

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Dave's Communications, Inc.)
Application for Authorization) File Nos. 0000383859
Call Signs WPSJ332 and WPSJ336) 0000384903
929.0875 MHz in Florida)
Application for Authorization) File Nos. 0000384886
At Various locations in Florida) 0000385030
On 929.0875 MHz) 0000385055
) 0000385117
) 0000385309
) 0000385321

ORDER

Adopted: December 4, 2001

Released: December 5, 2001

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Dave's Communications, Inc. (Dave's) filed the eight captioned applications on February 13, 2001, seeking authority to operate paging facilities on the shared 929.0875 MHz frequency at several locations in the state of Florida. On May 17, 2001, the Commercial Wireless Division's Licensing and Technical Analysis Branch (Branch) granted two of the applications, File Numbers 0000383859 and 0000384903. On June 5, 2001, AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. (AirPaging) filed an Emergency Request for Cease and Desist Order (Emergency Request) against the licensed facilities and, on June 8, 2001, a petition seeking reconsideration (Petition for Reconsideration) of the grants. The Branch, on its own motion, set the grants aside on June 13, 2001, and returned the applications to pending status. On July 5, 2001, AirPaging filed a notice withdrawing its Petition for Reconsideration. One week later, on July 12, 2001, AirPaging filed a petition to deny the two applications (July Petition). On July 16, 2001, Dave's amended the remaining six applications and on August 8, 2001, AirPaging filed a second, virtually identical petition to deny those amended applications

1 Emergency Request of AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. for Cease and Desist Order (June 5, 2001) (Call Signs WPSJ332 and WPSJ336).

2 Petition of AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. for Reconsideration (Call Signs WPSJ332 and WPSJ336) (June 8, 2001).

3 Notice of AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. of Withdrawal of Petition for Reconsideration (Call Signs WPSJ332 and WPSJ336) (July 5, 2001) (Notice of Withdrawal).

4 Petition of AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. to Dismiss or Deny (File Nos. 0000383859 and 0000384903) (July 12, 2001).

(August Petition).⁵ For the reasons discussed below, we approve the withdrawal of the Petition for Reconsideration and dismiss the Emergency Request as moot. We also deny the July and August Petitions.

II. DISCUSSION

A. Dismissal of Improperly and Untimely Filed Pleadings

2. We initially dismiss three pleadings that Dave's sent to the Commission's Gettysburg Office, but did not file with the Office of the Secretary. First, we dismiss Dave's "Informal Response to Emergency Request for Cease and Desist" (Informal Response) and its "Response to Petition for Reconsideration." AirPaging filed its Emergency Request with the Commission on June 5, 2001. Dave's sent its Informal Response to the Commission's Gettysburg office with a certification that the document was served on the parties to the proceeding on June 12, 2001. AirPaging filed its Petition for Reconsideration on June 8, 2001, and Dave's sent its Response to Petition for Reconsideration, which includes an affidavit dated June 28, 2001, but no certificate of service, also to the Gettysburg office.

3. AirPaging's Emergency Request was filed as an informal request under Section 1.41 of the Commission's rules.⁶ Because AirPaging's Emergency Request and Petition for Reconsideration raise similar issues about the same licenses, and effectively seek the same remedy, we apply the Commission's procedural rules for petitions for reconsideration to both sets of documents. A document is filed with the Commission upon its receipt at the location designated by the Commission.⁷ The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure their documents are filed at the correct location specified in the Commission's rules.⁸ Section 1.106(i) of the Commission's rules provides that petitions for reconsideration and related pleadings must be submitted to the "Secretary, Federal Communications Commission, Washington, D.C. 20554."⁹ Dave's sent its Informal Response and Response to Petition for Reconsideration to the Commission's Gettysburg, Pennsylvania Office, but it appears Dave's failed to submit either pleading to the Secretary's Office. We therefore find that neither pleading was filed at the proper location. Accordingly, we dismiss both Dave's Informal Response and Response to Petition for Reconsideration as improperly filed.

