

**PART 78—CABLE TELEVISION RELAY SERVICE**

1. The authority citation for Part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

**§ 78.19 [Amended]**

2. Section 78.19(e)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

**PART 80—STATIONS IN THE MARITIME SERVICES**

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

**§ 80.21 [Amended]**

2. Sections 80.21(b)(1) and 80.59(e) are amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

**§ 90.177 [Amended]**

2. Section 90.177(d)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

**PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE**

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

**§ 94.25 [Amended]**

2. Section 94.25(i)(2) is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

**PART 95—PERSONAL RADIO SERVICES**

1. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

**§ 95.39 [Amended]**

2. Section 95.39 is amended by removing the words, "Field Operations Bureau" and adding in their place, "Compliance and Information Bureau" wherever they occur.

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BILLING CODE 6712–01–P

**47 CFR Part 90**

[PR Docket No. 93–35; FCC 96–53]

**Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final Rule.

**SUMMARY:** In this *Memorandum Opinion and Order*, the Commission reviews six petitions for reconsideration and/or clarification of the *PCP Exclusivity Order* in this docket establishing channel exclusivity for qualified local, regional, and nationwide paging systems in the 929–930 MHz band, and grants the petitions in part and denies them in part. The petitions requesting exclusivity to regional 929 MHz systems in regions defined by state borders, rather than based on their actual service areas, are denied. The petitions that seek to increase the maximum transmitter power for local and regional systems are granted. Additionally, the Commission partially grants certain pending waiver requests of incumbent licensees seeking additional time to comply with multi-frequency transmitter specifications. The intended effect of this order is to affirm that exclusivity to regional 929 MHz systems is granted based on the service area as set forth in the *PCP Exclusivity Order* and to amend the rules to facilitate the rapid and efficient licensing of paging in the 929–930 MHz band. These amendments to the regional channel exclusivity scheme established in the *PCP Exclusivity Order* will facilitate the development of seamless, wide-area 900 MHz paging systems.

**EFFECTIVE DATE:** April 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mika Savir, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

**SUPPLEMENTARY INFORMATION:** This *Memorandum Opinion and Order* in PR Docket No. 93–35; RM Docket 7986, adopted February 8, 1996, and released February 13, 1996, is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street N.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street N.E., Suite 140, Washington D.C. 20037 (202) 857–3800.

Synopsis of Memorandum Opinion and Order

**I. Introduction**

Before the Commission are six petitions for reconsideration and/or clarification of our *PCP Exclusivity Order*, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz, *Report and Order*, PR Docket No. 93–35, 58 FR 62289 (November 26, 1993) (*PCP Exclusivity Order*), establishing channel exclusivity for qualified local, regional, and nationwide paging systems in the 929–930 MHz band. After reviewing the issues involved, the Commission grants the petitions in part and denies them in part. In particular, the Commission denies petitions requesting that exclusivity be granted to regional 929 MHz systems in regions defined by state borders, rather than based on their actual service areas. The Commission partially grants those petitions that seek to increase the maximum transmitter power for local and regional systems. The Commission also partially grants certain pending waiver requests of incumbent licensees seeking additional time to comply with the multi-frequency transmitter specifications. The Commission otherwise affirms the rules governing 929 MHz private paging as adopted in the *PCP Exclusivity Order*.

Additionally, the Commission is adopting a *Notice of Proposed Rule Making* in WT Docket No. 96–18, 61 FR 6199 (February 16, 1996) to examine ways to promote continued growth of the paging industry. In the *Notice of Proposed Rulemaking*, the Commission proposes to adopt new rules providing that future licensing of all exclusive paging channels, including 929 MHz channels, will be based on market-defined service areas, with mutually exclusive applications to be resolved by competitive bidding. Therefore, the conclusions reached in this *Memorandum Opinion and Order* are subject to future modification based on

the outcome of the comprehensive paging rulemaking.

