(h) *Alternative decontamination or sampling approval.* (1) Any person wishing to decontaminate material described in paragraph (a) of this section in a manner other than prescribed in paragraph (b) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

(2) Any person wishing to decontaminate material described in paragraph (a) of this section using a self-implementing procedure other than prescribed in paragraph (c) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

(3) Any person wishing to sample decontaminated material in a manner other than prescribed in paragraph (f) of this section must apply in writing to the EPA Regional Administrator in the Region where the activity would take place, for decontamination activity occurring in a single EPA Region; or the Director of the National Program Chemicals Division, for decontamination activity occurring in more than one EPA Region. * * *

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### § 761.247 [Amended]

15. Amend § 761.247 as follows:

a. Amend the heading by removing ''or pipeline section abandonment''.

b. Amend paragraph (a)(3) by removing ''or pipeline section''.

c. In the fourth sentence of paragraph (b)(2)(ii)(B)(*2*), revise ''section'' to read ''length''.

d. Amend the introductory language to paragraph (c) by removing ''pipeline section or''.

e. Amend paragraph (c)(5)(iii) by removing ''pipeline section or''.

f. Amend the second sentence of paragraph (d) by removing ''pipeline section or'' each time it appears.

### § 761.250 [Amended]

16. In § 761.250(a)(2), revise ''§ 761.247(d)'' to read ''§ 761.247(c) and (d)''.

### § 761.347 [Amended]

17. In § 761.347(c)(3)(i)(C), revise ''paragraph (c)(3)(iii) of this section'' to read ''paragraph (c)(3)(i)(B) of this section''.

[FR Doc. 99–16098 Filed 6–23–99; 8:45 am]
BILLING CODE 6560–50–F

## FEDERAL MARITIME COMMISSION

### 46 CFR Parts 502, 545 and 571

**[Docket No. 98–21]**

### Miscellaneous Amendments to Rules of Practice and Procedure; Correction

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Maritime Commission published in the **Federal Register** of February 17, 1999, a final rule making changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. Subsequently on May 3, 1999 a correction was published to add several amendatory instructions that were omitted in the final rule. This document satisfies Office of the Federal Register concerns, by correcting the new amendatory instructions.

**FOR FURTHER INFORMATION CONTACT:** Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW, Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail:secretary@fmc.gov.

**DATES:** Effective on June 24, 1999.

**SUPPLEMENTARY INFORMATION:** The FMC published a final rule in the **Federal Register** of February 17, 1999, (64 FR 7804) which made corrections and changes to existing rules of practice and procedure. Subsequently, a correction to the final rule was published on May 3, 1999 (64 FR 23551) to add several amendatory instructions which had been omitted. The **Federal Register** has requested that the FMC publish the following correction to clarify those amendatory instructions.

In the correction to Docket No. 98–21, published on May 3, 1999, on page 23551 in the second column, revise correction number one (1) to read as follows:

1. On page 7807, in the first column, after the text of instruction 4(c) add the following amendatory instructions:

d. In redesignating paragraph (b), revise the phrase ''paragraphs (b)(5), (6), and (7),'' to read ''paragraphs (e), (f), and (g).''

e. In redesignated paragraph (d), redesignate paragraphs (i), (ii), and (iii) as paragraphs (1), (2), and (3), and in redesignated paragraph (d)(3), revise the phrase ''(b)(4)(i) and (b)(4)(ii)'' to read ''(d)(1) and (d)(2).''

f. In redesignated paragraph (e), revise the reference ''(b)(4)'', to read ''(d).''

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–15973 Filed 6–23–99; 8:45 am]
BILLING CODE 6730–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 22 and 90

**[WT Docket No. 96–18; PR Docket No. 93–253; FCC 99–98]**

### Future Development of Paging Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document concerns rules and policies for the geographic area licensing of Common Carrier Paging and exclusive 929 MHz Private Carrier Paging, and competitive bidding procedures for auctioning mutually exclusive applications for these licenses. This document also adopts rules concerning the partitioning and disaggregation of paging licenses, and institutes procedures designed to deter application fraud on shared paging channels. The intended effect of this action is to clarify and resolve issues pertaining to the paging service prior to the Commission's auctions of remaining spectrum within that service.

**EFFECTIVE DATES:** Effective August 23, 1999.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW, Washington DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For non-auction information: Cyndi Thomas or Todd Slamowitz, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–7240. For auction information: Anne Napoli, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660. TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Memorandum Opinion and Order on Reconsideration and Third Report and Order* in WT Docket No. 96–18 and PR Docket No. 93–253, FCC 99–98, adopted on May 13, 1999, and released on May 24, 1999. The complete text of this decision is available for inspection and copying during normal business hours in the

FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B400, Washington DC. The complete text is also available under the file name fcc99098.wp on the Commission's internet site at http://www.fcc.gov/Bureaus/Wireless/Orders/1999.

**Paperwork Reduction Act**

The *Second R&O* and this *MO&O* and *Third R&O* contain a revision to an existing information collection that has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, Public Law No. 104–13 (3060–0697). The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the OMB to comment on this information collection in a separate **Federal Register** publication.

**Synopsis of Memorandum Opinion and Order on Reconsideration and Third Report and Order**

*Memorandum Opinion and Order on Reconsideration*

1. The Commission adopts a *Memorandum Opinion and Order on Reconsideration* (*MO&O*) and *Third Report and Order* (*Third R&O*) that responds to petitions for reconsideration or clarification of the *Second Report and Order* (*Second R&O*) and *Further Notice of Proposed Rulemaking* (*Further Notice*) adopted in this proceeding on February 19, 1997. The *Second R&O* (62 FR 11616, March 12, 1997) established rules to govern the geographic area licensing of Common Carrier Paging (CCP) and exclusive 929 MHz Private Carrier Paging (PCP), and procedures for auctioning mutually exclusive applications for these licenses. In general, the *MO&O* affirms the rules adopted in the *Second R&O,* with some changes and clarifications, stating the Commission's continuing belief that the adopted rules will facilitate competition in the wireless market by encouraging a more diverse array of entities, including small businesses and rural telephone companies, to offer paging services to the public. The *Further Notice* (62 FR 11616, March 12, 1997) sought comment on issues concerning partitioning and disaggregation of paging licenses, coverage requirements for nationwide geographic area licensees, and possible revisions to application procedures for shared channels. The *Third R&O* modifies the paging rules to permit partitioning by all nationwide geographic area licensees and to allow disaggregation by all geographic area licensees; adopts rules governing the coverage requirements for parties to partitioning or disaggregation agreements involving non-nationwide geographic area licenses, and the license term of partitioned or disaggregated geographic area licenses; permits geographic area licensees to combine partitioning and disaggregation; and establishes additional mechanisms to inform consumers of the rules governing paging licenses and the danger of fraudulent schemes perpetrated by application mills.

*Dismissal of Pending Applications*

2. The *MO&O* denies the petitions seeking reconsideration of the Commission's decision to dismiss all mutually exclusive paging applications and all paging applications filed after July 31, 1996. In the *Second R&O,* the Commission stated that, in light of its decision to adopt geographic area licensing, it would dismiss all pending mutually exclusive paging applications, including those filed under the interim rules adopted in the *First R&O* (61 FR 21380, May 10, 1996), and all applications filed after July 31, 1996. On December 14, 1998, the Commercial Wireless Division of the Wireless Telecommunications Bureau dismissed these applications pursuant to the *Second R&O.*[1]

3. The Commission disagrees with petitioners' arguments that the Commission did not notify the public prior to release of the *Second R&O* of its intent to dismiss these applications; that the Commission is unlawfully applying new rules retroactively; that applicants reasonably relied on the Commission's prior procedures for processing applications; and that the only reason for licensing paging spectrum through competitive bidding is to raise money for the Federal government. The Commission notes that courts have consistently recognized that the filing of an application creates no vested right to continued application of licensing rules that were in effect when the application was filed, and an application may be dismissed if substantive standards subsequently change. In this proceeding, the Commission dismissed pending applications based on its substantive rule changes establishing geographic area licensing for paging. In light of the notice the Commission gave of its interest in instituting geographic area licensing, and of its intent not to process applications filed after July 31, 1996, the Commission does not believe that any applicants could have reasonably relied on its processing applications filed after that date.

4. Moreover, the Commission does not think that carriers that had previously pending applications will be irreparably harmed by a decision to proceed to the auction of paging licenses without any further processing of site-specific applications because such applications were dismissed without prejudice and these applicants may therefore file applications to participate in the auctions. The Commission states that the reasons for adopting competitive bidding procedures for paging licenses are set forth at length in the *Notice of Proposed Rulemaking* (*Notice*) (61 FR 6199, February 16, 1996) and *Second R&O,* and these reasons do not include revenue-raising considerations. The Commission also notes that it concluded in the *Competitive Bidding Second R&O* (59 FR 162981, May 4, 1994) that mutually exclusive initial paging applications were auctionable under the auction authority provided the Commission by the 1993 Budget Act. This conclusion is unchanged by the Balanced Budget Act of 1997, which amended Section 309(j) to expand the Commission's auction authority.

5. Petitioners also assert that dismissal of pending applications undermines the policy goal of expediting the licensing of paging spectrum because dismissal will delay the initiation of paging service in many market areas and will prevent the expansion of networks. The Commission finds, however, that it was the formidable administrative burden of processing site-by-site applications, and the substantial number of mutually exclusive applications that were filed, which created a backlog of pending applications and caused their processing to be delayed. The Commission further rejects petitioners' suggestion to hold an additional auction for the purpose of resolving mutually exclusive site-by-site licenses, prior to conducting an auction for geographic areas containing these same sites, because it would be grossly inefficient.

6. Citing section 309(j)(6)(E) of the Communications Act of 1934, petitioners contend that the Commission may not proceed to geographic area licensing without first attempting to avoid mutual exclusivity through ''engineering solutions, negotiation, threshold qualifications, service regulations, and other means.'' The Commission has previously

[1] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Order,* WT Docket No. 96–18, DA 98–2543 (Dec. 14, 1998) (*CWD Order*).

construed Section 309(j)(6)(E) to mean that it has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of Section 309(j)(3). In the *Second R&O,* the Commission concluded that the public interest would be better served by licensing all remaining paging spectrum through a geographic area licensing scheme than by processing additional site-specific licenses. The Commission thereby effectively determined that it would not be in the public interest to implement other licensing schemes or other processes that avoid mutual exclusivity, thus fulfilling its obligation under Section 309(j)(6)(E).

7. Several petitions for reconsideration and an application for review were filed in response to the *CWD Order.* The parties generally reiterate the same arguments against dismissing their applications that were set forth in the petitions for reconsideration filed in response to the Second *R&O.* Having already considered these arguments, the Commission denies the application for review filed by Robert J. and Laurie F. Keller d/b/a Western Maryland Wireless Company on December 28, 1998, and petitions for reconsideration filed on January 13, 1999, by: AirTouch Paging, AirTouch Paging of California, AirTouch Paging of Kentucky, AirTouch Paging of Texas, AirTouch Paging of Virginia, Allcom Communications, Inc., Arch Capitol District, Inc., Arch Connecticut Valley, Inc., Arch Southeast Communications, Inc., Becker Beeper, Inc., Blasiar, Inc., Electronic Engineering Company, Hello Pager Company, Paging Systems Management, Inc., PowerPage Inc., Robert Kester *et al.*, Satellite Paging, Inc., South Texas Paging, Inc. (Arthur Flemmer), USA Mobile Communications, Inc. II, Westlink Licensee Corporation, and Westlink of New Mexico Licensee.

*Geographic Areas*

8. The Commission grants the petitions that request the Commission to use Major Economic Areas (MEAs) instead of Major Trading Areas (MTAs) for geographic licensing of the upper bands (929 and 931 MHz). When the Commission adopted the *Second R&O,* it had not established MEAs, which were first developed by the Commission to define geographic license areas for the Wireless Communications Service (WCS). Although MTAs and MEAs are substantially similar, the Commission finds that geographic area licensing based on MEAs will provide geographic area licensees with benefits that could not be obtained if the Commission maintained MTAs as the geographic area for the 929–931 MHz band. Licensees with paging systems in both the upper bands and the lower bands (35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz), which will be licensed as EAs, will benefit from the use of MEAs for the upper bands because MEAs are composed of EAs. The fact that the geographic borders of MEAs coincide with those of the EAs contained within the MEAs will enable licensees with both upper and lower band systems to operate more efficiently. The Commission also finds that adopting MEAs on the upper bands will enhance competition between the paging systems on the lower channels and the paging systems on the upper bands because the paging systems on the lower channels will be able to combine their EAs to form MEAs. The Commission also acknowledges that licensees will benefit economically from licensing based on a geographic designation that is in the public domain.

9. The Commission rejects one petitioner's contention that the decision to eliminate section 90.496 of the Commission's rules was arbitrary and capricious and an unlawful retroactive rulemaking without the opportunity for notice and comment. In the *Second R&O,* the Commission eliminated section 90.496 of its rules, which provided for extended implementation of construction and operations deadlines for proposed systems on the 929–930 MHz band that qualified for regional or nationwide channel exclusivity. As explained in the *Notice,* the Commission found that extended implementation would be unnecessary under its geographic area licensing scheme and, in fact, would hinder geographic area licensing because construction extensions for incumbents could effectively allow them to occupy an entire geographic area. The Commission sought comment in the *Notice* on its proposal to eliminate extended implementation and to dismiss all ''slow growth'' applications pending at the time an order pursuant to the *Notice* was adopted without prejudice to refile under its geographic area licensing scheme. The Commission affirms removal of section 90.496 of its rules and clarifies that removal of the rule does not affect the rights associated with extended implementation authority granted under that rule as of May 12, 1997, the effective date of the *Second R&O.* In addition, any requests pending as of May 12, 1997, are dismissed without prejudice to obtain licenses under the geographic area licensing rules.

10. The Commission rejects one petitioner's request to use BTAs for geographic area licensing in the lower bands, affirming its determination that EAs are appropriate for geographic area licensing on the 35–36 MHz, 43–44 MHz, 152–159 MHz, and 454–460 MHz bands. The petitioner contends that the size of EAs will prevent small and rural paging companies from participating in the geographic area licensing auctions; that EAs contain major urban areas as well as rural and suburban areas, and that small and rural companies are only interested in the rural and suburban areas of the EA; and that partitioning does not address the concerns of small and rural companies. Contrary to the petitioner's arguments, the Commission believes that the size of EA geographic areas will not prevent paging operators of smaller systems from participating in geographic area licensing auctions. The Commission also believes bidding credits will allow small businesses to compete against larger bidders. Further, small and rural paging companies will not be prevented from expanding their systems even if they choose not to participate in the geographic area licensing auctions, because the Commission will allow geographic area licensees to partition their service areas and it has no reason to believe that geographic area licensees will be unwilling to enter into partitioning agreements. The Commission continues to conclude that EAs, which the majority of commenters supported, best reflect the geographic area that the paging licensees on the lower channels seek to serve.

