

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

In re	)	
	)	
Arch Communications Group Inc.	)	File Nos.: D013946, D013947, D013948,
	)	D013949, D013950, D013951
Authority for Exclusive Use of	)	
929.8375 MHz Frequency Nationwide	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 17, 2000**

**Released: February 18, 2000**

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

**I. Introduction**

1. On December 1, 1995, Mr. Harry Soukiassian (Soukiassian), a Private Carrier Paging (PCP) licensee in Southern California, filed a petition (Petition) to remove Arch Communications Group Inc.’s (Arch) nationwide PCP exclusivity for the 929.8375 MHz frequency. For the reasons discussed below, we deny the Petition. We also deny six applications filed by Soukiassian on December 7, 1995, which were premised upon our granting Soukiassian’s Petition to withdraw Arch’s nationwide PCP exclusivity on frequency 929.8375 MHz.

**II. Background**

2. Pursuant to former section 90.495 of the Commission’s rules, a PCP licensee who applied for and received the right to exclusivity for a particular frequency could operate on an exclusive basis.<sup>1</sup> That is, an exclusive PCP licensee would not be required to share channels with another PCP licensee, in accordance with the geographic scope of the applied for-exclusivity. Exclusivity could be applied for on a local, regional, or nationwide basis. To meet the requirements for nationwide exclusivity, a nationwide system had to “consist of 300 or more transmitters [and] . . . provide service to at least 50 markets . . . , including 25 of the top 50 markets and two markets in each [designated] region[.]”<sup>2</sup> In addition,

<sup>1</sup> *Amendment of the Commission’s Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, Report and Order, 8 FCC Rcd 8318 (1993) (*PCP Exclusivity Order*).

<sup>2</sup> 47 C.F.R. § 90.495.

incumbent PCP licensees were able to obtain so-called “grandfathered exclusivity” for stations or systems that had been authorized on or before October 14, 1993. Applications pending on or before October 14, 1993, also qualified for grandfathered exclusivity status. As a result, applications for exclusivity based on authorizations obtained after the October 14, 1993 cutoff date, were accepted “only if the resulting system qualifie[d] for exclusivity under [Commission] rules and [did] not violate[] minimum separation standards with respect to other systems that [had] previously qualified for exclusivity on the same frequency.”<sup>3</sup> Applications for nationwide exclusivity were required to be filed on or before January 28, 1994.<sup>4</sup>

3. On January 27, 1994, Arch applied for nationwide PCP exclusivity on frequency 929.8375 MHz and, on the same day, Arch also applied for regional PCP exclusivity on frequency 929.3625 MHz in two regions, one of which included an area in northern and southern California.<sup>5</sup> Arch’s applications for exclusivity were based on its existing nationwide and regional systems, and included some stations authorized by the Commission but not yet constructed. Arch’s application for nationwide exclusivity was predicated upon 502 transmitters nationwide, 202 transmitters more than the 300 minimum required; service to 72 of the top 100 markets, 22 more than the 50 required; and service to 40 of the top 50 markets, 15 more than the 25 required.<sup>6</sup>

4. Also, on January 27, 1994, Arch filed a request for a wavier seeking a longer transition period within which to “convert its nationwide and regional . . . systems from the use of multi-frequency transmitters to the use of dedicated transmitters while retaining exclusivity . . . .”<sup>7</sup> The then-existing Commission rules required that multi-frequency transmitters (*i.e.*, transmitters capable of transmitting on more than one frequency), could be counted toward the minimum requirements for exclusivity on only a single frequency.<sup>8</sup> Arch requested more time to meet this so-called single-count transmitter requirement because it had systems that consisted of multi-frequency antennas and because it was having difficulty obtaining timely delivery of new transmitters.<sup>9</sup>

---

<sup>3</sup> *PCP Exclusivity Order*, 8 FCC Rcd at 8330, ¶ 32.