## II. Background

*PCP Exclusivity Order.* In the *PCP Exclusivity Order*, the Commission implemented a system of exclusive licensing for qualified local, regional, and nationwide 929 MHz private paging systems on 35 of 40 available channels. Prior to this action, all private paging frequencies, including those at 929 MHz, were assigned on a non-exclusive basis. The *PCP Exclusivity Order* concluded that enabling 929 MHz paging systems to operate on an exclusive basis is in the public interest, due to the efficiencies and incentives such an approach encourages in the marketplace. Specifically, the Commission indicated that continued sharing of frequencies would undermine efficient use of 929 MHz paging channels as demand for paging services expands in the future. The Commission observed that, while sharing is technically feasible, dividing air time among multiple licensees imposes significant constraints on the efficiency and quality of service in crowded markets. The Commission also indicated that in a shared environment, licensees are reluctant to invest in advanced paging technology because of the risk that others will be assigned to the same frequency in the future. The Commission concluded that exclusivity would create a stable, predictable environment necessary for the industry to attract investment in wide-area, high capacity paging systems in the 929–930 MHz band.

The *PCP Exclusivity Order* established the requirements for licensees to obtain channel exclusivity in the 929 MHz band. In particular, the Commission established minimum standards for the configuration of protected systems, including the number of transmitters required for local, regional, and nationwide systems, and the treatment of multi-frequency transmitters. The Commission also implemented geographic separation standards for placement of co-channel stations, to protect qualified local or regional systems, and established effective radiated power (ERP) limits for all such systems.

The *PCP Exclusivity Order* also set forth other prerequisites to obtaining exclusivity. Most notably, the Commission conditioned exclusivity on construction of a qualified system within eight months of licensing. For larger systems, the Commission indicated that a new applicant may request an extension of up to three years, based on its showing of need, a

construction timetable, and its establishment of an escrow account or securing of a performance bond to cover construction costs. Other matters addressed in the *PCP Exclusivity Order* include issues associated with application of exclusivity to existing systems and to future licensing, and certain transitional procedures. In particular, the Commission grandfathered all existing systems and indicated that it would grant immediate exclusivity to existing systems that satisfied the new exclusivity criteria.

*Petitions for Reconsideration/Waivers.* The Commission received petitions for reconsideration of the *PCP Exclusivity Order* from the following businesses and organizations: (1) the National Association of Business and Educational Radio and its Association for Private Carrier Paging Section (NABER); (2) First American National Paging (First National); (3) Afro-American Paging, Inc. (AAP); (4) American Mobilephone, Inc. (AMI); (5) Paging Network, Inc. (PageNet); MAP Mobile Communications, Inc. (MAP); and (6) Metrocall, Inc. The Commission has sought and received comment on the issues raised by these petitions. Some parties also have filed petitions asking that various provisions of the new exclusivity rules be waived to accommodate specific hardship situations. These requests generally involve waiver of the construction requirements, ERP limits, or system configuration rules. For the most part, the Commission will decide these waiver requests in other proceedings. The Commission partially grants the waiver requests of certain grandfathered licensees seeking time to convert their systems from multi-frequency transmitter to single-frequency transmitter operations for exclusivity purposes.

## III. Discussion

### A. Configuration of Local Systems

*Background.* To qualify for channel exclusivity under the 929 MHz paging rules, the *PCP Exclusivity Order* provided that 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. The Commission also provided that transmitters will be considered contiguous if (1) each transmitter is located within 25 miles of at least one other transmitter in the system; (2) the combined area defined by a 12.5 mile radius around each transmitter forms a single contiguous area; and (3) no transmitter is co-located

with any other transmitter being counted as part of the local system.