11. The Commission amends section 22.503(b)(3) of the Commission's rules to include three additional EA-like areas for the U.S. territories, which the Commission inadvertently omitted in the Second R&O. The Commission adds the following three EA-like service areas: Guam and the Northern Mariana Islands (EA 173); Puerto Rico and the United States Virgin Islands (EA 174); and American Samoa (EA 175).

*Highly Encumbered Areas*

12. The Commission denies petitions arguing that those incumbent licensees that have previously satisfied certain coverage requirements should receive a geographic area license without competitive bidding. Petitioners advocate granting a market area license to an incumbent providing coverage to at least 70 percent, two-thirds, or a similar portion of the market. Petitioners propose a two-step process for granting market area licenses. First,

where an incumbent operator certifies that it covers 70 percent of a market area's population or geographic area, the Commission should grant a market area license to that incumbent. If multiple incumbents serving a market on a single frequency together cover 70 percent of the population or geographic area, those licensees should be permitted jointly to file an application that demonstrates their joint coverage, and receive a market area license on that basis. In the second step, interested parties could file applications for all remaining available frequencies in each market. Mutually exclusive applications would then be subject to the Commission's auction rules. Petitioners alternatively propose to limit eligible bidders to the same channel incumbents operating within the geographic area or in an area adjacent to the geographic area license.

13. To support their proposals, petitioners argue, for example, that, under the Commission's rules adopted in the *Second R&O,* new opportunities for greenmail and speculative applications will result in inflated auction prices, and reliable service will decline because auctions introduce additional parties for coordination and negotiation and customers will be unable to receive or obtain services if multiple providers are using the same channel within a market area. Petitioners further argue that new entrants will increase the potential for co-channel interference; ''dead zones'' will occur between the incumbent and geographic area licensee's service areas; the incumbent's ability to expand to provide the ''widest area coverage'' will be blocked if a new entrant wins at auction; new entrants will be encouraged to enter markets where it would not be economically viable to do so; and customers will not reap the benefits of competition. In addition, petitioners state that an applicant is not qualified if it cannot meet the construction benchmark of covering two-thirds of the population of an MTA where operating incumbents already meet the coverage requirements. Petitioners further assert that the Commission's current rules do not meet its statutory obligation to avoid mutual exclusivity, while mutual exclusivity could be avoided through ''threshold qualifications,'' identified in their percent-of-coverage proposals.

14. While the Commission recognizes that some geographic areas are significantly served by incumbent licensees, it believes that the market should decide whether an economically viable paging system can be established in the unserved area of a geographic market. For instance, a paging provider that primarily serves an adjacent geographic market may have a strong desire to serve the unserved area in its neighbor's ''home'' market. In addition, even where only 30 percent of a geographic area is available to a potential new entrant, the Commission does not believe that it has been shown that the new entrant cannot establish a viable system that serves the public as well as the incumbent. Thus, the Commission cannot conclude that an incumbent licensee is entitled to a geographic area license without competitive bidding simply because its paging system may cover a substantial portion of the geographic area. The Commission continues to believe that open eligibility promotes prompt service to the public by allocating spectrum to the entity that values it most.

15. The Commission also believes that the benefits of open eligibility outweigh the risks that speculators and misguided applicants pose to the competitive bidding process. Indeed, while speculation can be a problem when licenses are awarded through such systems as lotteries, the Commission believes that auctions deter speculation. The Commission has auctioned other highly encumbered services and has not seen any evidence that speculative applications have raised bidding prices. Petitioners also have not provided any evidence that speculative applications have raised bidding prices in prior auctions.

16. Other issues raised by petitioners are addressed in other sections of the *MO&O.* The Commission states that a new entrant will be able to meet its coverage requirements by providing ''substantial service'' within the geographic area and geographic area licensees must provide co-channel protection to all incumbents. Moreover, the Commission notes that petitioners have not provided any evidence that the ''border'' issues raised here, including problems related to ''dead zones,'' are any different from issues that arise under other circumstances where one licensee is adjacent to another. Finally, turning to its obligation to attempt to avoid mutual exclusivity when it is in the public interest, the Commission does not believe that Congress intended the Commission to interpret the term ''threshold qualifications'' in Section 309(j)(6)(E) to mean that carriers should receive licenses for unserved areas without competitive bidding simply because they already hold certain licenses for other areas in the vicinity, particularly because the result of such an approach would be to preclude the dissemination of licenses to new entrants.

*Basic Exchange Telecommunications Radio Systems Licensees*

17. The *Second R&O* directs that Basic Exchange Telecommunications Radio Systems (BETRS) licensed under the Rural Radiotelephone Service should be subject to geographic area licensing and competitive bidding, and also allows providers in these services to obtain site licenses on a secondary basis. It further provides that all existing BETRS operating on a co-primary basis remain in place and receive full protection from interference by geographic area licensees. BETRS licensees may also enter into partitioning agreements with auction participants and auction winners both before and after the paging auctions. In the *Second R&O,* the Commission stated that ''[i]f a geographic area licensee is concerned that a BETRS facility operating on secondary sites may cause interference to the geographic area licensee's existing or planned facilities, the BETRS provider must discontinue use of the interfering channel no later than six months after the geographic area licensee notifies the BETRS provider of the actual or potential interference.'' This policy is codified at section 22.723 of the rules.

18. Several petitioners argue that BETRS is essential to the Commission's universal service goal of delivering local exchange service to remote, rural areas and should be licensed on a site-by-site, co-primary basis with geographic area licensees, and exempt from competitive bidding procedures. These petitioners contend that participation in auctions will impair the ability of rural telephone companies to respond to their customers' needs for local exchange service in remote rural areas.

19. The Commission declines to adopt rules that permit site-by-site licensing of BETRS on a co-primary basis with geographic area paging licensees. The Commission agrees that BETRS provide an important service, but finds that BETRS do not require exemption from competitive bidding to ensure continued BETRS service and lower costs to subscribers. The rules that the Commission adopted in the *Second R&O* provide competitive bidding benefits to small businesses that will enable them to compete more effectively with larger auction participants. The Commission also believes that BETRS operators will be able to obtain interests in paging licenses or actual paging licenses through entering into partitioning arrangements both before and after the paging auctions. The

Commission emphasizes that it is committed to promoting service in rural areas and believes that the rules adopted for BETRS in the *Second R&O* will further that goal. If a BETRS operator demonstrates that it cannot serve a particular need in a rural area under these rules, the Commission will consider appropriate action to address specific concerns.

20. Petitioners contend that, contrary to the Commission's universal service goals, section 22.723 of the Commission's rules will allow geographic area licensees to terminate BETRS upon any allegation of harmful co-channel interference, resulting in a loss of communications services essential to the public in rural areas. Petitioners argue that the Commission must either retain existing rules or establish safeguards against allowing geographic area licensees to ''shut down BETRS operations.'' Another petitioner, however, seeks clarification that section 22.723 confers no right on rural radio service licensees to continue operations that cause actual interference to geographic area licenses for six months after receiving notice of the interference. The Commission affirms its earlier decision to allow BETRS licensees to obtain site licenses and operate facilities on a secondary basis. The Commission clarifies that under section 22.723 of its rules, the geographic area licensee must provide notification to the BETRS provider that the relevant BETRS facility causes or will cause interference with the geographic area licensee's service contour in violation of the Commission's interference rules. Where the BETRS facility would create interference with a facility the geographic area licensee is proposing to build, the geographic area licensee may not provide notification of impermissible interference to the BETRS provider earlier than six months prior to the date it intends to initiate operation of the proposed facility. Thus, the geographic area licensee may not force the BETRS provider to discontinue service before the geographic area licensee initiates service. Where the BETRS facility is constructed after the geographic area licensee's facility is already constructed and the BETRS facility causes interference with that existing facility, the BETRS operator must discontinue use of the interfering channel in accordance with the Commission's interference rules. Where a geographic area licensee plans construction and initially determines that the BETRS facility would not cause interference, but after construction determines the BETRS facility is causing interference, the BETRS operator must discontinue use of its facility within six months of receiving notification. If a dispute arises, either party may submit the interference information to the Commission to resolve the dispute. If the geographic area licensee provides proper notification to the BETRS provider, no adjustments will be made to the initial six month period. If the Commission determines that the notification was improper or inaccurate, the geographic area licensee, where appropriate, must submit a new, corrected notification to the BETRS provider. In the latter case, the six month period would restart.

21. Contrary to petitioners' argument, the Commission has not exceeded its statutory authority by employing competitive bidding procedures to issue geographic area paging licenses. Section 309(j) of the Communications Act, as amended, gives the Commission authority to issue geographic area paging licenses through competitive bidding. Petitioners have offered no evidence to support their assertion that revenue for the federal treasury ''appears to be the real reason for the Commission's proposal.'' The recovery of a portion of the value of the public spectrum made available through competitive bidding does not amount to maximizing revenue, nor is it the Commission's sole objective.

22. Certain petitioners also argue that the Commission did not adequately consider adopting ''mandatory partitioning'' of rural areas of the geographic area license, at no cost to the rural telephone company, to offset the unwillingness of geographic area licensees to enter into agreements for the provision of BETRS service. The Commission affirms its conclusion in the *Second R&O* that BETRS licensees may acquire partitioned licenses from other licensees by: (1) participating in bidding consortia; or (2) acquiring partitioned licenses from other licensees through private negotiation and agreement either before or after the auctions. The Commission has no reason to believe that auction winners will not be willing to enter into partitioning arrangements. Petitioners themselves argue that winning geographic area licensees may have no desire or intention to build in rural areas. If this is true, there appears to be little incentive for these licensees to demand unreasonable amounts of money for the rural portion of a license prior to or subsequent to the auction, especially if the choice is between selling to a willing buyer or leaving the rural area unserved. Where possible, the Commission encourages market forces and the business judgment of companies to dictate the formation of business relationships. The Commission believes voluntary agreements will be an adequate means of accommodating BETRS licensees seeking modifications to existing BETRS or wishing to establish new systems, and that mandatory partitioning is unnecessary.

*Spectrum Reversion*

23. The Commission reaffirms that where an incumbent permanently discontinues operations at a given site, as defined by the Commission's rules, the spectrum automatically reverts to the geographic area licensee. In the *Second R&O*, the Commission concluded that spectrum within a geographic area recovered by the Commission from a non-geographic area licensee should automatically revert to the geographic area licensee. The Commission found that granting this right to geographic area licensees would give them greater flexibility in managing their spectrum, establish greater consistency with cellular and PCS rules, and reduce the regulatory burdens on both licensees and the Commission with respect to future management of the spectrum.

24. One petitioner suggests that the Commission should clarify that recovered spectrum automatically reverts to the geographic area licensee in all instances except where an incumbent licensee discontinues operations in a location wholly encompassed by the incumbent licensee's valid composite interference contours. The petitioner argues that the geographic area licensee would not be able to serve such an area, and that reversion would be contrary to the Commission's policy of allowing fill-in transmitters anywhere within the incumbent's outer perimeter interference contour. The Commission disagrees. As an initial matter, the Commission notes that an incumbent's valid composite interference contour does not include areas surrounded by the composite interior contour that is not part of the interference contours of the incumbent's individual sites. The Commission further finds that the petitioner has not demonstrated that a geographic area licensee would be unable to serve areas wholly surrounded by an incumbent; such service by the geographic area licensee would be subject to the Commission's interference rules. Moreover, where an incumbent discontinues service to an area, the Commission does not believe it serves the public interest to withhold that area from the geographic area licensee in the hope that the incumbent may wish to

resume service sometime in the future. Should an incumbent desire to serve the reverted area in the future, it is free to reach an agreement with the geographic area licensee for the partitioning of this area. This approach is consistent with the Commission's treatment of reverted spectrum in the 800 MHz SMR service, and it is in the public interest, as it promotes use of the spectrum.

*System-wide Licensing*

25. The Commission clarifies certain aspects of its rules regarding system-wide licensing. In the *Second R&O,* the Commission allowed all incumbent paging licensees to either continue operating under existing authorizations or trade in their site-specific licenses for a single system-wide license. The Commission stated that such a system-wide license would be demarcated by the aggregate of the interference contours around each of the incumbent licensee's contiguous sites operating on the same channel. The Commission also concluded that incumbent licensees may add or modify sites within their existing interference contours without filing site-specific applications, but may not expand their existing interference contours without the consent of the geographic area licensee.

26. Although system-wide licenses and site-specific licenses are identical in terms of operational and technical flexibility, some licensees may realize administrative benefits from consolidating site-specific licenses. Petitioners seek clarification of the procedures for converting site-specific licenses to a system-wide license. In the *ULS Order* (63 FR 856163, December 14, 1998), the Commission stated that conversions from site-specific to system-wide licenses are minor modifications subject to the Commission's prior approval. Applicants requesting a system-wide license will be notified by public notice of the action taken on their request and public notices granting such requests will indicate the new call sign associated with the system-wide license. The expiration date of the system-wide license will be determined by the earliest expiration date of the site-specific licenses that are consolidated into the system-wide license. Once a system-wide license is approved, the licensee must submit a timely renewal application for the system-wide license based on that expiration date. The Commission emphasizes, however, that the licensee is solely responsible for filing timely renewal applications for site-specific licenses included in a system-wide license request until the request is approved. If the situation arises where a site-specific renewal application for a site included in a system-wide license request and the system-wide license request itself are pending at the same time before the Wireless Telecommunications Bureau, the Bureau may elect to complete the site-specific license renewal proceeding prior to making a determination on the system-wide license request. Renewal applications will be placed on public notice as accepted for filing pursuant to the Commission's rules. To minimize administrative burdens on licensees and conserve government resources, the Bureau will use electronic filing to the greatest extent possible in accepting and processing these applications.

27. Several petitioners seek clarification of the definition of ''contiguous sites'' for the purpose of determining an incumbent's ''aggregate interference contour.'' Petitioners also urge the Commission to modify section 22.503(i) to define non-geographic area incumbent systems according to the composite interference contours of all authorized transmitters, including valid construction permits, regardless of the grant date. The Commission has consistently stated that system-wide licenses are defined by interference contours and it now clarifies that contiguous sites are defined by overlapping interference contours, not service contours. The Commission further clarifies that all authorized site-specific paging licenses and construction permits are included in a composite interference contour. The Commission is continuing to process site-specific applications that were not mutually exclusive and were filed prior to July 31, 1996, and it will not revoke authorized construction permits before the construction deadline. In addition, the Commission is continuing to resolve pending petitions that might result in grants of applications. The Commission also notes that for purposes of due diligence it intends to release, prior to auction, a list of site-specific applications and petitions pending at that time. Accordingly, the Commission amends section 22.503(i) to clarify that geographic area licensees must provide co-channel interference protection in accordance with sections 22.537 or 22.567, as appropriate for the channel involved, to all authorized co-channel facilities of exclusive licensees within the paging geographic area.

