ORIGINAL

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

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunication Services	)	WT Docket No. 98-20

To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. § 1.419, hereby comments on the issues and proposals raised in the *Notice of Proposed Rulemaking*[1] in the above-captioned docket. In support of these Comments, the following is respectfully shown:

I. INTRODUCTION

PageNet, through its subsidiaries, is the largest messaging carrier in the United States holding numerous paging, narrowband PCS, and 900 MHz Special Mobile Radio ("SMR") licenses. Each year PageNet submits thousands of FCC-related applications, notifications, modifications, reports, and other filings. As such, PageNet is eminently qualified to comment on the issues and proposals raised in the *Notice*. PageNet supports the implementation of the Universal Licensing System ("ULS") and the consolidation of the wireless rules and application forms. However, these comments identify and discuss a few issues, including automatic termination for non-renewal, the submission of technical data, the ability to make limited paper filings, and the use of NAD83 coordinates, that are of particular concern to PageNet and possibly other wireless carriers.

[1] 63 FR 16938 (1998) ("*Notice*").

No. of Copies rec'd 0+5
List ABCDE

II. THE COMMISSION SHOULD VERIFY IF A STATION IS OPERATING PRIOR TO AUTOMATIC LICENSE CANCELLATION

A. Failure To File A Renewal Application

In the *Notice*, the Commission tentatively concluded to eliminate the reinstatement period for licenses that had expired for failure to file a renewal application.[2] PageNet believes that this conclusion raises a broader issue. That issue is whether it is appropriate and in the public interest to automatically cancel a license simply because the licensee failed to timely file a renewal application.

PageNet suggests that, before a license is terminated for failure to renew, the Commission take affirmative steps to verify that the licensee does not wish to renew its license and has ceased operation under the license. During the FCC's verification process, the licensee should be able to continue operations. If through oversight, inadvertence, or other reason, the subject licensee failed to file the renewal application, but wishes to renew its licenses, the licensee should be allowed to do so *as long as its systems are constructed, in operation, and serving the public*.

Although PageNet agrees with the Commission that prior notification, electronic filing, and easy access to renewal forms[3] will greatly reduce the number of missed renewals, by no means do these factors cure every situation that would prevent a carrier from filing a renewal. Imagine a situation where a PCS licensee, having paid the U.S. government hundreds of millions of dollars of publicly raised money for its licenses, loses its licenses for failure to file renewal applications through oversight or some other inadvertence. The proposed penalty for failing to do a single act, which only comes about once every ten years, is simply too high. Moreover, creating a mechanism to ensure that licenses are not inadvertently lost is appropriate because, in

---

[2] *Notice* at ¶ 56.
[3] *Id.*

actual practice, the Commission would likely reinstate such licenses because it would be in the public interest to do so.

B. The Geographic Licensee Should Be Able To Operate If The Incumbent In Its Geographic Area Has Terminated Operations

The Commission should address whether a geographic licensee could serve areas licensed to co-channel incumbents, without prior Commission consent, if the geographic licensee determines that the incumbent licensee has abandoned its operations. PageNet suggests that the Commission allow geographic licensees to operate in the area previously served by the co-channel incumbent if the geographic licensee, after reasonable investigation, determines that the co-channel incumbent is not in operation. If the geographic licensees are able to operate without prior consent, and without having to initiate a license termination proceeding, the geographic licensee would be able to provide greater coverage within its geographic license area and provide coverage where there is none.[4] If the geographic licensee operates for more than 120 days without evidence of incumbent licensee operation, the Commission should treat this fact as *prima facie* evidence that the incumbent licensee has permanently discontinued operations.

If the geographic licensee was mistaken and the incumbent is operating, the geographic licensee could be required to immediately terminate co-channel operations in the area served by the incumbent. This will preserve the incumbent's rights and, in situations where the incumbent is no longer operating, allow the geographic licensee to serve the public without having to wait for the conclusion of the license cancellation process.

---

[4] It should be noted that the geographic licensee is authorized for the entire area of its geographic license. Such licensee must provide co-channel interference protection to incumbents, but does not need additional authority to serve an area within its geographic area that was once served by a co-channel incumbent.

C. Construction Notifications

In most services, licensees are required to notify the Commission of construction and implementation of service under their licenses. In paging, for incumbent licensees, the construction and operation of the facilities and service to the public had to be completed within eight months (929 MHz) or a year (931 MHz and later 929 MHz). If the licensee failed to notify the FCC of completion of construction, the construction permit (931 MHz) or license (929 MHz) expired. In general, geographic licensees have construction benchmarks under which they must construct a sufficient number of transmitters to cover a certain amount of the population or geographic area. If these benchmarks are not met, the licensee will lose its license.

For the reasons stated above, the simple failure to file the construction notification, as contrasted from failing to timely build and operate, should not adversely impact the validity of a license until the FCC has discovered the reason for the failure. For their geographic licenses, the Commission should employ a verification process for any failure to file a construction notice under a geographic license. If the carrier failed to file the appropriate notification, but has timely met the benchmarks, the carrier should be able to file the certification of construction after it is alerted by the FCC that the filing is delinquent.[5] if that failure will adversely impact the license. However, because the non-geographic licensees have always been subject to meeting transmitter by transmitter construction deadlines, it may not be appropriate to investigate each and every failure to file a notification. If any incumbent construction authorizations remain outstanding after the implementation of the ULS, the FCC could simply use the letter process it currently uses for 929 MHz systems (Form 800 A&B letters) to verify the construction of a transmitter for both 929 MHz and 931 MHz incumbents.

---

[5] PageNet does not believe that e-mail notifications will suffice in all circumstances.

III. TECHNICAL DATA MAINTAINED IN THE ULS DATABASE

In the *Notice*, the Commission generally sought comment regarding the level of technical information that should be maintained in the ULS database.[6] In the paging arena, co-channel carriers within a given geographic area will have different interference protection rights. Specifically, 929 MHz systems that operate on a secondary basis must protect exclusive licensees and have no protection rights from others, 929 MHz grandfathered systems must share the channel with the exclusive systems, and 929 MHz exclusive and 931 MHz incumbents will enjoy co-channel protection from the geographic licensees. In order for paging licensees to manage these varying sharing and protection rights, in addition to geographic channel border sharing, the Commission should maintain full engineering particulars (antenna height, power, ERP, and HAAT), as follows:

1. Non-Geographic Systems. Engineering data for all non-geographic systems (secondary, grandfathered, and exclusive incumbents) should be maintained in the ULS for transmitters that form the composite service and interference contours of such system.

2. Non-Nationwide Geographic Systems. Engineering data for non-nationwide geographic systems should be maintained in the ULS only for transmitter sites that are within 50 miles of (i) another co-channel licensee transmitter, or (ii) geographic border.

3. Nationwide Systems. Nationwide geographic licensees should not be required to maintain engineering information in the ULS.

The maintenance of engineering data in the ULS for facilities that will either require protection or that the geographic licensee will have to consider when engineering its systems will allow both geographic and incumbent co-channel licensees to use the ULS data to meet their sharing and protection requirements and obligations.

---

[6] *Notice* at ¶¶ 76-94.

IV. THE RULES SHOULD ALLOW FOR THE FILING OF SOME PAPER REQUESTS AND NOTIFICATIONS

As envisioned in the *Notice*, the ULS system would appear to obviate the necessity for all paper filings. PageNet is concerned, however, that in some instances a paper filing would be more efficient, cost effective, and expedient. As an example, if PageNet wishes to change the control point on all of its licenses, it would be inefficient to require PageNet to make numerous ULS filings when a simple, possibly single, paper notification would suffice. For these reasons, PageNet suggests that the Commission allow carriers to make paper filings for the following changes or actions:

1. Change in control point.
2. Change in licensee address.
3. Change in site address (but not location).
4. Dismissals of applications.
5. Termination of licenses.
6. Requests for Special Temporary Authority.
7. *Pro forma* assignments and transfers.

V. CHANGE TO NORTH AMERICAN DATUM 83 COORDINATE DATA

In the *Notice*, the Commission proposed to use the NAD83 geographical survey to coordinate data for the wireless services.[7] PageNet has no objection to the use of NAD83 coordinates for the ULS, but is concerned that the NAD83 coordinates will not properly correlate to the NAD27 coordinates contained in the Commission's records today. The issue here is really a question of process, that question being how the NAD27 coordinates will be reconciled with NAD83 coordinates.

---

[7] *Id.* ¶¶ 69-70.

PageNet suggests that the Commission explore whether it is possible for the Commission to convert the existing NAD27 coordinates to NAD83 coordinates for existing records (a blanket conversion). If this were possible, after the conversion, licensees could review the new NAD83 coordinates and file exceptions with the Commission, if necessary. The Commission could then allow licensees to review the data and submit corrections within a certain date. From this point forward, licensees would use only NAD83 coordinates for their filings.

Another option would be to update the record with NAD83 coordinates for a particular site when the licensee has made a ULS filing that requires the coordinate information. For a time, the ULS database would contain coordinate information using both the NAD27 and NAD83 data. Although this could be confusing, as long as the coordinate data is properly specified, both the NAD27 and NAD83 data could be used by carriers to identify and locate transmitters that must be taken into consideration for the purposes of interference protection, channel sharing, or border area sharing.

WHEREFORE, for the foregoing reasons, PageNet requests that the Commission adopt final rules in accordance with these comments.

Respectfully submitted,

PAGING NETWORK, INC.

By: Judith St. Ledger-Roty
Paul G. Madison
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 955-9600

Dated: May 22, 1998