4. For the same reasons, we dismiss Dave's response to AirPaging's first petition to deny. AirPaging filed its July Petition on July 12, 2001. Under Commission rules, manually filed petitions to deny and related pleadings must be filed with the Office of the Secretary, Washington D.C. 20554.¹⁰ Again, rather than filing its "Response to Petition to Dismiss Orders" (Response to July Petition) with the Secretary's Office, Dave's sent the pleading to the Commission's Gettysburg Office. Accordingly, we dismiss the Response to July Petition as improperly filed.¹¹

⁵ Petition of AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. to Dismiss or Deny (File Nos. 0000384886, 0000385030, 0000385055, 0000385117, 0000385309, and 0000385321) (Aug. 8, 2001).

⁶ Emergency Request at 1.

⁷ 47 C.F.R. § 1.7.

⁸ See *In re Belmont Technical College, Order on Reconsideration*, DA 01-2123 at ¶ 4 (PSPWD Sept. 11, 2001) (citing 47 C.F.R. § 0.401).

⁹ 47 C.F.R. § 1.106(i).

¹⁰ 47 C.F.R. § 1.939(b).

¹¹ AirPaging filed a reply to Dave's Response to Petition to Dismiss Orders on August 2, 2001. Reply of AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. to Response to Petition to Dismiss or Deny (File Nos.

(continued....)

5. Finally, we dismiss AirPaging's reply to Dave's opposition to the August Petition. Section 1.45 of the Commission's rules permits the original petitioner to file replies to oppositions within five days after the time for filing oppositions has expired.¹² The last day for Dave's to file its opposition to AirPaging's August Petition was August 31, 2001. AirPaging filed its reply on September 13, 2001 (September Reply),¹³ well after the five days allowed under Commission rules. In the absence of a request for an extension, we dismiss AirPaging's September Reply as untimely filed.

B. Emergency Request and Petition for Reconsideration

6. We also approve the withdrawal of AirPaging's Petition for Reconsideration and dismiss the Emergency Request as moot. The 929.0875 MHz frequency is one of five shared channels in the 929-930 MHz band allocated for paging operations.¹⁴ A number of channels are also allocated in the lower bands for providing paging services on a shared basis.¹⁵ Dave's is authorized under several licenses in Florida to provide service on exclusive as well as shared paging channels.¹⁶ While Dave's is the applicant in this proceeding, Gabriel Wireless LLC (Gabriel) manages Dave's paging operations in Florida. AirPaging is a co-channel licensee that has shared operations on 929.0875 MHz through a Management and Cooperative Sharing Agreement in the South Florida Market since 1996, with Motorola, Inc. and the Boca Raton Hotel and Club.¹⁷

7. As already stated, Dave's filed all eight applications on February 13, 2001. The applications were accepted for filing on March 7, 2001.¹⁸ On May 17, 2001, the Branch granted two of the applications – File Numbers 0000383859 and 0000384903 – on Call Signs WPSJ332 and WPSJ336.¹⁹ On June 5, 2001, AirPaging filed its Emergency Request asking the Wireless Telecommunications Bureau (Bureau) to direct Dave's and Gabriel's to show cause why they should not be stopped from testing and operating on the newly licensed facilities.²⁰ AirPaging contended that Gabriel's was violating

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0000383859 and 0000384903) (Aug. 2, 2001) (August Reply). Because we are dismissing Dave's response, we need not consider the arguments repeated in AirPaging's August Reply.

¹² 47 C.F.R. § 1.45(c). Section 1.939 of the Commission's rules provides that the time for filing oppositions to petitions to deny and replies to oppositions for non-auctionable services is governed by Section 1.45 of the Commission's rules. *Id.* § 1.939(f).

¹³ Reply of AirPaging Communications Corp. aka Super Beeper Electronic II, Inc to Opposition to Petition to Dismiss or Deny (File Nos. 0000384886, 0000385030, 0000385055, 0000385117, 0000385309, and 0000385321) (Sept. 13, 2001).

¹⁴ 47 C.F.R. § 90.494(b). The other five shared paging channels in the 929-930 MHz band are 929.0375, 929.0625, 929.1625, and 929.2625 MHz. *Id.*

¹⁵ Lower band shared paging channels include 35.64, 35.68, 42.80, 43.64, 43.68, 152.075, 157.450, 163.250, 151.070, 151.190, 151.310, 152.480, 154.625, 154.640, 157.740, 158.460, 462.750, 462.775, 462.800, 462.825, 462.850, 462.875, 462.900, 462.925, and 465.000 MHz.

¹⁶ Dave's holds two licenses to operate on a lower band shared paging channel, 152.48 MHz, Call Signs WNLA 382 and WNPI536, and a third license to provide service on 929.2625 MHz, a 929-930 MHz shared paging channel, Call Sign WPHG959.

¹⁷ Emergency Request at 2.

¹⁸ Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Report No. 794 at 27-28 (Mar. 7, 2001).

¹⁹ Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Report No. 864 at 7 (May 23, 2001).

²⁰ Emergency Request at 1.

Commission rules that require co-channel licensees to avoid harmful interference and to resolve interference problems through mutually acceptable sharing arrangements with each other.²¹ AirPaging further asserted that Dave's was ineligible as an applicant on the 929-930 MHz shared paging channels, arguing that Dave's was not an incumbent under the Commission's interim licensing rules on the those frequencies.²² Finally, AirPaging alleged that the frequency coordinator violated Commission rules because it did not provide a statement recommending the most appropriate frequency.²³ Three days after filing its Emergency Request, AirPaging filed its Petition for Reconsideration repeating its arguments that Dave's was an ineligible applicant and that the frequency coordination was improperly done.²⁴

8. On June 13, 2001, the Branch, on its own motion, set aside the grants involving Call Signs WPSJ332 and WPSJ336, and returned the applications to pending status.²⁵ On July 5, 2001, AirPaging filed a notice to withdraw its Petition for Reconsideration, stating that rescinding the license grants rendered the petition moot.²⁶ We approve the withdrawal of AirPaging's Petition for Reconsideration. We further find that returning the applications for File Numbers 0000383859 and 0000384903 to pending status renders the Emergency Request moot. The issues concerning Dave's eligibility and the adequacy of the frequency coordination for those licenses were the same issues raised and withdrawn in AirPaging's Petition for Reconsideration. With the licenses rescinded, Dave's is no longer authorized to operate on 929.0875 MHz in Florida, eliminating the remaining issue in the Emergency Request of whether Dave's was violating Commission rules pertaining to harmful interference with co-channel licensees. Accordingly, we approve the withdrawal of the Petition for Reconsideration and dismiss the Emergency Request for Cease and Desist Order as moot.

C. Petitions to Deny

9. We also deny AirPaging's July and August Petitions to Deny. The Branch released a public notice on June 13, 2001, setting aside the grants for Call Signs WPSJ332 and WPSJ336 and returned the applications, File Numbers 0000383859 and 0000384903, to pending status. In response, AirPaging filed its July Petition. On July 16, 2001, Dave's filed major amendments to the remaining six applications. The amended applications were accepted for filing in a public notice released on July 25, 2001.²⁷ AirPaging then filed its August Petition seeking dismissal of the amended applications. After filing a letter requesting an extension of time to respond to the August Petition,²⁸ Dave's filed its

²¹ Emergency Request at 4-6. AirPaging alleged that during the week of May 28 to June 4, 2001, it began receiving a large number of complaints of missed pages. Upon investigating, AirPaging concluded that the interference began less than two weeks after Dave's received its licenses. *Id.* at 4. AirPaging argued that Gabriel's was violating Sections 90.403(c) and (e), and 90.173 (b) of the Commission's rules.

²² Emergency Request at 7. AirPaging specifically alleged that Dave's was ineligible under Section 90.494(g) of the Commission rules.

²³ Emergency Request at 7. AirPaging specifically alleged that the applications violated Section 90.175(f) of the Commission's rules.

²⁴ Petition for Reconsideration at 2-4.

²⁵ Return of Applications to Pending Status, *Public Notice*, DA 01-1424 (June 13, 2001). The Branch set the grants aside within twenty-six days pursuant to Section 1.108 of the Commission's rules, which provides that "[t]he Commission may, on its own motion, set aside any action made by it within 30 days from the date of public notice of such action, as that date is defined in § 1.4(b) of these rules." *Id.* (citing 47 C.F.R. § 1.108).

²⁶ Notice of Withdrawal at 1.

²⁷ Wireless Telecommunications Bureau Site-By-Site Accepted for Filing, *Public Notice*, Report No. 922 at 23-25 (July 25, 2001).

²⁸ Letter from Kenneth E. Hardman, Attorney for Dave's Communications, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission (Aug. 22, 2001).

opposition on August 31, 2001 (August Opposition).²⁹

10. AirPaging initially asks that we accept the petitions to deny as informal requests pursuant to Section 1.41 of the Commission's rules if we decline to accept the petitions as formal pleadings.³⁰ We find that AirPaging filed both petitions to deny in a timely manner. Petitions to deny must be filed no later than 30 days after the date of the public notice listing the application or major amendment to the application as accepted for filing.³¹ The action of returning an application to pending status effectively renders the application as newly accepted for filing and the public notice announcing that action triggers a new pleading cycle.³² The Branch issued a public notice on June 13, 2001, returning the granted applications for File Numbers 0000383859 and 0000384903 to pending status. AirPaging filed its July Petition on July 12, 2001, within 30 days of that notice. Similarly, major amendments are treated as new applications and a public notice accepting the amendments for filing initiates a new pleading cycle.³³ The Branch released a public notice accepting Dave's amended applications for filing on July 25, 2001, and AirPaging filed its August Petition on August 8, 2001, within 30 days of the public notice. Accordingly, we accept the July and August Petitions as timely filed. Finally, noting that AirPaging does not object, we grant Dave's request for an extension of time to file its August Opposition by August 31, 2001.

11. While we find that both the July and August Petitions were filed in a timely manner, we dismiss the August Petition for raising issues that are not related to the amendments to the applications. Commission rules limit petitions asking the Commission to deny amended applications only to matters directly related to the major amendment that could not have been raised in connection with the application as originally filed.³⁴ In this case, because each amended application modified the coordinates of at least one transmitter location, the amendments were classified as major.³⁵ The August Petition, however, addresses issues pertaining to applicant eligibility and the adequacy of frequency coordination. Neither of these issues is related to the change in transmitter locations in the amended applications and, in fact, could have been properly raised in a petition to deny the applications as filed on February 13, 2001. We therefore dismiss the August Petition as raising issues outside the scope permitted by Commission rules. We note, however, that because the July and August Petitions raise the same issues, we, in effect, address the substantive issues in the August Petition.

12. In its Petitions, AirPaging argues that Dave's is ineligible for filing applications on the shared paging channel 929.0875 MHz.³⁶ AirPaging contends that, under Section 90.494(g) of the Commission's rules, "commercial paging licensees must be incumbents on the specific frequency requested in order to be granted licenses on that frequency."³⁷ AirPaging argues that Dave's certification

²⁹ Opposition of Dave's Communications, Inc. to Dismiss or Deny (File Nos. 0000384886, 0000385030, 0000385055, 0000385117, 0000385309, and 0000385321) (Aug. 31, 2001).

³⁰ July Petition at 1, n.1; August Petition at 1, n.1.

³¹ 47 C.F.R. § 1.939(a)(2).

³² See *In re* Application of Columbia Millimeter Communications, LP, *Order on Reconsideration*, 15 FCC Rcd 10251, 10253, ¶ 5 (PSPWD 2000) (dismissing a petition for reconsideration filed 31 days after release of a public notice returning applications to pending status as untimely filed by one day).

³³ See 47 C.F.R. § 1.927(h) (providing that "[w]here an amendment to an application constitutes a major change, as defined in § 1.929, the amendment shall be treated as a new application for determination of filing date, public notice, and petition to deny purposes").

³⁴ 47 C.F.R. § 1.939(e).

³⁵ See 47 C.F.R. § 1.929(c)(3)(ii). We also note that Dave's defined the amendments as major by answering "yes" to Item 7 of the applications.

³⁶ July Petition at 2-3; August Petition at 2-3.

³⁷ July Petition at 3; August Petition at 3.

in its applications that it operates on a 152.48 MHz facility does not qualify Dave's as an incumbent for purposes of filing the applications. According to AirPaging, Section 90.494(g) limits applicants on the shared 929-930 MHz paging channels to 929 MHz incumbent licensees.³⁸ AirPaging further contends that the applications must be dismissed because Section 90.494(g) provides that applications to operate new commercial systems on the shared channels are unacceptable for filing and, again according to AirPaging, Dave's applications are "for a new statewide commercial paging system" in Florida.³⁹ AirPaging finally submits that because Dave's is ineligible as an applicant, its answer "yes" to Item 8(c) on the application that "the frequencies or parameters requested in this filing [are] covered by grandfathered privileges, previously approved by waiver, or functionally integrated with an existing station," raises the question of misrepresentation to the Commission.⁴⁰

13. In response, Dave's asserts that the Bureau has interpreted the Commission's interim licensing rules to mean that "an incumbent paging licensee in one shared PCP channel is considered an incumbent PCP licensee in all of the shared PCP channels."⁴¹ Dave's further concludes that no response is required with respect to AirPaging's suggestion of misrepresentation because AirPaging has failed to establish a *prima facie* case that Dave's answer to Item (c) is incorrect.⁴² We agree that Dave's is an eligible applicant in this proceeding. In early 1996, after suspending acceptance of new applications for paging channels during the pendency of its rulemaking proceeding to adopt geographic area licensing and competitive bidding rules for paging services, the Commission established interim licensing rules. Initially, those rules permitted non-nationwide incumbent licensees to add sites to existing systems or modify existing sites, provided the additions or modifications did not expand the composite interference contour of the licensee's existing system.⁴³ Later that same year, the Commission relaxed the interim licensing rules to allow non-nationwide incumbent licensees on exclusive frequencies or the lower band shared paging channels and the five 929-930 MHz shared paging channels (Shared Paging Channels), to file applications for new sites outside the licensee's composite interference contour. Applicants were required to certify that the proposed site would be located within forty (40) miles of a site for which the licensee had already filed an application, and the proposed operations would be on the same channel as service provided at that original site.⁴⁴

14. In 1997, in the *Paging Second Report and Order*, the Commission again relaxed the interim licensing rules by eliminating the 40-mile requirement and allowing incumbents to file for new sites on the Shared Paging Channels at any location.⁴⁵ While the interim licensing rules as developed in

³⁸ July Petition at 3; August Petition at 3.

³⁹ July Petition at 3; August Petition at 4.

⁴⁰ July Petition at 4; August Petition at 4.

⁴¹ August Opposition at 3.

⁴² August Opposition at 4.

⁴³ *In re* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Notice of Proposed Rulemaking*, 11 FCC Rcd 3108, 3136, ¶ 140 (1996).

⁴⁴ *In re* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *First Report and Order*, 11 FCC Rcd 16570, 16583, ¶ 26, 16586, ¶ 32 (1996) (*First Report and Order*), *modified on reconsideration*, 11 FCC Rcd 7409, 7411, ¶ 4 (1996). Under this 40-mile requirement, the application for the original site must have been filed as of September 30, 1995. *Order on Reconsideration of the First Report and Order*, 11 FCC Rcd at 7411, ¶ 4. The Commission further exempted Special Emergency Radio Service providers from the paging freeze, allowing those providers to file applications on the Shared Paging Channels. *First Report and Order*, 11 FCC Rcd at 16588, ¶ 38.

⁴⁵ *In re* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC

Commission decisions applied to all of the Shared Paging Channels, the *Paging Second Report and Order* specifically revised Section 90.494(g) of the Commission's rules to reflect the interim licensing rules for purposes of the five 929-930 MHz shared paging channels.⁴⁶

15. The Bureau, on delegated authority from the Commission, recently removed Section 90.494(g) from its rules, but the rule was effective at the time Dave's filed its applications.⁴⁷ The plain language of Section 90.494(g) did not limit applications for the five 929-930 MHz shared paging channels to incumbent licensees. Rather, the rule provided that licensees could be granted licenses on those five channels for, in relevant part, expanding existing, licensed commercial paging systems.⁴⁸ Incumbent licensees already maintain existing, operating systems. Additional applications expand or modify those existing systems. The rule therefore was intended to prohibit entities that were not incumbent paging licensees from operating "new commercial paging systems" on the five shared paging channels.

16. The Commission's rationale for limiting its interim paging licensing rules to incumbent licensees supports this conclusion. Throughout the rulemaking proceeding, the Commission limited applications to incumbent licensees under the interim licensing rules based on its concern that allowing non-incumbents to file applications on either exclusive frequencies or the Shared Paging Channels would lead to a flood of speculative applications and increase opportunities for application mills to promote fraudulent investment schemes.⁴⁹ We see no reason to limit the scope of incumbents under the relaxed interim licensing rules, including Section 90.494(g), to those licensees on the same band. Incumbent licensees on any paging channel are as familiar with Commission application and license requirements, such as construction requirements, as those incumbents licensed on the same frequency for which an application is filed. Thus, incumbent paging licensees would generally not be susceptible to application fraud or build-out schemes. Moreover, in lifting the 40-mile requirement and adopting Section 90.494(g), the Commission removed not only the geographic limitation on new applications, but also the "same channel" requirement. Applicants were required to certify that a proposed site would operate on the same channel as a site located within 40-miles of the proposed site. Thus, the rule's limitation on channel selection was linked to the rule's limitation on geography. Removing the 40-mile geographic limitation also removed the 40-mile same channel requirement.