28. Petitioners also contend that system-wide licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of interference rules. The Commission concludes that a system-wide license is merely a consolidation of a system's call signs such that one call sign will be associated with the system-wide license. The contours of the system-wide license remain as the aggregate of the contours of the individual sites. The Commission finds that inclusion of areas that are outside of an incumbent's interference contours within a system-wide license would be contrary to the Commission's objective of prohibiting encroachment on the geographic area licensee's operations. A system-wide license is not intended to expand an incumbent's system beyond the contours of its individual sites. Incumbent licensees seeking to expand their contours may participate in the auction of geographic area licenses, or may seek partitioning agreements with the geographic area licensee.

29. One petitioner seeks clarification as to whether the discontinuance of operation of an interior site would jeopardize a system-wide license. Where a system-wide licensee allows an area within its system to revert to the geographic area licensee, the system-wide license shall remain intact; however, the parameters of the system-wide license shall be amended to the demarcation of the remaining contiguous interference contours.

30. The Commission will allow licensees to include in system-wide licenses remote, stand-alone transmitters that are linked to contiguous systems via control/repeater facilities or by satellites. Including these remote, stand-alone sites in the system-wide license, however, in no way expands the licensee's composite interference contours. The Commission will also permit licensees to maintain separate site-specific licenses for remote, stand-alone transmitters. The Commission further finds that an incumbent licensee should be permitted to obtain multiple system-wide licenses where applicable.

*Interference*

31. The Commission affirms its earlier decision to use Tables E–1 and E–2 to determine interference contours for both perimeter and ''fill-in'' transmitters. Co-channel interference rules are designed to protect licensees from interference caused by other licensees operating facilities on the same channel. Exclusive paging systems are protected from co-channel interference by a variety of rules that govern transmitter height and power, distance between transmission stations, the licensee's protected service area, and the field strength of the licensee's service and interfering signals. For the CCP channels below 931 MHz, the Commission uses

mathematical formulas to determine the distance from each transmitting site to its service and interference contours along the eight cardinal radials from the transmitter site. To determine service and interference contours for the 931 MHz channels, the Commission uses two tables of fixed radii, Tables E–1 and E–2. Prior to adoption of the *Second R&O,* for the 929 MHz exclusive channels, the Commission used geographic separation rules that agreed with the separations that result from the application of the fixed radii tables for 931 MHz. Unlike the Commission's CCP rules, at that time, the PCP rules did not formally define a protected service or interference contour for each station.

32. In the *Notice,* the Commission proposed to adopt the eight-radial contour method and new mathematical formulas, rather than fixed tables, to determine the service and interference contours for the exclusive 929 MHz and 931 MHz channels. The commenters addressing this issue strenuously objected to the Commission's proposal, stating that the proposed method could require incumbents to reduce coverage or be required to accept interference from geographic area licensees. Consequently, the Commission decided not to adopt the proposed formulas. The Commission did, however, adopt Tables E–1 and E–2 for the exclusive 929 MHz channels, thus maintaining the *status quo* for 931 MHz channels and conforming 929 MHz channels to the current procedures for 931 MHz channels.

33. Several petitioners now request that instead of using Tables E–1 and E–2, the Commission permit incumbents to employ alternative formulas to determine the interference contours of ''fill-in'' transmitters. One petitioner suggests using signal strength criteria, rather than alternative formulas, for determining the interference contours of ''fill-in'' transmitters. The Commission does not find that permitting incumbents to use different formulas for ''fill-in'' transmitters will serve the public interest. The record in this proceeding supports the decision to use Tables E–1 and E–2 to determine interference and service contours for all 929 MHz and 931 MHz transmitters. The Commission finds that to permit incumbents to add sites under alternative formulas depending on the location and power of each of their transmitters significantly raises the risk of encroachment on a geographic area licensee's territory. In addition, the incumbent will have the opportunity to cover any existing gaps in coverage by either competing for the geographic area license or by partitioning from the geographic area licensee.

34. The Commission affirms its previous conclusion to require geographic area licensees to negotiate to resolve interference problems with adjacent geographic area licensees. In the *Second R&O,* the Commission concluded that geographic area licensees should be able to negotiate mutually acceptable agreements with all adjacent geographic area licensees if their interfering contours extend into other geographic areas. The Commission also indicated that adjacent licensees have a duty to negotiate in good faith with one another regarding co-channel interference protection. The Commission noted that lack of adequate service to the public because of failure to negotiate reasonable solutions with adjacent geographic area licensees could reflect negatively on licensees seeking renewal.

35. Certain parties now seek clarification of the good faith negotiation requirement, arguing the standard is vague and invites litigation. One petitioner further notes that while the cellular industry has negotiated agreements, paging coordination will be more difficult because paging carriers operate on only one frequency, while cellular carriers have many channels with which to negotiate. The *Second R&O* adopted the good faith standard to provide flexibility for licensees to negotiate mutually acceptable agreements. Providing for adjacent geographic area licensees to negotiate mutually acceptable agreements should reduce the amount of unserved area that could result from specifying a minimum distance a geographic area licensee's transmitter must be from a geographic border. In other services, such as the Multipoint Distribution Service (MDS), the Commission has expected licensees to cooperate among themselves to resolve interference issues before bringing them to the attention of the Commission. Based on the limited number of interference complaints that it has been called upon to resolve, the Commission believes this policy has worked well in the MDS service. Moreover, none of the parties have proposed a better way to achieve flexibility and the reduction of unserved areas.

36. The Commission clarifies various issues regarding channel exclusivity on the 929–930 MHz bands. Prior to 1993, all PCP channels were assigned on a non-exclusive basis. In 1993, the Commission established rules allowing PCP carriers in the 929–930 MHz band to obtain channel exclusivity as local, regional, and nationwide paging systems on thirty-five of the forty 929 MHz PCP channels. Those licensees that qualified for exclusivity as a local, regional, or nationwide system at that time were grandfathered as exclusive licensees, and required to maintain their existing sharing arrangements with other licensees, but were protected from the addition of other licensees on these channels. Thus, no application for a new paging site would be granted on a channel assigned to an incumbent who qualified for exclusivity if the applicant proposed a paging facility that did not comply with the separation standards based on antenna height and transmitter power of the respective systems. All other incumbent licensees were grandfathered with respect to their existing systems as shared licensees, and required to continue to share channels with each other. The Commission notes that grandfathered licensees could not add stations to their existing systems in areas where a co-channel licensee had qualified for exclusivity. Therefore, on these thirty-five 929 MHz channels, the Commission has: (1) exclusive incumbents: grandfathered exclusive systems that are exclusive with respect to new licensees, but share with other grandfathered licensees; (2) non-exclusive incumbents: grandfathered shared licensees; (3) licensees who failed to construct enough sites to qualify for exclusivity under the *PCP Exclusivity Order* (considered ''secondary'' with respect to licensees with earned exclusivity); and (4) licensees with earned exclusivity. In the *Second R&O,* the Commission concluded that geographic area licensees must provide co-channel protection to all incumbent licensees.

37. Certain petitioners seek clarification as to whether non-exclusive 929 MHz licensees operating on the thirty-five exclusive channels (*i.e.,* categories 2 and 3 in the above paragraph) will receive the same interference protection as an exclusive licensee. Other petitioners seek clarification that the Commission did not elevate incumbent licensees operating on shared channels to exclusive status. One petitioner specifically argues that section 22.503(i) will require that nationwide geographic area licensees terminate sharing arrangements they have with non-exclusive licensees and provide interference protection to them, while another contends that section 22.503(i) does not require the termination of existing channel sharing arrangements involving exclusive incumbent licensees and non-exclusive incumbent licensees. Non-exclusive incumbent licensees on

the thirty-five exclusive 929 MHz channels will continue to operate under the same arrangements established with the exclusive incumbent licensees and other non-exclusive incumbent licensees prior to the adoption of the *Second R&O*. The Commission further clarifies that MEA, EA, and nationwide geographic area licensees will be able to share with non-exclusive incumbent licensees on a non-interfering shared basis. The non-exclusive incumbent licensees must cooperate with the nationwide and geographic area licensees' right to share on a non-interfering shared basis. Accordingly, the Commission amends section 22.503(i) to clarify that nationwide and geographic area licensees are afforded the right to share with non-exclusive incumbent licensees on a non-interfering shared basis. As for shared PCP channels, the Commission concluded in the *Second R&O* that licensees on these channels will not be converted to exclusive status and that these channels will not be subject to competitive bidding. Therefore, licensees on these shared channels will continue to share with any future licensees.

38. The Commission declines to grant one petitioner's request to grant full interference protection to existing control link operations on the UHF and VHF paired channels originally allocated for mobile telephone service once the ''auction for the UHF and VHF common carrier channels'' is completed. The petitioner contends that in reliance on the Commission's proceeding in CC Docket 87–120, which permitted paging carriers to use these two-way channels as control links, ''numerous carriers have configured their paging systems on [the] basis of their protected use of a VHF or UHF frequency to link their base stations.'' Another petitioner requests clarification as to whether incumbent mobile telephone service providers operating on the lower paging frequencies will be protected from interference from geographic area licensees. Furthermore, the petitioner requests that incumbent mobile telephone service providers be permitted to obtain additional site licenses on a secondary basis.

39. The Commission concludes that the petitioner's request to protect control link operations is unclear and outside the scope of this proceeding. The Commission's rules do not generally provide protection from interference to fixed stations and the petitioner's request would require a rulemaking to develop interference criteria, which is beyond the scope of this proceeding. In addition, the petitioner's request is unclear. For example, the petitioner does not specify whether any protection provided should apply to the mobile channel used as a control link or the base channel used as a control link. The Commission therefore denies the request. With respect to the request for clarification, the Commission reiterates that geographic area licensees must provide co-channel protection to all incumbent licensees, including incumbent mobile telephone service providers operating on the 150 MHz and 450 MHz bands.

40. The Commission will not, however, grant the petitioner's request that incumbent mobile telephone service providers be permitted to obtain additional site licenses on a secondary basis. While the Commission is generally aware that two-way incumbent mobile telephone service providers serve rural areas in the western part of the country, the petitioner provides no information at all for determining whether to permit incumbent mobile telephone service providers to operate facilities on a secondary basis. The Commission therefore denies the request.

*Shared Channels*

41. The Commission affirms its decision to not impose a limit or ''cap'' on the number of licensees for each of the shared channels. In the *Notice*, the Commission sought comment on whether to use geographic area licensing for the shared PCP channels in the 152–158 MHz, 462 MHz, and 465 MHz bands. Most commenters who responded to this issue in the Notice were opposed to geographic area licensing for the shared channels and sought to retain the *status quo*. In the *Second R&O*, the Commission found that the cost and disruption caused by converting shared channels to exclusive channels and subjecting them to competitive bidding would outweigh the benefits. The Commission did not impose a limit or ''cap'' on the number of licensees for each of the shared channels, as it found that capacity limits of paging channels are based primarily on use and not the number of licensees. Thus, ''capping'' the number of licensees would not necessarily ensure efficient spectrum use. The Commission also determined in the *Second R&O* that pending the resolution of issues related to consumer fraud addressed in the *Further Notice*, it would retain the interim licensing rules, which limited applications to incumbents seeking to expand their systems. The Commission did, however, eliminate the 40-mile requirement for new sites, allowing incumbents to file for new sites at any location. Finally, noting that it would not grant applications proposing operations on a commercial basis, the Commission allowed new applicants to file applications for private, internal-use systems, and reiterated that Special Emergency Radio Service providers would remain exempt from the licensing freeze and could continue to file applications on shared channels.

42. Petitioners oppose granting new applicants licenses for private, internal-use systems, alleging that allowing new applications would encourage speculative applications and result in harmful congestion on the shared PCP channels. As a remedy, petitioners urge the Commission to retain the interim rules, which limit the filing of new applications primarily to incumbents. Petitioners further urge the Commission to limit incumbents' expansion applications to sites that are within 75 miles of an existing facility, in lieu of the 40-mile requirement that the Commission has eliminated, to deter incumbents from filing speculative applications, and ask that the Commission permit applications from public safety and medical services providers for shared channels only upon certification that no public safety channels are available to meet those providers' needs.

43. The Commission does not believe that eliminating the opportunity for new licensees to establish service on shared channels serves the public interest because it does not promote efficient use of spectrum. The Commission does not believe that concerns about speculation or congestion on shared channels are sufficient at this time to warrant additional burdens on new applicants. The Commission's goal is to increase the use of these shared channels, not to unduly restrict access to them. Therefore, the Commission affirms its previous decision and declines to impose limits on the number of licensees for each channel in a particular area. The Commission will take further action if it finds that the transition of the exclusive channels to geographic area licensing results in congestion and interference problems on the shared channels. The Commission also declines to adopt a certification requirement for public safety providers. Finally, as described below, the Commission will be removing the interim licensing rules on all the shared paging channels. Accordingly, the Commission declines to impose any mileage limitations on expansion applications to provide service on shared paging channels.

44. One petitioner contends that the Commission should reconsider its

decision not to subject the five 929 MHz non-exclusive channels to competitive bidding. The Commission declines to reconsider this decision. Petitioner's arguments to include shared channels in competitive bidding are effectively a request to limit the number of licensees authorized to operate on shared channels. As previously stated, the Commission declines to impose limits on the number of licensees for each channel in a particular area.

45. The Commission also denies another petitioner's request to adopt specific interference rules for shared frequencies, and provide shared frequency licensees with some form of exclusivity protection. In the *Second R&O*, the Commission found that shared channels are heavily used by incumbent systems, many of whom have entered into time-sharing or interconnection agreements to avoid interference with one another. The Commission believes the imposition of specific interference requirements at this time could jeopardize the viability of some of these existing relationships.

*Coordination with Canada*

46. The Commission clarifies rules regarding coordination requirements with Canada. The Commission states that it is bound by international agreement to coordinate with the Canadian government (Industry Canada) stations using certain frequencies north of Line A or east of Line C. Incumbent and geographic area licensees on the lower paging channels must submit a Form 600 (or Form 601) to obtain authorization to operate stations north of Line A or east of Line C because the lower paging channels are subject to the *Above 30 Megacycles per Second Agreement* with Industry Canada. The *U.S.-Canada Interim Coordination Considerations for the Band 929–932 MHz, as amended,* assigns specific 929 and 931 MHz frequencies to the United States for licensing along certain longitudes above Line A, and assigns other specific 929 and 931 MHz frequencies to Canada for licensing along certain longitudes along the U.S.-Canada border. As a result, the Commission notes that frequency coordination with Canada is not required for the 929 and 931 MHz frequencies that U.S. licensees are permitted to use north of Line A pursuant to that agreement. In addition, the 929 and 931 MHz frequencies assigned to Canada are unavailable for use by U.S. licensees above Line A as set out in the agreement. Finally, the Commission is implementing electronic filing and automated coordination procedures to the extent practical and allowable under its agreements with Canada.

*Power Requirements*

47. The Commission clarifies that 929 MHz licensees, with certain limitations, do not need to file a modification application to increase the effective radiated power (ERP). Thus, the Commission states that licensees may modify power levels without filing a modification application only to the extent that their composite interference contour, as determined by Table E–2, remains constant or decreases. Again, the Commission restates that, pursuant to the *First R&O,* an incumbent licensee is not permitted to increase its composite interference contour.

*Coverage Requirements*

48. The Commission reaffirms coverage requirements for MEA and EA licensees. In the *Second R&O,* the Commission concluded that for each MTA or EA the geographic area licensee must provide coverage to one-third of the population of the entire area within three years of the license grant, and to two-thirds of the population of the entire area within five years of the license grant; or in the alternative, the MTA or EA licensee may provide substantial service to the geographic license area within five years of license grant. In addition, the Commission concluded that failure to meet the coverage requirements would result in automatic termination of the geographic area license. The Commission stated that it would reinstate any licenses that were authorized, constructed, and operating at the time of termination of the geographic area license.

49. One petitioner advocates requiring the geographic area licensee to provide coverage to one-third of the market area within one year, and two-thirds within three years. Other petitioners argue, however, that small companies will have difficulty meeting these suggested coverage requirements, especially if they must construct in rugged areas with low population density to cover two-thirds of the population. The Commission declines to adopt the proposal. The Commission believes that its previously adopted coverage requirements adequately promote prompt service to the public without being unduly burdensome on licensees that require a reasonable amount of time to complete construction. The Commission finds that areas which are currently unserved have remained so in spite of the fact that paging service has existed for many years and is extremely competitive in some markets. This finding suggests that providers of service in these areas may face unusual difficulties. Moreover, the Commission finds that overly stringent coverage requirements would unfairly favor incumbents by erecting a formidable barrier to entry.

50. Petitioners argue that the ''substantial service'' alternative should be eliminated because it will encourage speculation, greenmail and anticompetitive conduct. However, in some MEAs or EAs, an incumbent licensee may already serve more than one-third of the population. The elimination of the substantial service alternative would prevent a potential co-channel licensee other than the incumbent from bidding in these markets because the five-year coverage requirement could only be satisfied by the incumbent. The option of providing a showing of substantial service allows those MEA and EA licensees who cannot meet the three-year and five-year coverage requirements because of the existence of incumbent co-channel licensees to satisfy a construction requirement. Moreover, the Commission recognizes that the unserved areas of many MEAs and EAs are rural areas that may be more difficult to serve than urban areas. The Commission thinks it is in the public interest to encourage build-out in rural areas by allowing licensees to make a substantial service showing. Further, the substantial service option enables licensees to use spectrum flexibly to provide new services without being concerned that they must meet a specific percentage of the coverage benchmark or lose their license.

51. Certain petitioners argue that the vagueness of the definition of ''substantial service'' will result in an abundance of litigation. One petitioner suggests that substantial service could be defined as coverage of fifty percent at three years, and seventy-five percent at five years, of the geographic area that is not served by co-channel incumbent licensees; and that the Commission could require licensees to show a specified level of infrastructure investment by the three-year and five-year deadlines. Another petitioner suggests that the Commission provide specific examples of what construction levels would satisfy the substantial service test.

52. The Commission declines to adopt specific coverage requirements as the sole means of defining ''substantial service.'' As already noted, the unserved area of an MEA or EA license (i.e., the area not served by co-channel incumbent licensees at the time the MEA or EA license is granted) may consist largely of spectrum in rural

areas. The Commission believes that imposing strict coverage requirements to define substantial service in the unserved area would discourage new entrants from attempting to acquire licenses to serve rural areas. Nonetheless, the Commission finds that establishing an objective criterion as one means of meeting the substantial service option in the unserved areas of an MEA or EA would be useful. Therefore, the Commission will presume that the substantial service coverage requirement is satisfied if an MEA or EA licensee provides coverage to two-thirds of the population in the unserved area of the MEA or EA within five years of license grant.

53. At the same time, the Commission recognizes the need for flexibility in areas where stringent coverage requirements would discourage provision of any service. Therefore, the Commission clarifies that an MEA or EA licensee may be able to satisfy the substantial service requirement even if it does not provide coverage to two-thirds of the population in the unserved area within five years of license grant. The Commission offered guidance to WCS licensees with regard to factors that it would consider in evaluating whether the substantial service requirement has been met, and the Commission now applies this additional guidance to paging licensees. Thus, the Commission may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee's operations serve niche markets. A licensee may also demonstrate that it is providing service to unserved or underserved areas without meeting a specific percentage, as the Commission permitted SMR providers in the 800 MHz band to do. Because the substantial service requirement can be met in a variety of ways, the Wireless Telecommunications Bureau will review licensees' showings on a case-by-case basis.

54. Petitioners request clarification as to whether licensees who fail to meet coverage requirements will be permitted to retain licenses for those facilities authorized, constructed, and operating at the time the geographic area license is cancelled, or only those authorized, constructed, and operating at the time of grant of the geographic area license. The Commission agrees with the argument that licenses reinstated after termination of the geographic area license should be limited to the sites authorized, constructed, and operating at the time the geographic area license was granted. In other words, the right to use channels any place in the geographic area will be forfeited, but any licenses for which individual sites were constructed and operating prior to the grant of the geographic area license will be reinstated. The Commission believes that this approach properly balances its overarching goal of ensuring, to the extent possible, continuous service to the public and the Commission's policy of discouraging speculation and spectrum warehousing. Accordingly, the Commission amends section 22.503(k) to provide that licensees who fail to meet their coverage requirements will be permitted to retain licenses only for those facilities authorized, constructed, and operating at the time the geographic area license was granted. In such instances, incumbent licensees will have the burden of showing when their facilities were authorized, constructed, and operating, and they should retain necessary records of these sites until they have fulfilled their construction requirements.

*Geographic Area Licensing for Nationwide Channels*

55. The Commission affirms its decision in the *Second R&O* to grant nationwide geographic area licenses without competitive bidding to those licensees that met the exclusivity criteria established under its previous rules. The *Second R&O* awarded nationwide geographic area licenses on three 931 MHz channels and to the eighteen licensees who had constructed sufficient stations to obtain nationwide exclusivity on 929 MHz channels under the Commission's rules as of February 8, 1996. In addition, the Commission granted nationwide geographic area licenses to four licensees on the 929 MHz band that had sufficient authorizations, as of February 8, 1996, to qualify for nationwide exclusivity on a conditional basis, but had not completed build-out at that time. The Commission also granted nationwide exclusivity to Nationwide 929.8875 LLC on 929.8875 MHz based on showings that it had met the criteria for nationwide exclusivity as of February 8, 1996.

56. Certain petitioners argue that the exemption from competitive bidding for nationwide licensees is arbitrary and capricious because it results in similarly situated licensees being treated in a disparate manner. According to petitioners, incumbents that have met their five-year coverage requirement are similar to nationwide licensees that met the Commission's previous build-out requirements to qualify for exclusivity. The Commission does not believe that its decision to exempt nationwide licensees from competitive bidding discriminates against other paging systems. This decision merely recognizes licenses granted prior to this rulemaking proceeding. The exclusivity rules provided nationwide licensees with the right to continue to build out anywhere in the country on their designated channels, whereas non-nationwide paging licensees have been afforded no right to expand their service area beyond their interference contours. Thus, there are no areas available for auction on the channels on which nationwide geographic area licensees operate, while there are available areas on the channels on which non-nationwide licensees operate.

57. The Commission affirms its decision to deny Mobile Telecommunications Technologies, Inc. (MTel) a nationwide geographic area license on the 931.4375 MHz channel. The Commission disagrees with MTel's argument that denying MTel a nationwide grant on 931.4375 MHz is inconsistent with the Commission's grant of nationwide geographic area licenses to paging carriers in the 929 MHz band. The Commission recognizes that MTel is extensively licensed on 931.4375 MHz with over 800 transmitters in various locations throughout the United States. In addition, several other 931 MHz channels are extensively licensed by one carrier. But these 931 MHz channels, including 931.4375 MHz, have never been designated as nationwide channels. The Commission did not establish rules for a licensee to earn nationwide exclusivity on the thirty-seven channels in the 931 MHz band reserved for local and regional paging, as it did for the thirty-five exclusive 929 MHz channels, so MTel could not reasonably have expected to be granted nationwide status.

*Competitive Bidding*

58. The *MO&O* declines to adopt proposals regarding various operational aspects of the paging auctions, including: the sequence of the auctions (*e.g.*, auctioning the lower band channels prior to the upper band channels); modification of the hybrid simultaneous/license-by-license stopping rule adopted in the *Second R&O* (*e.g.*, replacing it with a market-by-market or license-by-license stopping rule); and the information disclosure to bidders during the Paging auctions (*e.g.*, whether bidder identities will be announced). The Commission concludes that, consistent with the Balanced Budget Act of 1997, the Wireless Telecommunications Bureau

will seek further comment on these matters during the pre-auction process. Doing so will allow the Bureau, pursuant to its delegated authority, to fully consider these matters in the unique context of the Paging auctions, and will provide adequate notice and opportunity for comment on auction procedures prior to the commencement of the auctions.

59. The *MO&O* declines to require paging auctions participants to identify on the FCC Form 175 each market for which they wish to bid and submit an upfront payment for each identified license. The Commission's current rules allow bidders to apply to bid for all available markets and submit an upfront payment that corresponds to the maximum number of bidding units on which a bidder expects to be active in a single round. The Commission believes that this approach provides bidders the flexibility to pursue back-up strategies and adequately protects against insincere bidding.

60. The *MO&O* rejects a proposal that the Commission modify its bid withdrawal rule to allow the withdrawal of high bids placed due to typographical or clerical error. The Commission concludes that recent modifications to its bid software adequately protect against the placement of erroneous bids. The *MO&O* also rejects petitions for reconsideration of the Commission's decision to apply its general anti-collusion rule, *see* 47 CFR 1.2105(c), in the Paging auctions. These petitions seek safe harbors for business discussions regarding such topics as mergers/consolidations and intercarrier agreements. The Commission concludes that sufficient guidance regarding application of the anti-collusion rule currently is readily available, and that applicants, not the Commission, are in the best position to determine whether their conduct or discussions may give rise to a potential violation of the rule.

61. In response to petitions for clarification of the Commission's attribution rules and small business definitions, the *MO&O* clarifies that personal net worth is not attributable for purposes of determining eligibility for small business bidding credits, and that controlling interests in an applicant are not required to hold a minimum amount of equity. In addition, the *MO&O* adopts a definition of ''controlling interest,'' which focuses on the concepts of *de jure* and *de facto* control, to further clarify the application of the attribution rule. Moreover, the *MO&O* declines to conclude that intercarrier agreements among otherwise independent entities do not constitute affiliation under the Commission's Rules, and explains that such agreements may rise to the level of affiliation if they meet the criteria set forth in the affiliation rule, *see* 47 CFR 22.223(d).

62. Finally, although the *MO&O* declines to eliminate the availability of bidding credits for small businesses, it does eliminate the availability of installment payments for these entities. This action is consistent with the Commission's prior decision in *Part 1 Third R&O and Second Further Notice* (63 FR 2315, January 15, 1998), to eliminate installment payments for all future auctions, including the Paging auctions. To balance the impact of this action, however, the *MO&O* increases the level of bidding credits available to small and very small businesses respectively from ten percent to twenty-five percent, and from fifteen percent to thirty-five percent. These amounts are based on the schedule of bidding credits adopted in the *Part 1 Third R&O and Second Further Notice*. Finally, the *MO&O* further conforms the paging competitive bidding rules with the Commission's general competitive bidding rules by allowing winning bidders to make their final payments within ten business days of the deadline, provided they also pay a late fee equal to five percent of the amount due. These actions will allow participants in the Paging auctions to enjoy the same advantages as bidders in other recent spectrum auctions.

*Third Report and Order*

63. In the *Second R&O*, the Commission adopted rules governing geographic area licensing of paging systems for exclusive channels in the 35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz, 929–930 MHz, and 931–932 MHz bands allocated for paging. The Commission adopted competitive bidding rules for granting mutually exclusive applications, adopted partitioning for non-nationwide geographic area licenses, imposed coverage requirements on non-nationwide geographic area licenses, and awarded nationwide geographic area licenses on the 929 MHz and 931 MHz bands. The Commission concurrently adopted a *Further Notice* seeking comment on whether it should adopt coverage requirements for nationwide geographic area licenses, various rules related to partitioning and disaggregation by paging licensees, and whether the Commission should revise the application procedures for shared channels.

*Coverage Requirements for Nationwide Geographic Area Licenses*

64. The Commission elects to defer a decision on whether to impose coverage requirements on nationwide geographic area licensees. As discussed in the *MO&O*, the Commission designated three channels in the 931 MHz band for exclusive nationwide use. In 1993, to encourage the development of wide-area paging systems, the Commission also implemented exclusive licensing of qualified local, regional, and nationwide paging systems on thirty-five of the forty 929 MHz channels licensed, at that time, under Part 90 of its rules. In the *Second R&O*, the Commission noted that its existing Part 22 and Part 90 requirements for construction of nationwide systems were not consistent, and both sets of requirements differ from the construction and coverage requirements applicable to nationwide narrowband PCS licenses. As a result, the Commission sought comment in the *Further Notice* on whether to impose minimum coverage requirements for nationwide paging licenses, and on what the appropriate coverage area should be. The Commission also sought comment on whether it should auction the entire nationwide license, or just a portion of the license, if the licensee fails to meet the coverage requirements.

65. The Commission rejects the constitutional and statutory arguments commenters make in opposition to coverage requirements. The Commission also disagrees with several commenters that argue that nationwide licensees' compliance with existing rules created a reasonable expectation that they would enjoy exclusivity on a nationwide basis, and imposing additional coverage requirements would improperly subject those licensees to retroactive rulemaking. Certain commenters also argue against nationwide coverage requirements on the basis that nationwide licensees are not similarly situated with either MEA/EA paging licensees or narrowband PCS licensees. Commenters that oppose coverage requirements also oppose any cancellation of nationwide licenses based on a failure to meet such requirements.

66. While petitioners have not persuaded the Commission that there are any legal impediments to the adoption of coverage requirements for nationwide geographic area paging licensees, the Commission concludes that it is best to defer any decision on this issue until the Commission resolves similar issues raised in the *Narrowband PCS Further Notice* (62 FR 27507, May 20, 1997). Doing so will allow the

Commission to more fully consider the question of whether regulatory parity with respect to coverage requirements is appropriate not only for nationwide and MEA/EA paging licensees, but also for nationwide paging and narrowband PCS carriers. In the *Narrowband PCS Further Notice*, the Commission sought comment on whether to conform its narrowband PCS coverage rules to its paging rules by allowing narrowband PCS licensees to meet their performance requirements through a demonstration of substantial service as an alternative to meeting the coverage requirements provided under the existing rules. The Commission further sought comment on whether to conform MTA-based narrowband PCS coverage requirements to the same requirements adopted for MTA and EA paging licenses in this proceeding. As a result, commenters in the *Narrowband PCS* proceeding have raised the issue of whether narrowband PCS, nationwide paging, and MTA/EA licensees provide substantially similar services. The Commission believes that it needs to consider this issue more carefully and to make a decision on nationwide paging coverage requirements in conjunction with a decision on narrowband PCS. Accordingly, the Commission defers resolution of whether to impose coverage requirements on nationwide paging geographic area licensees to the *Narrowband PCS Further Notice* proceeding. If it ultimately determines that coverage requirements are appropriate for nationwide paging geographic area licensees, the Commission will decide, at that time, what the consequence of failing to meet those requirements should be.

*Partitioning and Disaggregation*

67. In the *Second R&O*, the Commission adopted partitioning rules that permit all MEA and EA paging licensees to partition to any party eligible to be a paging licensee. In the *Further Notice*, the Commission sought comment as to whether nationwide geographic area licensees should also be permitted to partition their license areas. In the *Third R&O*, the Commission adopts rules that permit partitioning of nationwide geographic area licenses to any eligible party. The Commission agrees with the commenters that geographic partitioning would be an effective means of providing nationwide geographic area licensees with the flexibility to tailor their service offerings to meet market demands and facilitating greater participation in the paging industry by small businesses and rural telephone companies. The Commission found that the overall goal of partitioning—operational flexibility—outweighs any possible disadvantage of allowing nationwide licensees to receive a financial windfall though partitioning. Finally, consistent with the partitioning rules established for MEA and EA licensees, the Commission will permit partitioning of nationwide geographic area paging licenses based on any boundaries defined by the parties.

68. Under the rules adopted in the *Third R&O*, all MEA and EA licensees may partition at any time after the grant of their geographic area licenses, and all nationwide geographic area licensees may partition upon the effective date of this Order. The Commission established two options for parties to a partitioning agreement involving an MEA or EA license to satisfy coverage requirements. Under the first option, both the partitioner and partitionee are individually responsible for meeting the coverage requirements for their respective areas. Therefore, partitionees of MEA or EA licenses must provide coverage to one-third of the population in their partitioned area within three years of the initial grant of the license, and to two-thirds of the population in their partitioned area within five years of the initial grant of the license; or, licensees may provide, in the alternative, substantial service within five years of the grant of the MEA or EA license. The Commission states that failure by either party to meet its coverage requirements will result in the automatic cancellation of its license without further Commission action.

69. Under the second option, the original licensee may certify at the time of the partitioning transaction that it has already met, or will meet, the coverage requirements for the entire geographic area. The Commission states that only the partitioner's license will be cancelled if it fails to meet the coverage requirements for the entire geographic area. The Commission also states that the partitionee will not be subject to coverage requirements except for those necessary to obtain renewal. Finally, the Commission states that partitioners whose licenses are cancelled will retain those sites authorized, constructed, and operating at the time the geographic area license was granted.

70. The Commission rejects a proposal to eliminate the ''substantial service'' option because the Commission explains that this option will encourage licensees to build out their systems while safeguarding the financial investments made by those licensees who are financially unable to meet specific population coverage requirements. Thus, the Commission states that the substantial service alternative will promote service growth while helping licensees to remain financially viable and retain their licenses.

71. The Commission decided not to impose coverage requirements at this time on partitionees of a nationwide geographic area license, and will defer reaching a decision on this issue until it resolves the question of coverage requirements for nationwide licensees generally. The Commission believes that it would be inappropriate to subject entities that obtain partitioned licenses from nationwide geographic area licensees to coverage requirements when no such requirements have been established for partitioners. However, the Commission states that partitionees of nationwide licenses may be subject to coverage requirements in the future.

72. The Commission determined that partitionees should be authorized to hold their licenses for the remainder of the partitioner's original ten-year term. The Commission rejected a proposal that a partitionee receive a one-year term when any partitioning transaction occurs within one year of the renewal date of the original license because, in this instance, the partitioner would be conferring greater rights than it was awarded under the terms of its license grant. The Commission also found that a partitionee should be granted the same renewal expectancy as the partitioner; a Commercial Mobile Radio Services (CMRS) licensee will be entitled to a renewal expectancy if it demonstrates that it has provided substantial service during the license term and has complied with the Commission's rules and policies and the Communications Act.

73. Although several commenters oppose establishing disaggregation rules at this time, the Commission will permit MEA, EA, and nationwide geographic area licensees to engage in disaggregation. The Commission also will not impose a minimum limit on spectrum disaggregation in the paging service. The Commission concludes that the market should determine if paging spectrum is technically and economically feasible to disaggregate. In addition, the Commission notes that allowing disaggregation will encourage the further development of paging equipment capable of operating on less than 25 kHz. The Commission further concludes that allowing spectrum disaggregation at this time could potentially expedite the introduction of service to underserved areas, provide increased flexibility to licensees, and encourage participation by small businesses in the provision of services.

The Commission also finds that commenters have not provided sufficient evidence that interference to adjacent or co-channel licensees is a substantial risk that should preclude the Commission from allowing disaggregation of paging spectrum. The Commission finds that its existing technical rules provide parties with sufficient protection from interference. The Commission also believes that all qualified parties should be eligible to disaggregate any geographic area license. The Commission states that open eligibility to disaggregate spectrum promotes prompt service to the public by facilitating the assignment of spectrum to the entity that values it most.

74. The Commission establishes two options for parties to a disaggregation agreement involving an MEA or EA license to satisfy coverage requirements. Under the first option, which is the option proposed in the *Further Notice,* the parties may agree that either the disaggregator or the disaggregatee will be responsible for meeting the coverage requirements for the geographic service area. Under this option, the disaggregating party certifying responsibility for the coverage requirements of an MEA or EA license will be required to provide coverage to one-third of the population of the licensed geographic area within three years of license grant, and to two-thirds of the population within five years of license grant; or, in the alternative, provide substantial service to the geographic area within five years of license grant. Under the second option, the disaggregator and disaggregatee may certify that they will share the responsibility for meeting the coverage requirements for the entire geographic area. Under this option, both parties jointly will be required to provide coverage to one-third of the population of the licensed geographic area within three years of license grant, and to two-thirds of the population within five years of license grant; or, in the alternative, provide substantial service to the geographic area within five years of license grant.

75. The Commission recognizes that if the parties to a disaggregation agreement select the first option, situations may arise where a party minimally builds its system but will retain its license because the other party has met the coverage requirements for the geographic area. Nonetheless, the Commission believes that it is appropriate for one party to assume full responsibility for construction within the shared service area, because service would be offered to the required percentage of the population on a common frequency, even if not on the entire spectrum.

76. Under the first option, if the certifying party fails to meet the coverage requirements for the entire geographic area, that party's license will be subject to cancellation, but the non-certifying party's license will not be affected. However, if the parties to a disaggregation agreement select the second option and jointly fail to satisfy the coverage requirements for the entire geographic area, both parties' licenses will be subject to cancellation. The Commission notes that MEA or EA licensees whose licenses are cancelled will retain those sites authorized, constructed, and operating at the time the geographic area license was granted.

77. As the Commission did with respect to the issue of coverage requirements for partitionees of nationwide geographic area licenses, it will defer any decision on such requirements for disaggregatees of nationwide geographic area licenses until the Commission decides the question of whether to impose coverage requirements on nationwide geographic area licensees generally. Thus, the Commission notes that disaggregatees of nationwide licenses may be subject to coverage requirements in the future.

78. Disaggregatees will be authorized to hold licenses for the remainder of the disaggregator's original ten-year term. As the Commission concluded with respect to partitioners, the disaggregator should not be entitled to confer greater rights than it was awarded under the initial license grant. The Commission also concludes that a disaggregatee should be afforded the same renewal expectancy as the disaggregator. The Commission also concludes that carriers may engage in combinations of partitioning and disaggregation. As in other wireless services, the Commission further concludes that in the event there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail.

*Unjust Enrichment Provisions Regarding Partitioning and Disaggregation*

79. The Commission concludes that unjust enrichment provisions adopted in the *Part 1 Third R&O and Second Further Notice* will apply to any MEA or EA paging licensee that receives a bidding credit and later elects to partition or disaggregate its license. Specifically, the rules adopted in the *Part 1 Third R&O and Second Further Notice* indicate that if a licensee seeks to partition any portion of its geographic area, the amount of the unjust enrichment payment will be calculated based on the ratio of the population in the partitioned area to the overall population of the license area. In the event of disaggregation, the amount of the unjust enrichment payment will be based upon the ratio of the amount of spectrum disaggregated to the amount of spectrum held by the disaggregating licensee. When combined partitioning and disaggregation is proposed, the Commission will, consistent with its rules for other services, use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations. The Commission does not address how partitioning and disaggregation will affect installment payments because, in the *MO&O,* the Commission eliminated the use of installment payments for auctioned spectrum in the paging service.

*Application Fraud*

80. To deter fraud by application mills on the shared channels, the Commission will add language to the long-form application regarding construction and coverage requirements, and will disseminate information regarding its licensing rules and the potential for fraud through public notices and the Commission's website. The Commission is currently in the process of modifying FCC Form 601 to include language near the signature block that warns applicants that the failure of the licensee to construct may result in cancellation of the license. The Commission believes this language will be helpful to applicants in all services and may be of some use in deterring fraud. The Commission also applauds the measures taken by the Personal Communications Industry Association (PCIA) (frequency coordinator) to make applicants aware of the potential for fraud by applications mills.

81. Finally, once the Commission has completed the modification of FCC Form 601 to include warning language as described above, the Wireless Telecommunications Bureau will release a public notice that removes the interim licensing rules for both the lower band shared PCP channels and the five shared 929 MHz PCP channels. Presently, the interim paging rules for the shared PCP paging channels permit only incumbents to file for new sites at any location. The Commission allows non-incumbents to file applications, but only for private, internal-use systems. Once the interim licensing rules are removed, non-incumbents will be permitted to file applications on the shared PCP paging channels for new sites at any location. The Commission further notes that while frequency

coordination is no longer required on the exclusive paging channels, all applications for new sites filed on the shared PCP paging channels will continue to require frequency coordination prior to the filing of these applications with the Commission. Accordingly, the Commission amends section 90.175(f) to clarify that frequency coordination is only needed for shared frequencies in the 929–930 MHz band.

**Supplemental Final Regulatory Flexibility Analysis**

*Memorandum Opinion and Order on Reconsideration*

82. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix A of the *Notice* in this proceeding, and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix C of the subsequent *Second R&O*. As described below, two petitions for reconsideration of the *Second R&O* raise an issue concerning the previous FRFA. The *MO&O* addresses those reconsideration petitions, among others. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) also addresses those petitions and conforms to the RFA.

**I. Need for and Purpose of this Action**

83. In the *Second R&O,* the Commission adopted rules for geographic area licensing of Common Carrier Paging and exclusive 929 MHz Private Carrier Paging and procedures for auctioning mutually exclusive applications for these licenses. The actions taken in this *MO&O* are in response to petitions for reconsideration or clarification of the *Second R&O*. Throughout this proceeding, the Commission has sought to promote Congress's goal of regulatory parity for all CMRS, and to encourage the participation of a wide variety of applicants, including small businesses, in the paging industry. In addition, the Commission has sought to establish rules for the paging services that will streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

**II. Summary of Significant Issues Raised in Response to the Final Regulatory Flexibility Analysis**

84. Priority Communications, Inc.'s (Priority) petition for reconsideration raises various issues, one of which is in direct response to the FRFA contained in the *Second R&O*. Priority states that the FRFA did not address alternatives to competitive bidding, *e.g.*, granting geographic area licenses, without competitive bidding, to incumbents of highly encumbered areas. The Commission disagrees with the contention that the Commission failed to consider alternatives to competitive bidding. In the *Second R&O,* the Commission considered and rejected proposals to retain site-by-site licensing for the paging industry. In rejecting the proposals, the Commission found that geographic area licensing provides flexibility for licensees and ease of administration for the Commission, facilitates further build-out of wide-area systems, and enables paging operators to meet the needs of their customers more easily. Moreover, the Commission concluded that geographic area licensing will further the goal of providing carriers that offer substantially similar services more flexibility to compete, and will enhance regulatory symmetry between paging and other service in the CMRS marketplace.

85. The Commission further concluded that it would grant mutually exclusive applications for geographic area licenses through competitive bidding even in areas extensively built out by an incumbent licensee. The Commission specifically considered and rejected proposals to award geographic area licenses, without competitive bidding, to any incumbent providing coverage to 70 percent or more of the population or to two-thirds of the population in the license area. Similarly, the Commission rejected a proposal not to hold auctions where an incumbent licensee is serving at least 50 percent of the geographic area or 50 percent of the population in that market. The Commission also considered and rejected proposals to award a dispositive preference in the auction to a licensee that provides service to one-third or greater of the population, or one-half or greater of the geographic area, or to restrict competitive bidding to incumbent licensees. In rejecting these proposals, the Commission concluded that market forces, not regulation, should determine participation in competitive bidding for geographic area licenses.

86. In its petition for reconsideration, the National Telephone Cooperative Association (NTCA) contends that the FRFA failed to address alternatives that parties suggested in response to the *Notice* to minimize the impact of the rule changes adopted in the *Second R&O* on small BETRS operators. NTCA specifically contends that the Commission did not address the investment BETRS operators would be unable to recover once they were required to terminate operations upon notification by a geographic area licensee of interference. NTCA further contends that the Commission did not address the adverse impact on small BETRS operators resulting from auctions that ''pit them against paging operations that have no interest in the site licenses needed for BETRS operations.'' Initially, the Commission notes that NTCA did not raise these issues in response to the *Notice.* NTCA has raised these issues only in response to the *Second R&O*. The Commission also disagrees with the contention that the Commission failed to consider alternatives that would minimize the impact on small BETRS operators. The Commission specifically found it unnecessary to adopt the plan that Puerto Rico Telephone proposed, under which (1) BETRS operators would be given preferential treatment over paging operators for mutually exclusive applications (on a site-by-site basis), and (2) the Commission would designate a frequency block for reallocated frequencies solely for BETRS use. Based on the potentially competitive environment in local exchange services, the Commission saw no basis for distinguishing BETRS from other commercial radio services that are auctionable under Section 309(j) of the Communications Act. Rather, the Commission determined that BETRS licensees should be required to participate in competitive bidding for paging licenses. In considering proposals to continue licensing BETRS facilities on a site-specific basis, the Commission decided that BETRS licensees could obtain site licenses on a secondary basis and enter into partitioning agreements with paging geographic area licensees. With respect to the issue of stranded costs, the *Second R&O* does not limit BETRS operators' options to that of obtaining licenses on a secondary basis. As already explained, they may also obtain co-primary licenses through partitioning. Moreover, the Commission has adopted specific procedures in the *MO&O* to limit the extent to which BETRS providers will be required to discontinue operations at secondary sites.

**III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

87. The rules adopted in the *MO&O* will affect all small businesses that hold or seek to acquire commercial paging

licenses. As noted, a FRFA was incorporated into the *Second R&O*. In that analysis, the Commission described the small businesses that might be significantly affected at that time by the rules adopted in the *Second R&O*. Those entities include existing commercial paging operators and new entrants into the paging market. To ensure the more meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Second R&O*: (1) an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. Because the Small Business Administration (SBA) had not yet approved this definition, the Commission relied in the FRFA on the SBA's definition applicable at that time to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons. Given the fact that nearly all radiotelephone companies had fewer than 1,000 employees, and that no reasonable estimate of the number of prospective paging licensees could be made, the Commission assumed, for purposes of the evaluations and conclusions in the FRFA, that all the auctioned 16,630 geographic area licenses would be awarded to small entities. In December 1998, the SBA approved the two-tiered size standards for paging services set forth in the *Second R&O*.

88. In the FRFA, the Commission anticipated that approximately 16,630 non-nationwide geographic area licenses will be auctioned. No party submitting or commenting on the petitions for reconsideration giving rise to this *MO&O* commented on the potential number of small businesses that might participate in the commercial paging auction and no reasonable estimate can be made. While the Commission is unable to predict accurately how many paging licensees meeting one of the above definitions will choose to participate in or be successful at auction, the *Third CMRS Competition Report* estimated that, as of January 1998, there were more than 600 paging companies in the United States. The *Third CMRS Competition Report* also indicates that at least ten of the top twelve publicly held paging companies had average gross revenues in excess of $15 million for the three years preceding 1998. Data obtained from publicly available company documents and SEC filings indicate that this is also true for the three years preceding 1999. While the Commission expects these ten companies to participate in the paging auction, the Commission also expects, for the purposes of the evaluations and conclusions in this Supplemental FRFA, that a number of geographic area paging licenses will be awarded to small businesses.

**IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

89. With one exception, this *MO&O* does not impose additional recordkeeping or other compliance requirements beyond the requirements contained in the *Second R&O*. If an MEA or EA licensee fails to meet its coverage requirements, that licensee will have the burden of showing which of its facilities were authorized, constructed, and operating at the time the geographic area license was granted. MEA and EA licensees will need to retain necessary records of any such facilities until they meet the geographic area license coverage requirements.

**V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

90. The previous FRFA stated that the rules adopted for geographic area licensing will affect the Common Carrier Paging and exclusive 929 MHz Private Carrier Paging services. This Supplemental FRFA concludes that a number of geographic area commercial paging licenses may be awarded to small businesses. As described below, the Commission's actions taken to implement the transition to geographic area licensing and competitive bidding represent a balancing of various factors.

91. Certain petitioners suggested replacing Rand McNally MTAs with Major Economic Areas (MEAs) for the 929 MHz and 931 MHz bands. Considering these requests, the Commission has decided to adopt MEAs instead of MTAs. Because MEAs are composed of EAs, licensees with paging systems on both the lower channels and the 929 and 931 MHz bands, including small businesses, will be able to operate their systems more efficiently. The MEA designation will also enhance competition because paging systems on the lower channels, including small business paging systems, will be able to combine their EAs to form MEAs. In addition, the Commission considered and rejected a recommendation to use Basic Trading Areas (BTAs) for geographic area licensing on the lower paging bands. In rejecting the BTA designation, the Commission concluded that EAs, which the majority of commenters supported, best reflect the geographic area that the paging licensees on the lower channels seek to serve. The Commission also found that the use of EAs will not prevent paging operators of small systems from participating in the auction. The Commission noted that bidding credits will allow small businesses to compete against larger bidders. In addition, the Commission's partitioning rules will allow entities, including small businesses, to acquire licenses for areas smaller than EAs.

92. A number of petitioners have requested that the Commission reconsider its decision to grant mutually exclusive applications for geographic area licenses through competitive bidding even in areas extensively built out by an incumbent licensee. Again balancing various interests, the Commission has affirmed the use of competitive bidding to grant mutually exclusive paging applications. The Commission has rejected the petitioners' request because open eligibility promotes prompt service to the public by allocating spectrum to the entity that values it most. The Commission believes that the market should decide whether an economically viable paging system can be established in the unserved area of a geographic market. The Commission's decision on this issue will provide adjacent geographic area licensees and new entrants, including small businesses, with the opportunity to establish a viable system that serves the public as well as an incumbent. Moreover, the Commission sees no reason to give licensees that serve a substantial portion of a geographic area an advantage over other entities, including small businesses, that may also value the spectrum in that particular market.

93. Several petitioners request that the Commission clarify section 22.723 of its rules, which requires Rural Radiotelephone Service (RRS) licensees, including BETRS operators, to discontinue operations once the paging geographic area licensee notifies the RRS licensee that its co-channel secondary facilities may cause interference to the geographic area licensee's existing or planned facilities. The petitioners argue that the Commission's rules will allow geographic area licensees to terminate BETRS upon any allegation of harmful interference. In response to this concern, the Commission is adopting new procedures in the *MO&O* that geographic area licensees must follow in notifying a BETRS operator that its facility causes or will cause interference

with the geographic area licensee's service contour in violation of the Commission's interference rules. The new procedures limit the termination of operating BETRS co-channel secondary facilities until harmful interference would occur.

94. In the *Second R&O*, the Commission defined a system-wide license by the aggregate of the interference contours around each of the incumbent's contiguous sites operating on the same channel. The Commission also concluded that incumbent licensees may add or modify sites within their existing interference contours without filing site-specific applications, but may not expand their existing interference contours without the consent of the geographic area licensee. Several petitioners expressed confusion over the Commission's definition of ''contiguous sites'' for the purpose of determining an incumbent's ''aggregate interference contour.'' In addition, one petitioner asked that the Commission define ''composite interference contours'' to include all authorized transmitters, including valid construction permits, regardless of the grant date. Another petitioner requested that the Commission include remote transmitters within system-wide licenses, or in the alternative maintain separate licenses for any stand-alone or remote transmitter. Recognizing these concerns and balancing various interests as explained more fully in the *MO&O*, the Commission has maximized the definition of composite interference contour to reduce unnecessary regulatory burdens on licensees, reduce administrative costs on the industry, and thereby benefit consumers. In this regard, the Commission has clarified that contiguous sites, for the purpose of defining an incumbent's composite interference contour, are defined by overlapping interference contours, not service contours. The Commission further states that all authorized site-specific paging licenses and construction permits are included in a composite interference contour. Finally, the Commission has amended section 22.507 to allow system-wide licensees to maintain separate licenses for any stand-alone or remote transmitters, or to include remote and stand-alone sites within the system-wide license.

95. On a related matter, petitioners asked the Commission to allow reversion to the geographic area licensee of spectrum recovered from an incumbent in all instances except where an incumbent licensee discontinues operations in a location wholly encompassed by the incumbent's composite interference contour. In balancing the various relevant considerations, the Commission concluded that no demonstration had been made showing that the geographic area licensee would be unable to serve areas wholly surrounded by an incumbent. Moreover, the Commission does not believe the public interest would be served by withholding such areas from the geographic area licensee in hope that the incumbent will one day resume service to those areas. The Commission further noted that if incumbents, including small businesses, wish to serve reverted areas, they may seek to enter into partitioning agreements with the geographic area licensees. Similarly, a number of petitioners contended that system-wide licenses should include areas where an incumbent licensees' interference contours do not overlap, but where no other licensee could place a transmitter because of interference rules. The Commission considered and rejected this proposal, finding that inclusion of areas outside of an incumbent's interference contours would be contrary to the objective of prohibiting encroachment on the geographic area licensee's operations. Incumbents seeking to expand their contours, including small businesses, may participate in the auction or seek partitioning agreements with geographic area licensees.

96. In the *Second R&O*, the Commission elected not to impose a limit or ''cap'' on the number of licensees that may operate on shared paging channels. Two petitioners asked the Commission to reconsider that determination. Again, balancing the options, the Commission reaffirmed its prior decision. A ''cap'' would not promote efficient use of spectrum because the capacity limits on paging channels are based primarily on use and not the number of licensees. The Commission's goal is to increase the use of these shared channels, not to unduly restrict access to them. This decision will provide new entrants, including small businesses, with another opportunity to acquire paging spectrum.

97. In the *Second R&O*, the Commission also eliminated the Part 90 height and power limitations on 929 MHz stations and increased the maximum permitted effective radiated power (ERP) to 3,500 watts. Some petitioners have asked for clarification as to whether incumbent 929 MHz licensees must file a modification application to increase the current ERP for their base stations up to the maximum permissible. In response to this request, the Commission has clarified that incumbent 929 MHz licensees need not file a modification application to increase the ERP for base stations at any location, including exterior base stations, as long as they do not expand their existing composite interference contour. This clarification conforms the Commission's technical requirements for height and power with the general rule that incumbents need not file applications for internal system changes. Adopting this rule will minimize burdens on all entities, including small businesses, that increase the ERP of their base stations.

98. One petitioner advocated that the Commission make its coverage requirements more stringent by requiring geographic area licensees to provide coverage to one-third of the market area within one year, and two-thirds within three years. The Commission considered and rejected this proposal because it believes that the coverage requirements adequately promote prompt service to the public without being unduly burdensome on licensees, including small businesses, that need a reasonable amount of time to complete construction. Moreover, the Commission believes that overly stringent coverage requirements unfairly favor incumbents by erecting formidable barriers to new entrants, including small businesses. Several petitioners also requested that the Commission eliminate the ''substantial service'' option for meeting MEA or EA coverage requirements. The Commission rejected this request because the Commission believes that the ''substantial service'' option will facilitate build-out in rural areas, encourage licensees to provide new services, and enable new entrants to satisfy the Commission's coverage requirements in geographic areas where incumbents are already substantially built out. The Commission believes that rural service providers as well as new entrants are likely to include small businesses, and thus retaining the ''substantial service'' option should benefit small businesses. While the Commission will presume that the ''substantial service'' option is satisfied if an MEA or EA licensee provides coverage to two-thirds of the population in unserved areas within five years of license grant, the Commission declines to adopt specific coverage requirements as the sole means of defining ''substantial service.'' Giving licensees flexibility to satisfy the ''substantial service'' option in different ways should benefit small businesses.

99. In the *Part 1 Third R&O and Further Notice*, the Commission suspended the availability of installment payment financing for small businesses participating in future

auctions. Consistent with this decision, the *MO&O* rescinds installment payment financing for the paging auctions. To balance the impact of this decision on small businesses, however, the Commission is increasing the bidding credits available to qualifying entities. The revised rule conforms to a schedule of bidding credits adopted in the *Part 1 Third R&O and Second Further Notice*. Under this rule, an applicant will qualify for a twenty-five percent (25%) bidding credit if the average gross revenues for the preceding three years of the applicant, its affiliates and controlling interests do not exceed $15 million. Similarly, an applicant will qualify for a thirty-five percent (35%) bidding credit if the average gross revenues for the preceding three years of the applicant, its affiliates and controlling interests do not exceed $3 million. As the Commission stated in the *Part 1 Third R&O and Second Further Notice*, the Commission believes that these increased bidding credits will provide small businesses with adequate opportunities to participate in the paging auctions. Moreover, the Commission is further conforming the paging competitive bidding rules to the Part 1 rules by allowing winning bidders to make their final payments within ten (10) business days after the payment deadline, provided that they also pay a late fee of five (5) percent of the amount due. As the Commission stated in the *Part 1 Third R&O and Second Further Notice*, it believes that this additional ten-day period provides winning bidders with adequate time to adjust for any last-minute problems in arranging financing and making final payment.

**VI. Report to Congress**

100. The Commission will send a copy of the *MO&O*, including this Supplemental FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *MO&O*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Association. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

**Final Regulatory Flexibility Analysis**

*Third Report and Order*

101. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix D of the *Second R&O and Further Notice* in this proceeding. The Commission sought written public comment on the proposals in that *Further Notice*, including comment on the IRFA. As described below, no commenter raised an issue concerning the IRFA. The Commission's Final Regulatory Flexibility Analysis in this *Third R&O* conforms to the RFA.

**I. Need for and Purpose of this Action**

102. In the *Second R&O*, the Commission adopted coverage requirements for and decided to allow partitioning by non-nationwide geographic area licensees, including small businesses. In the *Further Notice*, the Commission sought comment on whether to adopt coverage requirements for nationwide geographic area licenses, whether to allow partitioning by nationwide geographic area licensees, whether to permit disaggregation of paging licenses, and whether to revise the application procedures for shared channels. In the *Third R&O*, the Commission concludes that it is best to defer any decision on coverage requirements for nationwide geographic area licenses until similar issues raised in the *Narrowband PCS Further Notice of Proposed Rulemaking* are resolved. The Commission further modifies the paging rules to permit partitioning by all nationwide geographic area licensees and to allow disaggregation by all MEA, EA, and nationwide geographic area licensees. The *Third R&O* also adopts rules governing the coverage requirements for parties to partitioning or disaggregation agreements involving MEA or EA licenses, and the license term of partitioned or disaggregated MEA, EA, and nationwide geographic area licenses. Further, the *Third R&O* permits MEA, EA, and nationwide geographic area licensees to combine partitioning and disaggregation. These partitioning and disaggregation rules will allow entities in addition to the initial geographic area licensees, including small businesses, to participate in providing paging services. Indeed, partitioning and disaggregation should be well suited to small businesses that do not wish to acquire an entire geographic area license. Finally, the *Third R&O* establishes additional mechanisms to inform consumers of the rules governing paging licenses and the danger of fraudulent schemes perpetrated by application mills. These mechanisms should help to reduce application fraud and protect consumers.

**II. Summary of Issues Raised in Response to the Initial Regulatory Flexibility Analysis**

103. None of the commenters submitted comments specifically in response to the IRFA. The Commission has, however, taken small business concerns into account in the *Third R&O*, as discussed in Sections V and VI of the FRFA.

**III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

104. The rules adopted in the *Third R&O* will affect small businesses that hold or seek to acquire commercial paging licenses. These entities include small business nationwide geographic area licensees that decide to partition or disaggregate, small businesses that obtain MEA or EA licenses through auction and subsequently decide to partition or disaggregate, and small businesses that may acquire partitioned and/or disaggregated MEA, EA, or nationwide geographic area licenses. To ensure the more meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Second R&O*: (1) An entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. In December 1998, the Small Business Association approved the two-tiered size standards for paging services set forth in the *Second R&O*.

*MEA and EA Licenses*

105. In the Final Regulatory Flexibility Analysis incorporated in Appendix C of the *Second R&O*, the Commission anticipated that approximately 16,630 non-nationwide geographic area licenses will be auctioned. No parties, however, commented in response to the *Further Notice* on the number of small businesses that might elect to use the proposed partitioning and disaggregation rules and no reasonable estimate can be made. While the Commission is unable to predict accurately how many paging licensees meeting one of the above definitions will participate in or be successful at auction, the *Third CMRS Competition Report* estimated that, as of January 1998, there were more than 600 paging companies in the United States. The *Third CMRS Competition Report* also

indicates that at least ten of the top twelve publicly held paging companies had average gross revenues in excess of $15 million for the three years preceding 1998. The Commission expects that these ten companies will participate in the paging auction and may employ the partitioning or disaggregation rules. The Commission also expects, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that a number of paging licenses will be awarded to small businesses, and at least some of those small business licensees will likely also take advantage of the partitioning and disaggregation rules. The Commission is unable to predict accurately the number of small businesses that may choose to acquire partitioned or disaggregated MEA or EA licenses. The Commission expects, however, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that entities meeting one of the above definitions will use partitioning and disaggregation as a means to obtain a paging license from an MEA or EA licensee at a cost lower than the cost of the license for the entire MEA or EA.

*Nationwide Geographic Area Licenses*

106. The partitioning and disaggregation rules pertaining to nationwide geographic area licenses adopted in the *Third R&O* will affect the 26 licensees holding nationwide geographic area licenses to the extent they choose to partition or disaggregate, as well as any entity that enters into a partitioning or disaggregation agreement with a nationwide geographic area licensee. No parties, however, commented on the number of small business nationwide geographic area licensees that might elect to partition or disaggregate their licenses and no reasonable estimate can be made. While the Commission is unable to state accurately how many nationwide geographic area licensees meet one of the above small business definitions, the *Third CMRS Competition Report* indicates that at least eight of the top twelve publicly held paging companies hold nationwide geographic area licenses and had average gross revenues in excess of $15 million for the three years preceding 1998. The Commission expects at least some of these eight companies to employ the partitioning or disaggregation rules, and also expects, for the purposes of evaluations and conclusions in this Final Regulatory Flexibility Analysis, that nationwide geographic area licensees meeting one of the above definitions may use the partitioning or disaggregation rules. No parties commented on the number of small businesses that may choose to acquire partitioned or disaggregated licenses from nationwide geographic area licensees and, again, no reasonable estimate can be made. While the Commission is unable to predict accurately the number of small businesses that may choose to acquire partitioned or disaggregated licenses from nationwide geographic area licensees, the Commission expects, for purposes of the evaluations and conclusions in the Final Regulatory Flexibility Analysis, that entities meeting one of the above small business definitions will use partitioning and disaggregation as a means to obtain a paging license from a nationwide geographic area licensee.

*Fraud on Shared Paging Channels*

107. The additional mechanisms established to inform consumers of the paging rules and the potential for paging application fraud on the shared channels will not affect small businesses seeking to acquire a license on a shared paging channel, except that small businesses interested in investing in shared channel licenses will be more informed of the potential for fraud.

**IV. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

108. The rules adopted in the *Third R&O* impose reporting and recordkeeping requirements on small businesses, as well as others, seeking to obtain or transfer licenses through partitioning and disaggregation. The information requirements would be used to determine whether the proposed partitionee or disaggregatee is an entity qualified to obtain a partitioned license or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license. The information can be submitted on FCC Form 490 or Form 603 for Part 22 paging services until July 1, 1999. Part 22 applicants must file electronically in the Universal Licensing System (ULS) on Form 603 on or after July 1, 1999. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that seventy-five percent of the respondents, which may include small businesses, will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining twenty-five percent of respondents, which may include small businesses, are estimated to employ in-house staff to provide the information. Applicants filing electronically, including small businesses, will not incur any per minute on-line charge. The Commission estimates that applicants contracting out the information would use an attorney or engineer (average of $200 per hour) to prepare the information.

**V. Steps Taken to Minimize Burdens on Small Entities**

109. The rules adopted in the *Third R&O* are designed to implement Congress' goal of giving small businesses, as well as other entities, the opportunity to participate in the provision of spectrum-based services. The rules are also consistent with the Communications Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications services.

*Partitioning and Disaggregation*

110. Partitioning of nationwide geographic area licenses and disaggregation of MEA, EA, and nationwide geographic area licenses will facilitate market entry by parties that may lack the financial resources to participate in auctions, including small businesses. Partitioning and disaggregation are expected to enable small businesses to obtain licenses for areas smaller than MEA, EA, and nationwide areas, or smaller amounts of spectrum, at costs they will be able to afford. Allowing for the partitioning and disaggregation of MEA and EA licenses prior to fulfillment of construction requirements by the initial licensees will facilitate the immediate entry of new competitors, including small businesses, into the paging market. Finally, the Commission's decision to allow parties to partitioning or disaggregation agreements of MEA and EA licenses to choose between two options to meet the coverage requirements will provide small businesses with more flexibility in managing their resources.

*Fraud on Shared Paging Channels*

111. As stated above, the additional mechanisms established to deter paging application fraud on the shared channels are not expected to have an impact on any small business or other entity applying for a paging license on a shared channel. The changes are intended to protect consumers from application fraud. Small businesses interested in investing in shared channel licenses, however, will be more informed of the potential for fraud.

**VI. Significant Alternatives Considered**

112. The Commission considered and rejected the following alternative proposals concerning partitioning, disaggregation, coverage requirements for parties to partitioning and disaggregation agreements, and license terms.

*Partitioning*

113. The Commission declined to adopt Paging Network, Inc.'s (PageNet) proposal that partitioning should be allowed only after the initial geographic area licensee has met the build-out requirements for the entire geographic area, and that partitioning before a geographic area licensee meets its construction requirements should be allowed only on a waiver basis where good cause is shown. PageNet's concern was that the ability to partition may encourage bidders in the auction to engage in unlawful contact with other bidders, particularly if the market is highly contested, and that geographic area licensees may seek to avoid the cancellation of their licenses by partitioning to a ''straw man'' when they fail to meet the Commission's coverage requirements. The Commission found, however, that there was no evidence that ''sham'' arrangements between geographic area licensees and other parties to avoid construction requirements are likely to occur in the paging service or have already taken place in other services. The Commission also determined that any unlawful activity between bidders concerning partitioning falls within its anti-collusion rules. Finally, allowing parties to partition spectrum immediately after license grant will facilitate the entry of new competitors to the paging market, many of whom will be small businesses seeking to acquire a smaller service area or smaller amount of paging spectrum at a reduced cost.

*Disaggregation*

114. A number of petitioners opposed the Commission's proposal to allow MEA, EA, and nationwide geographic area licensees to disaggregate, contending that disaggregation of paging spectrum is neither technically nor practically feasible. Small Business in Telecommunications (SBT) proposes that disaggregation should be limited only to small businesses during the original licensee's construction period. In considering and rejecting the petitioners' arguments, the Commission concluded that the market should determine whether it is technically or economically feasible to disaggregate spectrum. The Commission further concluded that all qualified parties should be eligible to disaggregate any geographic area license because open eligibility to disaggregate spectrum promotes prompt service to the public by facilitating the assignment of spectrum to the entity that values it most. The Commission found that allowing spectrum disaggregation at this time could potentially expedite the introduction of service to underserved areas, provide increased flexibility to licensees, and encourage participation by small businesses in the provision of services.

*Coverage Requirements*

115. The Commission declined to adopt Metrocall, Inc.'s proposal that geographic area licensees' coverage benchmarks should be based on the entire geographic area, including the partitioned area, to prevent the geographic area licensee from using partitioning to circumvent coverage requirements. As stated previously, the Commission found that there was no evidence that ''sham'' arrangements between geographic area licensees and other parties to avoid construction requirements are likely to occur in the paging service or have already taken place in other services. The Commission also declined to adopt PCIA's proposal that the partitioner should be responsible for build-out in the partitioned area if the partitionee fails to build out, and that the entire license should be cancelled if build-out in the partitioned area is not completed by either the partitionee or the partitioner. The decision not to place the ultimate responsibility for the partitionee's coverage requirements on the partitioner, as well as the decision to provide parties to partitioning agreements with two options for meeting the coverage requirements, is expected to encourage more partitioning agreements, including agreements involving small businesses. The resulting benefits will be the same for disaggregation arrangements.

116. Finally, the Commission declined to adopt commenters' proposal to eliminate the ''substantial service'' option as it applies to coverage requirements in the partitioning and disaggregation context. The Commission found that maintaining the ''substantial service'' option will encourage licensees to build out their systems while safeguarding the financial investments made by those licensees who are financially unable to meet specific population coverage requirements. Thus, the Commission found that the substantial service alternative will promote service growth while helping licensees to remain financially viable and retain their licenses. Retaining the ''substantial service'' option will also allow small businesses flexibility in meeting their coverage requirements.

*License Term*

117. The Commission declines to adopt SBT's proposal that when an area is partitioned within one year of the renewal date of the original ten-year license term, the partitionee should receive the license for a one-year term. The Commission found that adopting this proposal would result in the partitioner conferring greater rights than it was awarded under the original terms of its license grant.

**VII. Report to Congress**

118. The Commission shall send a copy of the *Third R&O*, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Third R&O*, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Association. A copy of the *Third R&O* and Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

**Ordering Clauses**

119. Authority for issuance of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* is contained in Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405.

120. Accordingly, *it is ordered* that the petitions for reconsideration or clarification listed in Appendix A *are granted* to the extent provided herein and otherwise *are denied;* and that the Petition for Partial Reconsideration of PSWF Corporation filed April 11, 1997, is to the extent provided herein *dismissed* as moot. This action is taken pursuant to Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405, and Section 1.429(i) of the Commission's rules, 47 CFR 1.429(i).

121. *It is further ordered* that the petitions for reconsideration and application for review of the *CWD Order* listed in footnote 51 *are denied*. This action is taken pursuant to Sections 4(i), 303(r), 309(j), 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 309(j), 332, and 405, and Sections

1.429(i) and 1.115 of the Commission's rules, 47 CFR 1.429(i), 1.115.

122. *It is further ordered* that the Commission's rules are amended as set forth in Appendix B. *It is further ordered* that the provisions of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* and the Commission's rules, as amended in Appendix B, *shall become effective* 60 days after publication of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* in the **Federal Register**.

123. *It is further ordered* that a Public Notice will be issued by the Wireless Telecommunications Bureau following the adoption of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* that will remove the interim licensing rules on the shared PCP channels from the Commission's rules.

124. *it is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Memorandum Opinion and Order on Reconsideration and Third Report and Order,* including the Supplemental Final Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 22*

Public mobile services.

*47 CFR Part 90*

Private land mobile radio services.

**Rule Changes**

For the reasons stated in the preamble, parts 22 and 90 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

**Authority:** Sections 4, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 309 and 332, unless otherwise noted.

2. Section 22.213 is added to read as follows:

**§ 22.213 Long-form application (FCC Form 601).**

Each successful bidder for a paging geographic area authorization must submit a ''long-form'' application (Form 601) within ten (10) business days after being notified by Public Notice that it is the winning bidder. Applications for paging geographic area authorizations on FCC Form 601 must be submitted in accordance with § 1.2107 and § 1.2112 of this chapter, all applicable procedures set forth in the rules in this part, and any applicable Public Notices that the FCC may issue in connection with an auction. After an auction, the FCC will not accept long-form applications for paging geographic area authorizations from anyone other than the auction winners and parties seeking partitioned authorizations pursuant to agreements with auction winners under § 22.221 of this part.

3. Section 22.215 is amended by revising paragraph (a) to read as follows:

**§ 22.215 Authorization, grant, denial, default, and disqualification.**

(a) Each winning bidder will be required to pay the full balance of its winning bid no later than ten (10) business days following the release date of a Public Notice establishing the payment deadline. If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment no later than ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid by the late payment deadline, it is considered to be in default on its authorization(s) and subject to the applicable default payments. Authorizations will be awarded upon the full and timely payment of winning bids and any applicable late fees.

* * * * *

4. Section 22.217 is amended by revising paragraph (a) and adding paragraph (b)(4) to read as follows:

**§ 22.217 Bidding credits for small businesses.**

(a) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(i) of this part may use a bidding credit of thirty-five (35) percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 22.223(b)(1)(ii) of this part may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid.

(b) * * *

(4) If a small business that utilizes a bidding credit under this section partitions its authorization or disaggregates its spectrum to an entity not meeting the eligibility standards for the same bidding credit, the partitioning or disaggregating licensee will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111(e) (2) and (3) of this chapter.

**§ 22.219 [Removed]**

5. Section 22.219 is removed.

6. Section 22.221 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 22.221 Eligibility for partitioned licenses.**

* * * * *

(b) Each party to an agreement to partition the authorization must file a long-form application (FCC Form 601) for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MEA or EA filed by the auction winner.

(c) If the partitioned authorization is being applied for as a partial assignment of the MEA or EA authorization following grant of the initial authorization, request for authorization for partial assignment of an authorization shall be made pursuant to § 1.948 of this part.

7. Section 22.223 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii) and (b)(2) and adding paragraphs (b)(4) and (e) to read as follows:

**§ 22.223 Definitions concerning competitive bidding process.**

* * * * *

(b) * * *

(1) * * *

(i) Together with its affiliates and controlling interests has average gross revenues that are not more than $3 million for the preceding three years; or

(ii) Together with its affiliates and controlling interests has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets either the $3 million or $15 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(3) * * *

(4) Applicants without identifiable controlling interests. Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

* * * * *

(e) *Controlling interest.* (1) For purposes of this section, controlling interest includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a

partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) *Calculation of certain interests.* (i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person or its affiliate pursuant to paragraph (d) of this section has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

8. Section 22.225 is amended by revising paragraphs (a)(1), (b)(1) and (e) to read as follows:

**§ 22.225 Certifications, disclosures, records maintenance and audits.**

(a) * * *

(1) The identity of the applicant's controlling interests and affiliates, and, if a consortium of small businesses, the members of the joint venture; and

* * * * *

(b) * * *

(1) Disclose separately and in the aggregate the gross revenues, computed in accordance with § 22.223, for each of the following: the applicant, the applicant's affiliates, the applicant's controlling interests, and, if a consortium of small businesses, the members of the joint venture;

* * * * *

(e) *Definitions.* The terms affiliate, small business, consortium of small businesses, gross revenues, and controlling interest used in this section are defined in § 22.223.

9. Section 22.503 is amended by revising paragraphs (b)(2), (b)(3), (h), (i), and (k)(1) and (k)(2) to read as follows:

**§ 22.503 Paging geographic area authorizations.**

* * * * *

(b) * * *

(2) Major Economic Areas (MEAs) and Economic Areas (EAs) are defined below. EAs are defined by the Department of Commerce, Bureau of Economic Analysis. *See* Final Redefinition of the MEA Economic Areas, 60 FR 13114 (March 10, 1995). MEAs are based on EAs. In addition to the Department of Commerce's 172 EAs, the FCC shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa, which have been assigned FCC-created EA numbers 173–175, respectively, and MEA numbers 49–51, respectively.

(3) The 51 MEAs are composed of one or more EAs as defined in the following table:

| MEAs | EAs |
|---|---|
| 1 (Boston) | 1–3. |
| 2 (New York City) | 4–7, 10. |
| 3 (Buffalo) | 8. |
| 4 (Philadelphia) | 11–12. |
| 5 (Washington) | 13–14. |
| 6 (Richmond) | 15–17, 20. |
| 7 (Charlotte-Greensboro-Greenville-Raleigh) | 18–19, 21–26, 41–42, 46. |
| 8 (Atlanta) | 27–28, 37–40, 43. |
| 9 (Jacksonville) | 29, 35. |
| 10 (Tampa-St. Petersburg-Orlando) | 30, 33–34. |
| 11 (Miami) | 31–32. |
| 12 (Pittsburgh) | 9, 52–53. |
| 13 (Cincinnati-Dayton) | 48–50. |
| 14 (Columbus) | 51. |

| MEAs | EAs |
|---|---|
| 15 (Cleveland) | 54–55. |
| 16 (Detroit) | 56–58, 61–62. |
| 17 (Milwaukee) | 59–60, 63, 104–105, 108. |
| 18 (Chicago) | 64–66, 68, 97, 101. |
| 19 (Indianapolis) | 67. |
| 20 (Minneapolis-St. Paul) | 106–107, 109–114, 116. |
| 21 (Des Moines-Quad Cities) | 100, 102–103, 117. |
| 22 (Knoxville) | 44–45. |
| 23 (Louisville-Lexington-Evansville) | 47, 69–70, 72. |
| 24 (Birmingham) | 36, 74, 78–79. |
| 25 (Nashville) | 71. |
| 26 (Memphis-Jackson) | 73, 75–77. |
| 27 (New Orleans-Baton Rouge) | 80–85. |
| 28 (Little Rock) | 90–92, 95. |
| 29 (Kansas City) | 93, 99, 123. |
| 30 (St. Louis) | 94, 96, 98. |
| 31 (Houston) | 86–87, 131. |
| 32 (Dallas-Fort Worth) | 88–89, 127–130, 135, 137–138. |
| 33 (Denver) | 115, 140–143. |
| 34 (Omaha) | 118–121. |
| 35 (Wichita) | 122. |
| 36 (Tulsa) | 124. |
| 37 (Oklahoma City) | 125–126. |
| 38 (San Antonio) | 132–134. |
| 39 (El Paso-Albuquerque) | 136, 139, 155–157. |
| 40 (Phoenix) | 154, 158–159. |
| 41 (Spokane-Billings) | 144–147, 168. |
| 42 (Salt Lake City) | 148–150, 152. |
| 43 (San Francisco-Oakland-San Jose) | 151, 162–165. |
| 44 (Los Angeles-San Diego) | 153, 160–161. |
| 45 (Portland) | 166–167. |
| 46 (Seattle) | 169–170. |
| 47 (Alaska) | 171. |
| 48 (Hawaii) | 172. |
| 49 (Guam and the Northern Mariana Islands) | 173. |
| 50 (Puerto Rico and U.S. Virgin Islands) | 174. |
| 51 (American Samoa) | 175. |

* * * * *

(h) *Adjacent geographic area coordination required.* Before constructing a facility for which the interfering contour (as defined in § 22.537 or § 22.567 of this part, as appropriate for the channel involved) would extend into another paging geographic area, a paging geographic area licensee must obtain the consent of the relevant co-channel paging geographic area licensee, if any, into whose area the interfering contour would extend. Licensees are expected to cooperate fully and in good faith attempt to resolve potential interference problems before bringing matters to the FCC. In the event that there is no co-channel paging geographic area licensee from whom to obtain consent in the area into which the interfering contour would extend, the facility may be constructed and operated subject to the condition that, at such time as the FCC issues a paging geographic area authorization for that adjacent geographic area, either consent must be obtained or the facility modified or eliminated such that the interfering contour no longer extends into the adjacent geographic area.

(i) *Protection of existing service.* All facilities constructed and operated pursuant to a paging geographic area authorization must provide co-channel interference protection in accordance with § 22.537 or § 22.567, as appropriate for the channel involved, to all authorized co-channel facilities of exclusive licensees within the paging geographic area. Non-exclusive licensees on the thirty-five exclusive 929 MHz channels are not entitled to exclusive status, and will continue to operate under the sharing arrangements established with the exclusive licensees and other non-exclusive licensees that were in effect prior to February 19, 1997. MEA, EA, and nationwide geographic area licensees have the right to share with non-exclusive licensees on the thirty-five exclusive 929 MHz channels on a non-interfering basis.

* * * * *

(k) *Coverage requirements.* Failure by an MEA or EA licensee to meet either the coverage requirements in paragraphs (k)(1) and (k)(2) of this section, or alternatively, the substantial service requirement in paragraph (k)(3) of this section, will result in automatic termination of authorizations for those facilities that were not authorized, constructed, and operating at the time the geographic area authorization was granted. MEA and EA licensees have the burden of showing when their facilities were authorized, constructed, and operating, and should retain necessary records of these sites until coverage requirements are fulfilled. For the purpose of this paragraph, to ''cover'' area means to include geographic area within the composite of the service contour(s) determined by the methods of §§ 22.537 or 22.567 as appropriate for the particular channel involved. Licensees may determine the population of geographic areas included within their service contours using either the 1990 census or the 2000 census, but not both.

(1) No later than three years after the initial grant of an MEA or EA geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover one third of the population in the paging geographic area. The licensee

must notify the FCC at the end of the three-year period pursuant to § 1.946 of this chapter, either that it has satisfied this requirement or that it plans to satisfy the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

(2) No later than five years after the initial grant of an MEA or EA geographic area authorization, the licensee must construct or otherwise acquire and operate sufficient facilities to cover two thirds of the population in the paging geographic area. The licensee must notify the FCC at the end of the five year period pursuant to § 1.946 of this chapter, either that it has satisfied this requirement or that it has satisfied the alternative requirement to provide substantial service in accordance with paragraph (k)(3) of this section.

* * * * *

10. Section 22.507 is amended by revising paragraph (c) to read as follows:

**§ 22.507 Number of transmitters per station.**

* * * * *

(c) *Consolidation of separate stations.* The FCC may consolidate site-specific contiguous authorizations upon request (FCC Form 601) of the licensee, if appropriate under paragraph (a) of this section. Paging licensees may include remote, stand-alone transmitters under the single system-wide authorization, if the remote, stand-alone transmitter is linked to the system via a control/repeater facility or by satellite. Including a remote, stand-alone transmitter in a system-wide authorization does not alter the limitations provided under § 22.503(f) on entities other than the paging geographic area licensee. In the alternative, paging licensees may maintain separate site-specific authorizations for stand-alone or remote transmitters. The earliest expiration date of the authorizations that make up the single system-wide authorization will determine the expiration date for the system-wide authorization. Licensees must file timely renewal applications for site-specific authorizations included in a single system-wide authorization request until the request is approved. Renewal of the system-wide authorization will be subject to § 1.949 of this chapter.

**§ 22.509 [Amended]**

11. Paragraph (c) of § 22.509 is removed.

12. Section 22.513 is added to read as follows:

**§ 22.513 Partitioning and disaggregation.**

MEA and EA licensees may apply to partition their authorized geographic service area or disaggregate their authorized spectrum at any time following grant of their geographic area authorizations. Nationwide geographic area licensees may apply to partition their authorized geographic service area or disaggregate their authorized spectrum at any time as of August 23, 1999.

(a) *Application required.* Parties seeking approval for partitioning and/or disaggregation shall apply for partial assignment of a license pursuant to § 1.948 of this chapter.

(b) *Partitioning.* In the case of partitioning, requests for authorization for partial assignment of a license must include, as attachments, a description of the partitioned service area and a calculation of the population of the partitioned service area and the authorized geographic service area. The partitioned service area shall be defined by 120 sets of geographic coordinates at points at every 3 degrees azimuth from a point within the partitioned service area along the partitioned service area boundary unless either an FCC-recognized service area is used (*e.g.*, MEA or EA) or county lines are followed. The geographical coordinates must be specified in degrees, minutes, and seconds to the nearest second latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In the case where FCC-recognized service areas or county lines are used, applicants need only list the specific area(s) through use of FCC designations or county names that constitute the partitioned area.

(c) *Disaggregation.* Spectrum may be disaggregated in any amount.

(d) *Combined partitioning and disaggregation.* Licensees may apply for partial assignment of authorizations that propose combinations of partitioning and disaggregation.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 1.955 of this chapter.

(f) *Coverage requirements for partitioning.* (1) Parties to a partitioning agreement must satisfy at least one of the following requirements:

(i) The partitionee must satisfy the applicable coverage requirements set forth in § 22.503(k)(1), (2) and (3) for the partitioned license area; or

(ii) The original licensee must meet the coverage requirements set forth in § 22.503(k)(1), (2) and (3) for the entire geographic area. In this case, the partitionee must meet only the requirements for renewal of its authorization for the partitioned license area.

(2) Parties seeking authority to partition must submit with their partial assignment application a certification signed by both parties stating which of the above options they select.

(3) Partitionees must submit supporting documents showing compliance with their coverage requirements as set forth in § 22.503(k)(1), (2) and (3).

(4) Failure by any partitionee to meet its coverage requirements will result in automatic cancellation of the partitioned authorization without further Commission action.

(g) *Coverage requirements for disaggregation.*

(1) Parties to a disaggregation agreement must satisfy at least one of the following requirements:

(i) Either the disaggregator or disaggregatee must satisfy the coverage requirements set forth in § 22.503 (k)(1), (2) and (3) for the entire license area; or

(ii) Parties must agree to share responsibility for meeting the coverage requirements set forth in § 22.503 (k)(1), (2) and (3) for the entire license area.

(2) Parties seeking authority to disaggregate must submit with their partial assignment application a certification signed by both parties stating which of the above requirements they meet.

(3) Disaggregatees must submit supporting documents showing compliance with their coverage requirements as set forth in § 22.503 (k)(1), (2) and (3).

(4) Parties that accept responsibility for meeting the coverage requirements and later fail to do so will be subject to automatic license cancellation without further Commission action.

13. Section 22.531 is amended by revising paragraph (f) to read as follows:

**§ 22.531 Channels for paging operation.**

* * * * *

(f) For the purpose of issuing paging geographic authorizations, the paging geographic areas used for UHF channels are the MEAs, and the paging geographic areas used for the low and high VHF channels are the EAs (see § 22.503(b)).

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

14. Section 90.175 is amended by revising paragraph (f) to read as follows:

**§ 90.175 Frequency coordination requirements.**

* * * * *

(f) For frequencies in the 929–930 MHz band listed in paragraph (b) of § 90.494: A statement is required from the coordinator recommending the most appropriate frequency.

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Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–15329 Filed 6–23–99; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket Nos. 96–45 and 97–21; FCC 99–49]**

### Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, we clarify certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. In this document, we also reconsider, on our own motion, the Commission's rule that prohibits the disbursement of funds during the pendency of an appeal of a decision issued by the Administrator.

**DATES:** June 24, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sharon Webber, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document released on May 28, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

#### I. Introduction

1. In this Order, we clarify certain portions of the Commission's funding priority rules for the schools and libraries universal service support mechanism to remove any ambiguity that may exist in the application of such rules. Specifically, we clarify that, when a filing window is in effect, and demand exceeds total authorized support, the Administrator of the universal service support mechanisms (the Universal Service Administrative Company or USAC), shall allocate funds for discounts to schools and libraries for internal connections beginning with those applicants at the highest discount level, i.e., ninety percent, and to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage.

2. In this Order, we also reconsider, on our own motion, the Commission's rule that prohibits the disbursement of funds during the pendency of an appeal of a decision issued by the Administrator. We find that, if the appeal relates to a request for additional support by the applicant or involves a challenge by a third party to only a portion of the approved support, and the application is not otherwise the subject of an appeal, the Administrator may disburse, during the pendency of the appeal, those funds that have been approved by the Administrator.

#### II. Rules of Funding Priority

3. In the *Fifth Reconsideration Order*, 63 FR 43088 (August 12, 1998), the Commission adopted new rules of funding priority that would apply when a filing window is in effect and demand exceeds total authorized support. In establishing these rules of priority, the Commission sought to ensure that funds are directed to the most economically disadvantaged schools and libraries and that every eligible school and library that filed within the window would receive some assistance. Consistent with these goals, the rules of priority provide that requests for telecommunications services and Internet access for all discount categories shall receive first priority for the available funding (priority one services). The remaining funds are allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix, i.e., schools and libraries eligible for a ninety percent discount. To the extent funds remain, the rules provide that the Administrator shall allocate funds to the requests for support for internal connections submitted by schools and libraries eligible for an eighty percent discount, then for a seventy percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining. The rules further provide that, if the remaining funds are not sufficient to support all funding requests within a particular discount level, the Administrator shall allocate the total amount of remaining support on a pro rata basis to that particular discount level.

4. Although the Commission's rules prioritize funding requests on the basis of broad discount categories, e.g., ninety percent or eighty percent, the Commission's rules also specifically recognize that not all discounts calculated under the schools and libraries support mechanism will fall within these broad discount categories. In the *Fourth Reconsideration Order*, 63 FR 2093 (January 13, 1998), the Commission revised the rules regarding how to calculate the appropriate discount level when schools and libraries aggregate their demand with others to create a consortium. The Commission determined, *inter alia*, that, for services that are shared by two or more schools, libraries, or consortia members, i.e., ''shared services,'' the discount level should be calculated by averaging the applicable discounts of all member schools and libraries. As a result, the discount levels for ''shared service'' requests, which typically are internal connection requests, are single discount level percentages, e.g., eighty-nine percent, eighty-eight percent, and so on.

5. While the Commission's funding priority rules do not specifically address the single discount percentage levels associated with ''shared service'' requests, the rules on ''shared services'' and the funding priority rules must be read in concert. We clarify, therefore, that, when sufficient funds are not available to fund all internal connection requests, the Administrator shall allocate funds for discounts to schools and libraries beginning with those applicants at the ninety percent discount level and, to the extent funds remain, continue to allocate funds for discounts to applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on. We believe that this method of allocating funds is consistent with the Commission's goal of ensuring that support for internal connections is directed first toward the most economically disadvantaged schools. We also note that allocating funds at each descending discount level will enable the Administrator to distribute funds sooner than it could if it were required to determine the pro rata amount for the entire discount category before distributing support. We add a Note to section 54.507(g)(1)(iii) to reflect the clarification made in this Order. We also clarify that, to the extent sufficient funds do not exist to fund all requests within a single discount percentage, the Administrator shall allocate the