*Petitions for Reconsideration/Comments.* On reconsideration, AAP challenges Section 90.495 (a)(1)(ii) of the rules, as adopted in the *PCP Exclusivity Order*, which requires that a 12.5 mile radius surrounding each transmitter form a single contiguous area. AAP argues that there was no notice of this rule change, because the restriction was not part of our original proposal and is not a logical outgrowth of the *PCP Exclusivity Notice*, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929–930 MHz, *Notice of Proposed Rulemaking*, PR Docket No. 93–35, 58 FR 17819 (April 6, 1993) (*PCP Exclusivity Notice*). AAP claims that as a result of the added 12.5 mile radius requirement, one of its systems now is disqualified from obtaining exclusivity. AAP contends that if it is the Commission's goal to confine systems to smaller geographic areas, a 15 mile radius standard is more equitable. The Commission has received no comments on AAP's reconsideration proposal.

*Decision.* The Commission will not eliminate or alter the requirement for local exclusivity that requires that a 12.5 mile radius surrounding each transmitter form a single contiguous area. The 12.5 mile rule is a necessary component of the exclusivity rules, because it ensures that a local system will serve a contiguous geographic area. Without such a requirement, licensees could obtain local exclusivity based on non-contiguous placement of transmitters, undermining the Commission's effort to establish truly local systems serving an indigenous locale or community. Proportionately, the 12.5 mile distance is one-half the distance of the 25 mile rule, and thereby works well to ensure that transmitters are located to serve a single contiguous geographic territory.

While the 12.5 mile rule was not expressly included in the *PCP Exclusivity Notice*, the Commission believes that this restriction nonetheless is a "sufficiently minor" difference from the rule proposed to be a "logical outgrowth" of the Commission's efforts to establish a system of local exclusivity. The *PCP Exclusivity Notice* sought comment on the configuration of locally protected systems. Specifically, the Commission proposed that each transmitter in a qualified system would have to be within 25 miles of another transmitter to count toward the number required for exclusivity. Incorporation of the 12.5 mile restriction in the final rules constitutes a minor, technical

change to the original proposal, which is necessary to ensure that local exclusivity is awarded to operators that locate transmitters in close proximity to one another within a system. The 12.5 mile rule effectively closes a loophole in the original proposal, and comports with the Commission's intent to create local paging systems in the 929-930 MHz band. Only AAP has objected to the change, apparently based on its own unique situation, that one of its transmitters is 13.2 miles from the nearest other transmitter, which is best resolved by a request for waiver.

#### B. Configuration of Regional Systems

*Background.* The *PCP Exclusivity Order* provided protection for exclusive regional systems based on the location of stations comprising the system. To qualify for exclusivity, a regional system must consist of 70 or more transmitters, not necessarily contiguous, located in no more than twelve adjacent states in the continental United States. The rules provide regional systems with exclusivity based on a prescribed separation distance around each of the regional licensee's stations, ranging from 112 to 187 kilometers (70 to 116 miles) depending on the class of the station. Also, in each of the top thirty markets, specified in Section 90.741 of the Commission's rules, no transmitter may be counted as part of a regional system unless it also meets the requirements for local exclusivity in that market. *Petitions for Reconsideration/Comments.* NABER and PageNet argue that the geographic scope of exclusivity granted to 929 MHz regional systems should be based on state borders, rather than the location of the system's stations. According to NABER, allowing regional paging systems statewide exclusivity in each state in which the system provides service is needed to promote the development of regional systems. NABER and PageNet also express concern that under the current rules, speculators can file applications in strategic locations designed solely to extract payment from regional systems seeking to expand their coverage. NABER therefore recommends that the Commission grant regional applicants (*i.e.*, applicants proposing a system of 70 or more transmitters) exclusivity extending to the borders of any state in which the applicant constructs at least one transmitter, except that in states having markets listed among the top 30, the applicant must construct six or 18 transmitters, depending on the size of the market. NABER also requests that the Commission permit regional licensees to locate transmitters

anywhere within any state included in the system, as long as they maintain the required geographic separation from facilities in adjoining regions.

AMI and ADC express concern about the application of NABER's proposal to licensees who are entitled to regional exclusivity under our existing rules. In general, these commenters are opposed to any change that would result in divesting licensees of existing exclusivity rights. ADC suggests that the Commission not apply statewide exclusivity to licensees whose applications (including those for local exclusivity) were received by NABER for coordination on or before March 31, 1994, at least where a portion of the involved local system was constructed and in operation before October 14, 1993.

ARCH, API, and Airtouch, on the other hand, favor statewide exclusivity for licensing as proposed by NABER and PageNet. According to these commenters, permitting licensees to achieve exclusivity on a statewide basis is essential to the development of truly regional systems. Airtouch and ARCH believe AMI and ADC's opposition to statewide exclusivity stems from the unique market situation of these licensees, and contend that the appropriate remedy for AMI and ADC is a waiver, not a decision to retain the status quo.

*Decision.* The Commission declines to reconsider the rules defining regional exclusivity for 929 MHz regional systems in this proceeding. The Commission is considering the issue of revising the paging licensing area definitions in a separate *Notice of Proposed Rule Making* on market-area licensing. Under the market-area licensing proposal, paging systems in general, including 929 MHz systems, no longer would be licensed on a station-by-station basis. Instead, licensees would be licensed within Commission-defined service areas, and would be afforded the same flexibility, to the extent feasible, as cellular and PCS licensees to locate, design, construct, and modify system facilities throughout those areas. Because the Commission is addressing this issue in a broader context than 929 MHz paging alone, it is premature to modify the rules for this single category of paging service in response to NABER's reconsideration petition.

Moreover, the Commission is not persuaded that paging licensing areas should be based on state borders, as NABER proposes. In all other services where Commission-defined licensing areas have been adopted, as opposed to station-by-station licensing, the

Commission has used licensing area definitions based on economic markets or trading areas (*e.g.*, MSAs/RSAs for cellular, and MTAs/BTAs for PCS and 900 MHz SMR). By contrast, using state borders would create licensing areas with political boundary lines which do not necessarily correspond to economic markets or trading areas and, in some instances, which may cut across them. The Commission therefore concludes that the status quo should prevail while alternative licensing area definitions more consistent with our approach in other services are considered.

#### C. Effective Radiated Power

*Background.* In the *PCP Exclusivity Order*, the Commission established effective radiated power (ERP) limits of 1000 watts for local and regional 929 MHz systems and 3500 watts for nationwide systems. The Commission noted that the 3500 watt limit for nationwide systems was the same as the limit for nationwide common carrier paging systems in the 931 MHz band. The Commission declined to adopt a 3500 watt limit for non-nationwide systems, notwithstanding the fact that the Part 22 rules then in effect allowed 931 MHz non-nationwide common carrier licensees to operate internal system sites at 3500 watts. The Commission reasoned that higher power limits for 931 MHz licensees were justified because demand for 931 MHz licenses largely was confined to expansion by existing systems. The Commission concluded that a 1000 watt maximum for 929 MHz non-nationwide systems was appropriate to preserve opportunities for entry by new systems.

*Petitions for Reconsideration/Comments.* NABER and PageNet request that the Commission increase the maximum ERP for 929 MHz regional systems from 1000 watts to 3500 watts, provided that adjacent co-channel systems remain protected. NABER claims that, in the context of the statewide regional licensing scheme it has proposed, a 3500 watt power limit would not restrict opportunities for the entry of new systems into the market, which was the reason the Commission rejected a 3500 watt ERP previously. According to NABER and PageNet, use of high-power transmitters within the boundaries of a regional system will enable licensees to offer superior service at a lower cost. Celpage, ARCH, Airtouch, and API support NABER's proposal.

MAP seeks clarification on whether the 1000 watt ERP restriction applies only to facilities that define the exterior of the licensee's service area, and whether higher power facilities are

permitted at internal sites within existing service areas. MAP observes that 931 MHz common carrier paging licensees are permitted to operate at 3500 watts ERP at internal sites within their service areas. MAP asserts that principles of regulatory parity require us to apply the same rule to private paging systems. The Commission received no comments on MAP's request for clarification.

**Decision.** Except in certain limited circumstances discussed below, the Commission declines to raise the maximum ERP for non-nationwide 929 MHz systems at this time. NABER's proposal to raise the ERP limit is premised on the Commission adopting its proposal to base regional exclusivity on state borders, rather than site location. The Commission has declined to reconsider the definition of regional exclusivity, therefore NABER's rationale for raising the ERP limit does not apply. The Commission's decision on this issue does not preclude future changes to the rules if the Commission adopts some form of market-based licensing for 929 MHz channels. The Commission seeks further comment on height and power limits for common carrier and private carrier paging in the *Notice of Proposed Rule Making*.

The Commission agrees with commenters that under certain circumstances, allowing local and regional 929 MHz licensees to operate at greater than 1000 watts ERP may be appropriate. Specifically, if operation of sites at a higher power would not expand a licensee's existing service-area contour, there is no reason to prohibit operation at such higher power. The Commission will modify the rules to allow non-nationwide licensees to operate sites within their existing service area at up to 3500 watts ERP, provided that such operation does not increase the minimum geographic separation applicable to co-channel systems under Section 90.495(b)(2) of the Commission's rules. This will give licensees greater flexibility to build technically and economically efficient systems, without compromising opportunities for co-channel entry in areas adjacent to those systems.

#### D. Slow Growth Eligibility

**Background.** In the *PCP Exclusivity Order*, the Commission adopted rules allowing for so-called "slow growth" extensions of the eight-month construction requirement for larger system applicants. Specifically, for applications filed after October 14, 1993, a period of up to three years may be authorized for construction and commencement of operations if the

proposed system is composed of more than 30 transmitters and the applicant submits specific justification for an extended implementation period. Applicants must provide a detailed construction timetable and evidence of the ability to fund construction, either in the form of a construction escrow account or a performance bond covering construction costs.

**Petitions for Reconsideration/Comments.** NABER, PageNet, Metrocall, First National Paging, and AMI challenge the Commission's decision to make the three-year slow-growth option available only to post-October 14, 1993 paging applicants. NABER contends that the Commission did not provide adequate notice of the rule, because the *PCP Exclusivity Notice* did not expressly propose to limit the slow growth option to new applicants. According to NABER, the restriction has a detrimental impact on existing licensees because of the added construction demands posed by the Commission's treatment of multi-frequency transmitters under the exclusivity rules. AMI suggests that slow-growth eligibility be extended to licensees who filed for exclusivity after the March 31, 1993 release date of the *PCP Exclusivity Notice*, rather than limited to applicants filing after the October 14, 1993 date established in the *PCP Exclusivity Order*. According to AMI, there is no link between the October 14, 1993 date and the decision by any affected licensee to rebuild its facilities.

Commenters generally support extending the slow growth option to grandfathered licensees on the grounds that additional construction time is needed for incumbents to transition to our new system of channel exclusivity. Celpage, however, is concerned about the treatment of licensees who relied on single-frequency, as opposed to multi-frequency, transmitters. Celpage does not want operators that decided to build dedicated facilities at each licensed site, rather than to rely on inter-carrier agreements allowing them to utilize other licensees' dual-frequency transmitters, to be penalized under an extended transition period. Celpage therefore seeks reinstatement of certain "single use" transmitter licenses, whose authorizations expired while the exclusivity rules were under consideration. Arch and Airtouch support a slow growth period for existing licensees, but argue that the bond and escrow requirements for new construction should not apply in such cases.

**Decision.** The Commission will not change the rules to make pre-October 14, 1993 applicants automatically

eligible for the extended implementation construction schedule. October 14, 1993, the date of the Sunshine Notice on the *PCP Exclusivity Order*, is the cutoff date for slow growth eligibility. The Commission will deny slow growth extensions to grandfathered licensees generally. As of our Sunshine Notice on October 14, 1993, applicants reasonably could anticipate that the Commission was going to adopt channel exclusivity rules for 929-930 MHz paging licensees. To deter speculative filings, therefore, the Commission decided not to grandfather anyone that filed after October 14, 1993. The date for dividing "old" from "new" applicants also is the appropriate date for triggering slow growth eligibility. Moreover, the Commission never suggested that slow growth extensions would apply to grandfathered licensees. Indeed, in an April 6, 1993 *Order*, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, *Order*, PR Docket No. 93-35, 58 FR 21111 (April 19, 1993) (*Order*), the Commission indicated that all parties in the application and coordination process were expected to comply with existing eight-month construction requirements while the rule making was underway. Consequently, applicants falling into the grandfathered category cannot legitimately claim that they expected to be eligible for slow growth extensions.

#### E. Multi-Frequency Transmitters

**Background.** In the *PCP Exclusivity Order*, the Commission considered the issue of whether licensees should be allowed to count multi-frequency transmitters for exclusivity purposes on more than one channel. The Commission concluded that licensees should not be barred from using multi-frequency transmitters, but that each such transmitter would be counted only once for exclusivity purposes. This requirement was to ensure that licensees would not claim exclusivity on multiple channels by repeatedly counting the same transmitter. The Commission noted that a licensee using multi-frequency transmitters could qualify for exclusivity on two frequencies by constructing twice the number of transmitters required to obtain one channel.

**Petitions for Reconsideration/Comments.** Several parties urge the Commission to relax the "single-count" rule to accommodate incumbent licensees who had constructed systems based on multi-frequency transmitters prior to the adoption of the *PCP Exclusivity Order*. NABER argues that these licensees need time to construct

sufficient single-frequency transmitters to comply with the exclusivity requirements on a single-count basis. PageNet suggests that existing licensees be given two years from the time they qualify for earned exclusivity to make this conversion. First National Paging suggests establishing a reasonable transition period for incumbent licensees, beyond the existing eight-month construction requirement.

In addition to reconsideration petitions on this issue, the Commission has received waiver requests from Arch, Comtech, First National Paging, Metrocall, Airtouch, and Message Center Beepers. At the time the *PCP Exclusivity Order* became effective, each of these petitioners was operating systems on dual channels using multi-channel transmitters. The number of transmitters in place in each system is sufficient to qualify for regional or nationwide exclusivity on one channel, but under the single-count rule petitioners would be required to construct additional sites to obtain protection for their operations on the second channel. Because their construction plans prior to the *PCP Exclusivity Order* relied on use of dual-channel transmitters, petitioners request twenty-four months rather than eight months to reconfigure their systems and construct additional sites to meet the requirements of the single-count rule.

*Decision.* The Commission declines to modify the general rule that no transmitter may be counted more than once for exclusivity purposes. This rule prevents the potential hoarding of multiple frequencies, by requiring paging licensees seeking more than one exclusive frequency to meet a higher construction threshold. Licensees may continue to use multi-frequency transmitters in their systems, but exclusivity will be conferred on multiple channels only if the total number of transmitters is sufficient to qualify for exclusivity on each channel on a single-count basis.

The Commission will grant some additional time to those grandfathered licensees who have filed waiver requests to bring existing systems into compliance with the single-count rule. Prior to the adoption of the *PCP Exclusivity Order*, these licensees had embarked on construction and operation of substantial systems relying on dual-frequency transmitters. The adoption of the single-count rule required these licensees to modify their plans to add additional transmitters in order to gain full exclusivity protection for their existing systems. The Commission believes that a reasonable time should be afforded to petitioners to make this

adjustment. The Commission notes that the risk of allowing hoarding of frequencies is not present here, because the systems at issue already are grandfathered on both channels, petitioners substantially have constructed their systems and are providing service to the public on a dual-channel basis, and the additional construction needed will promote increased coverage and better quality service.

The petitioners filed their initial requests for a twenty-four month construction period in early 1994. Since that time, petitioners have had substantial opportunity to construct additional facilities on a single-frequency transmitter basis to bring their systems into compliance. The Commission concludes that because of this elapsed time, petitioners should be granted an amount of time consistent with their original estimate of the time required to bring their systems into compliance. The Commission grants Arch, Comtech, First National Paging, Metrocall, Airtouch, and Message Center Beepers until six months after the publication date of this *Memorandum Opinion and Order* in the Federal Register to demonstrate that their grandfathered systems qualify for exclusivity on a single-count basis.

#### F. Modification of Existing Systems

*Background.* In the *PCP Exclusivity Order*, the Commission concluded that all existing 929 MHz licensees should be grandfathered under the new rules whether or not they qualified for exclusivity. Thus, incumbent systems that did not qualify for exclusivity would be allowed to continue operating their existing facilities, and any licensee granted exclusivity on the same channel in the same area would be required to share the channel with the grandfathered system. Grandfathered systems would not be allowed to add new facilities to their systems, however, if such expansion conflicted with exclusivity rights granted to another licensee.

*Petitions for Reconsideration/Comments.* MAP contends that the Commission should allow grandfathered licensees who do not qualify for exclusivity to modify their existing systems in order to continue service to subscribers. MAP argues that allowable modifications should include changes in the number of paging receivers, type of emission, antenna height, power, class of station, ownership or corporate structure, and location of existing facilities. API opposes MAP's proposal. API believes that minor and reasonable modifications to existing facilities

should be allowed, but that other changes should not be permitted, particularly if the effect is to diminish or impair the development of a co-channel system which already has qualified for exclusivity in the same area. MAP replies that it is not asking to expand the rights of grandfathered licensees, but only is seeking a clarification of the types of "minor" modifications that the FCC will allow. MAP does not want the rules interpreted in a manner that hampers the ability of existing licensees to improve service, respond to customer needs, and adjust to business changes.

*Decision.* The rules provide that grandfathered licensees who do not qualify for exclusivity may make modifications to existing facilities that do not impair the exclusivity rights of co-channel licensees or otherwise violate our rules. There is no reason to change this rule, based on MAP's petition. This issue is raised more broadly in the *Notice of Proposed Rule Making* in WT Docket No. 96-18. Therefore, the Commission will defer additional consideration of the issues raised by MAP to that proceeding.

#### G. Miscellaneous

In the *PCP Exclusivity Order*, the Commission addressed the issue of conditional operation of 929-930 MHz stations located above "Line A," *i.e.*, within 250 miles of the Canadian border. Noting that a 1992 agreement between the Commission and Canada's Department of Communications had eliminated the need for international coordination of these channels, the Commission stated that it would allow operation of 929 MHz stations above Line A, provided all other requirements of the rules are met. Some licensees have misconstrued this language in the *PCP Exclusivity Order* to open all channels in the 929-930 MHz band to operation by U.S. licensees above Line A. In fact, the 1992 U.S.-Canada agreement provides that only channels between 929.5 and 930 MHz may be used by U.S. licensees above Line A. To eliminate any possible confusion, the Commission clarifies that operation above Line A (which is now within 75 miles of the Canadian border) is allowed only on these channels. In accordance with the 1992 agreement, no U.S. licensee may operate conditionally or otherwise on channels from 929.0 MHz to 929.5 MHz.

#### IV. Conclusion

The Commission is amending the rules as described above to facilitate the rapid and efficient licensing of paging in the 929-930 MHz band. The limited

amendments to the regional channel exclusivity scheme established in the *PCP Exclusivity Order* will facilitate the development of seamless, wide-area 900 MHz paging systems. Otherwise, the Commission affirms the rules as adopted in the *PCP Exclusivity Order*.

#### V. Procedural Information

##### Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

##### A. Need for and Purpose of This Action

This *Memorandum Opinion and Order* makes amendments to Part 90 of the Commission's rules relating to channel exclusivity for qualified local, regional, and nationwide private paging systems on certain channels at 929–930 MHz. The amendments will promote the efficient use of paging channels by encouraging investment in new paging technology. They also will foster the development of more efficient paging systems on a local, regional, and nationwide basis.

##### B. Summary of Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

Only one party, Radiofone, filed comments responding to the Initial Regulatory Flexibility Analysis (IRFA). Radiofone argued that the Commission has not adequately addressed the impact of the proposal on small paging systems and that exclusive licensing will preclude small business entry at 900 MHz. The Commission reviewed Radiofone's concerns in the context of *PCP Exclusivity Order*. No additional comments have been submitted.

##### C. Significant Alternatives Considered and Rejected

As the Commission determined in the *PCP Exclusivity Order* and affirms in this *Memorandum Opinion and Order*, this action is fully consistent with the Commission's small business policy objectives. The Commission noted in the IRFA that this action imposes certain conditions on the licensing of smaller 929–930 MHz paging systems, but these requirements are not unduly burdensome. The new rules contain significant benefits for small businesses by protecting dozens of small existing systems in place, allowing many such systems to obtain exclusivity, and creating opportunities for expansion and new entry by small business licensees.

##### Ordering Clauses

It is ordered that pursuant to the authority of Sections 4(i), 303(g) 303(r),

and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), 303(r) and 332(a), 47 CFR Part 90, is amended as set forth below, effective April 4, 1996.

It is further ordered that the petitions for reconsideration filed by National Association of Business and Educational Radio/ Association for Private Carrier Paging Section, First National Paging Company, Inc., Afro-American Paging, American Mobilephone, Inc., Paging Network, Inc., MAP Mobile Communications, Inc. and Metrocall, Inc. are granted to the extent described above and are denied in all other respects.

It is further ordered that the waiver requests filed by American Mobilephone, Inc., Arch Communications Group, Inc., Comtech, Inc., First National Paging Company, Inc., Message Center Beepers, Inc., Metrocall, Inc. and PacTel Paging (now "Airtouch Paging") are granted to the extent described above.

It is further ordered that, pursuant to the authority of Section 0.331 of the Communications Act of 1934, as amended, we delegate to the Wireless Telecommunications Bureau the authority to address any request for waiver of our exclusivity rules, which shall be evaluated based on criteria set forth above.

It is further ordered that this proceeding is terminated.

##### List of Subjects in 47 CFR Part 90

Common carriers.

Federal Communications Commission.  
William F. Caton,  
*Acting Secretary*.

##### Rule Amendments

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.494 is amended by revising paragraph (g) to read as follows:

#### **§ 90.494 One-way paging operations in the 929–930 MHz band.**

\* \* \* \* \*

(g) Stations operating as part of regional or local systems under § 90.495(a)(1) or (a)(2) may also operate sites within their existing service area at a maximum effective radiated power of 3500 watts, provided that such an

increase in power does not expand the licensee's service-area contour, and the requirements of § 90.495(b)(2) are met as to any co-channel system that has preexisting exclusivity rights.

[FR Doc. 96–4723 Filed 3–4–96; 8:45 am]

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 380**

[Docket No. 950707173–6036–02; I.D. 012296E]

RIN 0648–AF51

#### **Antarctic Marine Living Resources Convention Act of 1984; Conservation and Management Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Commerce (Secretary) amends the regulations governing harvesting and reporting of Antarctic living marine resource catches by vessels of, and persons subject to the jurisdiction of, the United States. The regulations implement conservation and management measures implemented by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR or Commission) and accepted in whole by the Government of the United States to regulate catches in Convention for the Conservation of Antarctic Marine Living Resources (Convention) statistical reporting areas 48 and 58. These measures restrict the use of gear, restrict the directed taking and bycatch of certain species of fish, prohibit the taking of other species, and require real-time and other reporting of the harvest of certain species.

**EFFECTIVE DATE:** February 29, 1996.

**ADDRESSES:** A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding burden estimates or collection of information aspects of this rule should be sent to Robin Tuttle, (See **ADDRESSES**), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: NOAA Desk Officer.