17. Finally, in the *Paging Third Report and Order*, the Commission directed the Bureau to remove the interim licensing rules for the Shared Paging Channels, including Section 90.494(g) of its rules, once certain warning language was added to FCC Form 601, the Application for Wireless

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Rcd 2732, 2757, ¶ 43 (1997) (*Second Report and Order*). The Commission also affirmed its decision to allow new applicants to file applications for private, internal-use systems. *Id.* at 2757, ¶ 43.

⁴⁶ *Second Report and Order*, 12 FCC Rcd at 2856.

⁴⁷ See *infra* at ¶ __ (outlining the removal of the Commission's interim licensing rules in general, and Section 90.494(g) specifically).

⁴⁸ Former Section 90.494(g) provided that "[l]icenses may be granted on these shared paging channels [929.0375, 929.0625, 929.0875, 929.1625, 929.2625] only for expansion (addition of new sites or relocation of existing sites) or other modification, assignment or transfer of control of existing, licensed private (including Special Emergency Radio Service) or commercial paging systems, and for new private (including Special Emergency Radio Service), internal-use paging systems. Any application for authority to operate a new commercial paging system on any of these shared channels is unacceptable for filing." Former 47 C.F.R. § 90.494(g).

⁴⁹ *First Report and Order*, 11 FCC Rcd at 16581, ¶ 19, 16584, ¶ 27, 16585-86, ¶¶ 30-32; *Second Report and Order*, 12 FCC Rcd at 2756-57, ¶¶ 40-42.

Telecommunications Bureau Radio Service Authorization.⁵⁰ Having added the warning language to FCC Form 601, the Bureau recently issued an order removing the Commission's interim licensing rules with respect to filing applications for licenses at new sites on the Shared Paging Channels.⁵¹ Effective November 19, 2001, any qualified entity may submit applications for licenses on these channels at any location.⁵² Accordingly, we find that Dave's is eligible to apply for licenses on the shared paging channel 929.0875 MHz. We need not address AirPaging's suggestion that Dave's misrepresented itself by answering "yes" to Item 8(c) on its applications because that issue is now moot in light of our determination that Dave's is an eligible applicant.

18. AirPaging also argues that the frequency coordination for the applications was improperly performed. Citing Section 90.175(f) of the Commission's rules, AirPaging contends that the frequency coordinator must recommend the most appropriate frequency to the Commission. AirPaging explains that the 929.0875 MHz frequency in Florida has three carriers using 80 percent of the frequency's airtime. AirPaging states that the frequency coordinator did not reference Section 90.175(f) or mention whether the frequency was appropriate at all.⁵³ Noting that the application for File Number 0000384859 references another rule section that applies to trunked systems, AirPaging concludes that "there was a misunderstanding about this frequency by ITA [the Industrial Telecommunications Association, Inc.] and given this misunderstanding, the coordination appears to be invalid."⁵⁴ Dave's asserts that AirPaging has made no attempt to demonstrate that compliance with Section 90.175(f) requires a coordinator to do anything more than assign the application "a frequency coordination number" and file it with the Commission.⁵⁵

19. Section 90.175(f) of the Commission's rules requires a statement from the coordinator recommending the most appropriate frequency in the shared paging channels in the 929-930 MHz band.⁵⁶ Dave's included an attachment in its application for File Number 0000383859 from ITA certifying that the application complies with Section 90.187(a)(2)(ii) of the Commission's rules. The certification further states that ITA has notified the applicant that operation on these frequencies would be on a secondary basis.⁵⁷ We believe this attachment must have been inadvertently included with the application. First, Commission rules do not include a "Section 90.187(a)(2)(ii)." Section 90.187(b)(2)(ii), however, outlines when trunking a system may be authorized for stations in the 150-174 MHz and the 421-512 MHz bands.⁵⁸ Clearly, even this rule section is inapplicable to the instant application. While we do not condone sloppiness in filing applications, we decline to find that inclusion of this errant Attachment to one of the applications indicates improper frequency coordination. Moreover, each of the applications includes information that the Personal Communications Industry Association, not ITA, "successfully coordinated" the applications before filing them with the

⁵⁰ *In re* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10113, ¶ 164, 10115, ¶ 167 (1999).

⁵¹ *In re* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Order*, DA 01-2650 (rel. Nov. 14, 2001) (*Paging Freeze Order*).

⁵² The *Paging Freeze Order* was published in the Federal Register on November 19, 2001. 66 Fed. Reg. 57,884 (2001).

⁵³ July Petition at 4; August Petition at 4.

⁵⁴ July Petition at 4.

⁵⁵ August Opposition at 4.

⁵⁶ 47 C.F.R. § 90.175(f).

⁵⁷ File No. 0000383859, Attachment.

⁵⁸ 47 C.F.R. § 90.187(b)(2)(ii).

Commission. We find AirPaging has provided no basis for determining that the applications were improperly coordinated. Accordingly, we deny the July and August Petitions and refer Dave's applications to the Branch for processing.

20. Finally, AirPaging has suggested that granting licenses to Dave's would cause harmful interference to its own operations and that Dave's has declined to reach a mutually agreeable sharing arrangement in the past on the shared frequency.⁵⁹ In its Opposition, however, Dave's suggests its willingness to comply with its obligations to share 929.0875 MHz on a non-interfering basis.⁶⁰ Because 929.0875 MHz is a shared frequency, there are no minimum or maximum loading standards for the channel.⁶¹ All licensees on shared channels are directed, under Commission rules, to cooperate in the use of the shared frequencies to reduce interference and to make the most effective use of authorized facilities.⁶² In fact, Commission rules require licensees on these channels to restrict all transmissions to the minimum practical transmission time and to employ efficient operating procedures to maximize use of the spectrum.⁶³ Licensees are further required to take reasonable precautions, including monitoring the transmitting frequency for communications in progress, to avoid causing harmful interference.⁶⁴ If the Branch grants Dave's applications, we expect all co-channel licensees to comply with these rules.

III. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i),405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the withdrawal of the Petition for Reconsideration filed by AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. on June 8, 2001, IS GRANTED.

22. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i),405, and Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Emergency Request for Cease and Desist Order filed by AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. on June 5, 2001, IS DISMISSED as moot.

23. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Informal Response to Emergency Request for Cease and Desist, the Response to Petition for Reconsideration, and the Response to Petition to Dismiss Orders filed by Dave's Communications, Inc. ARE DISMISSED as improperly filed.

24. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331, the Reply to Opposition to Petition to Dismiss or Deny filed by of AirPaging Communications Corp. aka Super Beeper Electronic II, Inc on September 13, 2001, IS DISMISSED as untimely filed.

25. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and Section 1.939 of the

⁵⁹ July Petition at 2; August Petition at 2.

⁶⁰ August Opposition at 2, n.1.

⁶¹ 47 C.F.R. § 90.494(e).

⁶² 47 C.F.R. § 90.173(b).

⁶³ 47 C.F.R. § 90.403(c).

⁶⁴ 47 C.F. R. § 90.403(e).

Commission's rules, 47 C.F.R. § 1.939, the Petition to Deny or Dismiss filed by AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. on August 8, 2001, IS DISMISSED as raising issues outside the scope permitted.

26. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(d), and Section 1.939 of the Commission's rules, 47 C.F.R. § 1.939, the Petition to Deny or Dismiss filed by AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. on July 12, 2001, and the Petition to Deny or Dismiss filed by AirPaging Communications Corp. aka Super Beeper Electronic II, Inc. on August 8, 2001, ARE DENIED.

27. IT IS FURTHER ORDERED that the applications assigned File Numbers 0000383859, 0000384903, 0000384886, 0000385030, 0000385055, 0000385117, 0000385309, and 0000385321 are referred to the Commercial Wireless Division's Licensing and Technical Analysis Branch for processing consistent with this order and applicable Commission rules.

28. This action is taken pursuant to the authority delegated under Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau