementation of Enhanced SMR systems differently, it is difficult to create a distinction between enhanced systems that have sufficient capacity to make resale a viable option and systems without sufficient capacity. Further, the prospect of mandating that an ESMR operator be permitted to resell on an analog SMR system of an unaffiliated carrier raises the potential that the ESMR operator could "dump" unwanted traffic on the analog SMR system, causing the analog system to become overly congested and enabling the ESMR operator to convince more desirable customers to leave the analog system for the ESMR system.