<sup>4</sup> *See FCC Announces Procedures for Implementation of Exclusivity on 929-930 MHz Paging Frequencies*, Public Notice, 9 FCC Rcd 375 (1993) (noting that requests for exclusivity should be submitted “as soon as possible, but no later than January 28, 1994).

<sup>5</sup> Letter from Carl W. Northrop, counsel for Arch, to NABER (Jan. 27, 1994) (enclosing Arch’s request for nationwide exclusivity on 929.8375 MHz).

<sup>6</sup> *See id.* at Attachment A; 47 C.F.R. § 90.495(a)(3).

<sup>7</sup> *Request of Arch Communications Group for a Temporary Waiver of Section 90.495(a)(5) of the Commission’s Rules Pending a Conversion from Multi-Frequency to Dedicated Transmitters* (Jan. 27, 1994).

<sup>8</sup> 47 C.F.R. § 90.495(a)(5) provided that “[f]requency-agile transmitters may be counted no more than once for purposes of this section.”

<sup>9</sup> *Id.* at 5, 7-8.

5. On May 27, 1994, the Private Radio Bureau issued a Public Notice listing PCP operators that qualified for grandfathered exclusivity. Arch's nationwide 929.8375 MHz system was not included on the list. It was noted in the Public Notice, however, that the list did not "apply to 929-930 MHz paging systems that are the subject of pending requests for grandfathered exclusivity based on petitions for waiver of our exclusivity rules."<sup>10</sup> And, therefore, the list of operators qualifying for exclusivity was "subject to possible modification based on any action that the Commission might take in response to such petitions."<sup>11</sup>

6. On December 1, 1995, Soukiassian filed the instant Petition to remove Arch's nationwide PCP exclusivity on frequency 929.8375 MHz. Subsequently, on December 7, 1995, Soukiassian filed six applications for authority to operate new PCP stations on frequency 929.8375 MHz at various California locations including: Running Springs, San Francisco, Corona, Huntington Beach, Los Angeles, and Anaheim. For each application, Soukiassian requested a waiver of the Commission rules requiring frequency coordination, asserting that frequency coordination was impossible because Arch "allegedly has nationwide exclusive use of the frequency 929.8375 MHz"<sup>12</sup> and further asserting that Arch "does not qualify to continue to enjoy exclusive status on the requested frequency."<sup>13</sup> Each application filed was predicated upon the Commission granting Soukiassian's Petition to remove exclusivity.

7. On May 10, 1996, the Wireless Bureau issued a Public Notice listing Arch as one of the PCP "licensees who [Commission] records indicate have met the construction requirements for nationwide exclusivity as defined in Section 90.495(a)(3)" of the Commission rules on frequency 929.8375 MHz.<sup>14</sup>

### III. Discussion

8. Soukiassian asserts that Arch's exclusivity for frequency 929.8375 MHz should be removed because Arch violated former Section 90.495(d) by applying for exclusivity on a second frequency before having completed construction of its first system. Former section 90.495(d) provided:

Applications for channel exclusivity may request no more than one frequency in each location to be served. No applicant or affiliate of an applicant may apply for an additional frequency in an area that is the subject of the applicant's prior application unless the system proposed in the prior application has been constructed, is operating, and meets the criteria set forth in paragraph (a) of this section.

---

<sup>10</sup> *Private Radio Bureau Announces 929-930 MHz Paging Operators Qualifying for Local, Regional, and Nationwide Exclusivity*, Public Notice, DA 94-546 (1994).

<sup>11</sup> *Id.*

<sup>12</sup> *See, e.g.*, Application for New Private Carrier Paging Stations at Corona, California (929.8375 MHz), filed by Kathleen A. Kaercher, Brown & Schwaninger, counsel for Soukiassian (December 7, 1995).

<sup>13</sup> *Id.*

<sup>14</sup> *Wireless Telecommunications Bureau Announces 929-930 MHz Paging Licensees That Have Met Construction Requirements for Nationwide Exclusivity*, Public Notice, 11 FCC Red. 12124 (1996).

47 C.F.R. § 90.495(d). Soukiassian asserts that this rule prohibited Arch from applying concurrently for nationwide PCP exclusivity on 929.8375 MHz while applying for regional exclusivity in California on 929.3625 MHz because Arch's 929.3625 MHz system was not yet fully constructed before it applied for nationwide exclusivity.

9. This rule, however, applied to new systems (*i.e.*, systems not fully authorized until after October 14, 1993) and not to incumbent, or grandfathered, systems. To that end, the PCP Exclusivity Order notes that “multi-frequency requirements are the same for grandfathered systems, except that we will not withhold exclusivity on the second frequency pending construction of the system.”<sup>15</sup> Thus, incumbent, or grandfathered, licensees were permitted to apply simultaneously for more than one frequency, even before the construction of such systems was completed to the full extent authorized. As noted above, because Arch obtained or had applied for the requisite authorizations prior to the October 14, 1993 cutoff date, Arch's nationwide PCP system qualified for grandfathered exclusivity. As a result, Arch's 929.8375 MHz nationwide system did not need to be fully constructed and operating before it applied for regional exclusivity on another frequency.

10. Soukiassian also asserts that, even if Arch properly obtained nationwide exclusivity for 929.8375 MHz, Arch's exclusivity expired because Arch did not timely construct its system, and because Arch ultimately did not construct and operate its PCP system in California and Nevada using the particular stations upon which Arch's application for nationwide exclusivity was predicated. In particular, Soukiassian argues that Arch violated former Section 90.495(c) of the Commission's rules.<sup>16</sup> This rule provided, in part, that a proposed paging system's exclusivity “will expire unless the proposed system (or a sufficient portion of the system to qualify for exclusivity) is constructed and operating within eight months of the licensing date.”<sup>17</sup>

11. Section 90.495(c) appears on its face to have required Arch to construct its system within eight months of the October 14, 1993 cutoff date. Even assuming that Section 90.495(c) is applicable, the Commission partially granted Arch's request for a temporary waiver of the single-count transmitter requirement and allowed Arch until September 5, 1996 to complete its nationwide 929.8375 MHz system.<sup>18</sup> Soukiassian makes no argument that Arch failed to complete its nationwide 929.8375 MHz system within that timeframe and our records in this proceeding do not indicate otherwise.

---

<sup>15</sup> *PCP Exclusivity Order*, 8 FCC Rcd 8328, at n.56 (emphasis added).

<sup>16</sup> Petition at 6.

<sup>17</sup> 47 C.F.R. § 90.495(c).

<sup>18</sup> *Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, Memorandum Opinion and Order, 11 FCC Rcd 3091 (1996). On January 26, 1996, just days before the Commission's February 13, 1996 Order granting Arch additional time to construct its 929.8375 MHz system, Arch filed a certification of completion of construction for its nationwide 929.8375 MHz system. At the same time, Arch sought to withdraw its temporary waiver request with respect to its 929.8375 MHz system.

12. Soukiassian also asserts that Arch's exclusivity expired because Arch did not use ten of the stations in California and Nevada specified in its application for nationwide exclusivity.<sup>19</sup> Soukiassian argues that the Commission should not have authorized Arch to operate substitute stations in these locations.<sup>20</sup> Moreover, Soukiassian asserts that Arch was not candid with the Commission regarding its system modifications and, as a result, the Commission unknowingly granted the applications for the substitute stations in error.<sup>21</sup> We disagree with Soukiassian's characterizations of this issue for the following reasons.

13. First, as noted above, Arch's application for nationwide exclusivity was based on a proposed system that consistently exceeded the minimum requirements for system exclusivity.<sup>22</sup> For example, in Region 7, which includes California and Nevada, former Section 90.495(3) of the Commission's rules required Arch to serve two markets,<sup>23</sup> and Arch's grandfathered system (based on authorizations granted and applications pending) served nine markets.<sup>24</sup> Thus, even if some of the stations in Arch's nationwide system were deleted entirely, its system would still meet the exclusivity requirements.

14. Second, the Commission anticipated that Arch's system would undergo certain system modifications due to Arch's temporary waiver request of the single-count transmitter requirements. Specifically, as noted above, because Arch's grandfathered system used multi-frequency transmitters, Arch needed more time to convert its system to comply with the single-count transmitter rule. The Commission was fully aware of the status of Arch's PCP systems as the result of Arch's waiver request. Indeed, Arch was not the only company to file such a request. At least five other companies sought the same relief. In granting the six companies who had sought waivers of the single-count requirement additional time to ensure that their systems complied with the regulations, the Commission noted that "[t]he 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."<sup>25</sup> Thus, the Commission was aware that some systems that qualified for grandfathered exclusivity, including Arch's system, needed to be modified to meet the exclusivity requirements.

15. Moreover, in providing PCP operators with the opportunity for exclusivity, the Commission's

---

<sup>19</sup> Petition at 5-6.

<sup>20</sup> *Id.* at 7-8.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *See infra.* at ¶ 3.

<sup>23</sup> 47 C.F.R. § 90.495(3).

<sup>24</sup> Arch's Application for Exclusivity, Attachment D (January 24, 1994) (listing Los Angeles, San Francisco, San Diego, San Jose, Sacramento, Oxnard-Simi Valley, Fresno, Las Vegas, and Bakersfield as the markets in Region 7 serviced by Arch).

<sup>25</sup> *Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, Memorandum Opinion and Order, 11 FCC Rcd 3091 (1996) (emphasis added).

goal was to give licensees “greater incentive to invest in technology and to develop higher-capacity paging systems.”<sup>26</sup> Arch’s extensive, capital intensive nationwide 929.8375 MHz system is precisely the byproduct the Commission sought when it provided for exclusivity and, any minor system modifications Arch made were inconsequential.

16. Soukiassian also asserts that Arch was not granted additional time for construction using the so-called “slow growth” option of the PCP Exclusivity rules and, as a result, Arch forfeited its nationwide exclusivity.<sup>27</sup> The “slow growth” option extended the permissible period of construction from eight months to three years for certain qualifying systems. While we agree with Soukiassian’s contention that grandfathered licensees were not entitled to slow-growth status,<sup>28</sup> as noted above, Arch constructed its nationwide PCP 929.8375 MHz system within the required timeframe specified by the Commission’s Order dated February 13, 1996.

17. As demonstrated by the foregoing analysis, the Commission was always fully aware of the status and make up of Arch’s nationwide 929.8375 MHz system. Arch’s filings, such as its waiver request, were both timely and forthcoming. As a result, we reject Soukiassian’s argument that Arch made “willful material omissions”<sup>29</sup> to the Commission relating to its applications for exclusivity.

---

<sup>26</sup> *Amendment of the Commission’s Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, Notice of Proposed Rulemaking, 8 FCC Rcd 2227 (1993).

<sup>27</sup> Petition at 9.

<sup>28</sup> *See Amendment of the Commission’s Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz*, Memorandum Opinion and Order, 11 FCC Rcd 3091 (1996) (“We stand by our decision to establish October 14, 1993, the date of our Sunshine Notice on the Report and Order [PCP Exclusivity Order], as the cutoff date for slow growth eligibility, and to deny slow growth extensions to grandfathered licensees generally. . . . We believe that the date for dividing ‘old’ from ‘new’ applicants also is the appropriate date for triggering slow growth eligibility.”)

<sup>29</sup> 47 C.F.R. § 1.17.

**IV. Ordering Clauses**

18. Accordingly, IT IS ORDERED that, pursuant to authority delegated by Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, the petition for removal of exclusivity filed by Harry Soukiassian on December 1, 1995, is DENIED.

19. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act, as amended, 47 U.S.C. § § 154(i) and 309, and section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, the above-referenced applications filed by Harry Soukiassian on December 7, 1995, are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari  
Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau