

Faso, Cameroon, Côte d'Ivoire, Denmark, Egypt, Finland, Israel, Kenya, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia, the band 790–830 MHz, and in these same countries and in Spain, France, Malta, the Gabonese Republic and Syria, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with this band.

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703 In Region 1, in the band 862–960 MHz, stations of the broadcasting service shall be operated only in the African Broadcasting Area (see Nos. 400 to 403) excluding Algeria, Egypt, Spain, Libya and Morocco, subject to agreement obtained under the procedure set forth in Article 14.

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708 [Reserved]

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#### 47 CFR Parts 22 and 90

[WT Docket No. 96–18; PP Docket No. 93–253; FCC 96–52]

#### Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** In this *Notice of Proposed Rule Making* in WT Docket No. 96–18 and PP Docket No. 93–253 (*Notice*), the Commission proposes to implement geographic licensing for paging services to streamline licensing procedures for Common Carrier Paging (CCP) and Private Carrier Paging (PCP). The Commission proposes to transition to a geographic licensing approach, and issue licenses for geographic areas, rather than on a transmitter-by-transmitter basis. The Commission also proposes to adopt competitive bidding rules to select among mutually exclusive paging applications.

The Commission also addresses how paging applications should be treated during the pendency of this rulemaking.

The Commission proposes to hold in abeyance and not process applications for paging channels received after the adoption date of this *Notice*, except during the pendency of this proceeding incumbent licensees may add sites to existing systems or modify existing sites, so long as such additions or modifications do not expand the interference contour of the incumbent's existing system. With respect to CCP and PCP licensees who have obtained nationwide exclusivity, the Commission will allow applications for additional sites, without restrictions.

With respect to paging applications that were filed prior to the February 8, 1996 adoption date of this *Notice* and remain pending, the Commission proposes to process such applications provided that they are not mutually exclusive with other applications, and the relevant period for filing competing applications has expired as of the adoption date of this *Notice*. The processing of mutually exclusive pending applications and applications for which the relevant period for filing competing applications has not yet expired will be held in abeyance until the conclusion of this proceeding. In the *Notice*, the Commission examines ways to promote continued growth and preserve vigorous competition in the paging industry through revisions to the common carrier and private carrier paging regulations. The Commission seeks to establish a comprehensive and consistent regulatory scheme that will simplify and streamline licensing procedures. To reach this objective, the Commission proposes to transition to geographic licensing and to adopt competitive bidding rules for mutually exclusive paging applications.

**DATES:** Comments are to be filed on or before March 18, 1996. Reply Comments are to be filed on or before April 2, 1996. Comments on the Interim Licensing Proposal are to be filed on or before March 1, 1996. Reply Comments on the Interim Licensing Proposal are to be filed on or before March 11, 1996.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

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

**SUPPLEMENTARY INFORMATION:** This *Notice of Proposed Rule Making* in WT Docket No. 96–18 and PP Docket No. 93–253, adopted February 8, 1996, and released February 9, 1996, is available for inspection and copying during normal business hours in the FCC

Dockets Branch, Room 230, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.E., Suite 140, Washington, D.C. 20037 (202) 857–3800).

#### Synopsis of Notice of Proposed Rule Making:

##### I. Background

1. The Commission first allocated spectrum for the CCP service in 1949. The Commission responded to the growth of the paging market in 1982 by allocating 40 new channels in the 931 MHz band exclusively for use by CCP operators and dedicating three of these channels for use by nationwide systems.

2. PCP was established by the Commission, and authorized on specified channels within each private radio service category, with licensees authorized either to operate systems for their own internal use or to provide service to limited categories of eligible users. In 1982, the Commission allocated 40 channels in the 929 MHz band for PCP, with some channels to be licensed for internal-use systems and others for PCP systems that could provide commercial paging service to eligible users under Part 90. In 1993, the Commission allowed PCP operators to provide service to the public on virtually the same unrestricted basis as CCP operators.

3. The Omnibus Budget Reconciliation Act of 1993 amended the Communications Act of 1934, as amended (the Act) to divide all mobile services into two categories: Commercial Mobile Radio Services (CMRS) and private mobile radio service (PMRS), and mandated that “substantially similar” mobile services receive comparable regulatory treatment. The Commission concluded in the *CMRS Second Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, *Second Report and Order*, GN Docket No. 93–252, 59 Fed. Reg. 18493 (April 19, 1994) (*CMRS Second Report and Order*), that PCP services were subject to reclassification as CMRS as of August 10, 1996. In the *CMRS Third Report and Order*, Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, GN Docket No. 93–252, 59 Fed. Reg. 59945 (Nov. 21, 1994) (*CMRS Third Report and Order*), the Commission concluded that PCP and CCP are substantially similar services that should be subject to comparable regulation to the extent feasible, and that geographic licensing should be considered in both services.

### A. Common Carrier Paging

#### a. Current Licensing Procedures

4. Under current rules, a CCP channel is assigned to a single licensee in each area on an exclusive basis. Licensees' protected service areas are based upon predicted coverage of the transmitters in their systems; licensees must apply for additional transmitter locations when expanding their systems. On all CCP allocations other than 931 MHz, known as lower band CCP channels, applicants specify which channels they want. Applications filed within the designated filing window for the same channel in the same area are, by definition, mutually exclusive. The 931 MHz band applications are not channel-specific. Therefore, when there are more available channels in an area than there are applications for new channel assignments, 931 MHz applications are not mutually exclusive. In most major markets, the number of applications often exceeds the number of available channels, resulting in all applications being treated as mutually exclusive.

#### b. Part 22 Rewrite Order

5. In the *Part 22 Rewrite Order*, Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket No. 92-115, 59 Fed. Reg. 59502 (Nov. 17, 1994) (*Part 22 Rewrite Order*), the Commission revised its licensing rules for all Part 22 services, including adoption of new licensing rules for 931 MHz paging frequencies. The *Part 22 Rewrite Order* provided that, as of January 1, 1995, all 931 MHz applicants, including those who had applications pending under the old rules, would be required to specify channels in their applications. After a 60-day filing window for such channel-specific applications, the Commission would grant those applications that were not mutually exclusive and use competitive bidding to select among the mutually exclusive applications.

### B. Private Carrier Paging

#### a. Current Licensing Procedures

6. Historically, PCP channels have been licensed on a shared basis, such that licensees would not obtain exclusive rights to a particular channel and may be required to share the channel with others in the same area. Under the current rules, PCP applicants for all non-929 MHz PCP channels and five of the forty 929 MHz channels must submit their applications to a frequency coordinator who recommends a channel to be assigned by the Commission. PCP applicants are not currently subject to

competing applications or mutual exclusivity selection procedures, such as lotteries, comparative hearings, or auctions.

7. As a result of the Commission's adoption of the *PCP Exclusivity Order*, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, *Report and Order*, PR Docket No. 93-35, 58 Fed. Reg. 62289 (Nov. 26, 1993) (*PCP Exclusivity Order*), thirty-five of the forty 929 MHz PCP channels may be licensed on an exclusive basis. Licensees whose systems operate on these channels were allowed to earn exclusivity on a local, regional, or nationwide basis, by constructing multi-transmitter systems meeting certain build out criteria. The remaining incumbent licensees are allowed to continue operating without being forced to change channels or location. Applicants for exclusive PCP channels continue to submit their applications to a frequency coordinator, and applications are processed on a first-come, first-served basis.

## II. Discussion

### A. Geographic Licensing Proposal

#### a. Overview

8. Paging operators currently choose the areas they seek to serve by applying for licenses on a site-by-site basis. The boundary of the licensee's service area is derived from the composite service areas of existing base stations. Geographic licensing for paging channels would enhance regulatory symmetry with other CMRS services. In this *Notice*, the Commission considers geographic licensing in the context of all paging channels, including 931 MHz, 929 MHz, and lower band CCP and PCP channels.

9. The Commission tentatively concludes that the public interest would be served by converting to geographic licensing for all paging channels that are licensed on an exclusive, non-nationwide basis. Licensing such systems by geographic areas for ten-year license terms, rather than by individual sites, would simplify paging system expansion and substantially reduce the administrative burden on both paging licensees and the Commission.

10. The Commission proposes that all incumbent systems be entitled to continue operating under existing authorizations with full protection from interference. Geographic licensees and incumbents could enter into voluntary negotiations with respect to the purchase or relocation of the incumbents' facilities. Any request for transfer or assignment of an incumbent

authorization to the geographic licensee is presumed to be in the public interest, although each request will be reviewed as required by Section 310(d) of the Act. In addition, if an incumbent fails to construct, discontinues operations, or otherwise has its license terminated, the Commission proposes that the geographic area covered by the incumbent's authorization revert automatically to the geographic licensee. To the extent geographic licensing is adopted, the Commission proposes to eliminate the finder's preference under Part 90 of the Commission's rules. The Commission seeks comment on the geographic licensing proposal.

11. *931 MHz and 929 MHz Channels.* Under the geographic licensing proposal in this *Notice*, 931 and 929 MHz licensees would be extended the same flexibility, to the extent feasible, as cellular and PCS licensees in terms of the location, design, construction, and modification of their facilities throughout their geographic areas. The Commission tentatively concludes that geographic licensing would decrease the filing burden on 931 and 929 MHz licensees and provide additional operational flexibility. Such licensing also would expedite the processing of applications by reducing the number of licenses to be issued and simplifying the determinations of which license applications are mutually exclusive. The Commission seeks comment on this tentative conclusion.

12. *Nationwide Channels.* The Commission proposes to exclude from geographic licensing the following channels that have been assigned to single licensees on a nationwide basis under the existing rules: the three CCP channels (931.8875, 931.9125, and 931.9375 MHz) dedicated for nationwide use and all PCP channels for which licensees have met the construction requirements for nationwide exclusivity as of the adoption date of this *Notice*. The Commission will announce, by Public Notice, the specific PCP channels excluded for nationwide use at a later time. The Commission tentatively concludes that a licensee who has obtained nationwide exclusivity on a paging channel should be given a single nationwide license for use of the channel instead of continuing to operate under site-specific authorizations. The Commission tentatively concludes that if a licensee fails to comply with the construction and service requirements for nationwide exclusivity, the channel should be made available for geographic licensing, and such licensee would receive protection as an incumbent only

for those areas where it has completed construction and commenced service. The Commission seeks comment on whether MTel's second channel (931.4375 MHz) used virtually on a nationwide basis, should be designated a nationwide channel, and whether it should be excluded from our geographic licensing proposal.

13. *Lower Band CCP Channels.* The Commission also tentatively concludes that geographic licensing should be extended to CCP channels in the 35, 43, 152, and 454 MHz bands. The Commission asks commenters to address the relative costs and benefits of converting lower band channels to geographic licensing. The Commission also seeks comment on whether competitive bidding should be used to select among mutually exclusive paging and BETRS applications, and whether to allow geographic partitioning of licensing areas to make spectrum available to BETRS operators in sparsely populated regions.

14. *Shared PCP Channels.* The Commission seeks comment on whether and when to use geographic licensing for lower band PCP channels (*i.e.*, those PCP frequencies in the 152/158 MHz, 462 MHz, 465 MHz bands), which currently are licensed on a shared basis. The Commission also seeks comment on whether to (1) convert lower band shared PCP channels to exclusive use and implement geographic licensing; (2) issue only a certain number of licenses per shared channel and use competitive bidding to choose among mutually exclusive applications once the limit is reached; or (3) retain the *status quo*. The Commission tentatively concludes that if the shared paging channels were to convert to exclusive licensing, a geographic licensing approach would be appropriate.

15. The Commission requests comment on the costs and benefits of continuing to license some channels on a shared basis versus licensing all channels on an exclusive basis, how such licensing plans would affect the rights of incumbent licensees, and whether a geographic plan is the most practical way in which to begin licensing these channels on an exclusive basis.

#### b. Defining the Service Areas

16. The Commission seeks comment on the use of Metropolitan Statistical Areas (MTAs) and on other options for defining service areas for all of the various paging services. The Commission tentatively concludes that MTAs form the most appropriate geographic area boundaries for paging systems, because they are economically-

defined regions that appear to best mirror the size and development of existing paging systems. MTAs also offer advantages from an administrative perspective, because they are more efficient for the Commission to license than smaller areas that require issuance of more licenses. Commenters should provide empirical data on the area covered by existing paging systems and how such coverage areas compare to MTAs.

17. The Commission tentatively concludes that, if MTA service areas are adopted, three licensing regions in addition to the 47 Rand McNally MTAs would be used to cover United States territories: Guam and the Northern Mariana Islands would be licensed as a single area, Puerto Rico and the U.S. Virgin Islands as a single area, and American Samoa as a single area. Alaska would be licensed as a single area separate from the Seattle MTA.

18. Rand McNally is the copyright owner of the MTA/BTA Listings, which list the counties contained in each BTA/MTA, as embodied in Rand McNally's Trading Area System BTA/MTA Diskette and geographically represented in the map contained in Rand McNally's *Commercial Atlas & Marketing Guide*. Rand McNally has licensed the use of its copyrighted MTA/BTA Listings and maps for certain services such as PCS, 800 MHz and 900 MHz SMR, and Local Multipoint Distribution Services. These blanket licensing agreements authorize the conditional use of Rand McNally's copyrighted material in connection with these particular services, require interested persons using the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally's ownership, and provide for a payment of a license fee to Rand McNally. Currently, paging services are not covered by a blanket copyright license agreement. A paging authorization grantee who does not obtain a copyright license (either through a blanket license agreement or some other arrangement) from Rand McNally for use of the copyrighted material may not rely on grant of a Commission authorization as a defense to any claim of copyright infringement brought by Rand McNally against such grantee.

#### c. Treatment of Incumbents

19. The Commission tentatively concludes that there is no feasible means to relocate incumbents to alternative channels. Therefore, incumbent licensees would be allowed to continue to operate under their existing site-specific authorizations or a single system-wide license, and

geographic licensees would be required to provide protection to all co-channel systems that are constructed and operating within their service areas. No incumbent licensee would be allowed to expand beyond its existing interfering contour and into the geographic licensee's territory without the consent of the geographic licensee unless the incumbent in question is itself the geographic licensee for the relevant channel.

20. The Commission proposes that incumbent licensees should be permitted to modify or add transmitters in their existing service area without prior notification to the Commission, as long as the interfering contour of the pre-existing system is not expanded. Incumbents would be free to negotiate voluntary arrangements with geographic licensees to allow expansion within a geographic area. The Commission seeks comment on whether this proposal strikes a proper balance between the competing interests of geographic and incumbent licensees and whether there are any circumstances under which incumbents should be permitted to expand into unserved areas without the geographic licensee's consent.

#### d. Coverage Requirements

21. The Commission seeks comment on whether geographic paging licensees should be subject to minimum coverage requirements as a condition of licensing. The Commission tentatively concludes that geographic licensees should be required to provide coverage to one-third of the population within their geographic areas within three years of initial license grant and to two-thirds of the population by the end of five years, or in the alternative, provide substantial service to the geographic license area at five years. A geographic licensee must, three years from license grant, either submit a showing that the one-third population coverage standard has been met, or provide written notification that it has elected to show substantial service to the geographic license area five years from license grant. Each geographic licensee must, three years from license grant, indicate how it expects to demonstrate substantial service at five years. The Commission tentatively concludes that population-based coverage requirements are more appropriate than geographic-based coverage requirements, because strictly geographic-based requirements may lead to coverage in sparsely populated areas where service is not needed or is economically unjustified. The Commission requests comment on the costs and benefits of imposing coverage requirements on geographic licensees,

the specific coverage criteria proposed, and any alternative criteria.

22. The Commission tentatively concludes that under this geographic licensing scheme, "slow growth" extensions for paging systems in the 929–930 MHz spectrum are unnecessary and that such extensions could hinder geographic licensing because an incumbent licensee obtaining a construction extension could effectively occupy an entire market area. Therefore, the Commission proposes to dismiss all "slow growth" applications pending at the time an order pursuant to this *Notice* is adopted, without prejudice to refile under the new geographic licensing scheme. The Commission seeks comment on its tentative conclusion and proposal to dismiss pending "slow-growth" extensions.

23. The Commission also tentatively concludes that, regardless of the extent to which their respective service areas are occupied by co-channel incumbents, geographic licensees should be responsible for meeting their coverage requirements. This rule will deter applicants who have a limited ability to provide coverage in a geographic area from seeking the geographic license for anti-competitive reasons, e.g., to block expansion by an incumbent who already provides substantial coverage. The "substantial service" option will provide an incentive for incumbents already providing substantial coverage to seek geographic licenses in the areas they serve. The Commission proposes to require the geographic licensee to meet its coverage requirement directly (e.g., by utilizing vacant spectrum or acquiring such spectrum through buy-outs of incumbent licensees). The Commission asks commenters to address the advantages and disadvantages of these proposals and any alternatives.

24. The Commission tentatively concludes that a geographic licensee's failure to meet the coverage requirements should result in automatic cancellation of the geographic license. The Commission also tentatively concludes that if a licensee loses its geographic license for failure to comply with coverage requirements authorizations that the licensee held prior to the auction for sites constructed and operating would be reinstated. The Commission requests comment on this proposal and any alternatives.

#### e. Co-Channel Interference Protection

25. The Commission seeks comment on the appropriate interference protection criteria for incumbent co-channel facilities and to co-channel licensees in neighboring service areas.

#### a. Protection of Incumbent Systems

26. Paging systems are currently protected from co-channel interference by a variety of rules that govern transmitter height and power, distance between stations, the licensee's protected service area, and/or the field strength of the licensee's service and interfering signals. The Commission proposes to retain these criteria to define the interference protection rights of incumbent licensees under any geographic licensing scheme that may be adopted. There are some variations in the specific methodologies used to measure interference in the different paging services. Therefore, the Commission seeks comment on whether to adopt a standard methodology for measuring interference in all paging bands or to retain existing criteria in our rules.

27. *Lower Band CCP Channels.* In the *Part 22 Rewrite Order*, the Commission adopted a series of mathematical formulas to determine service and interfering contours in each CCP frequency range, other than 931 MHz. If lower band CCP channels are converted to geographic licensing, the Commission proposes to retain the mathematical formulas and contour overlap provisions adopted in the *Part 22 Rewrite Order* to define the interference protection rights of incumbents. The Commission seeks comment on this proposal, and asks commentators to provide empirical evidence showing whether the current Part 22 formulas would provide satisfactory co-channel protection to incumbents.

28. *931 MHz Channels.* The Commission seeks comment on whether incumbents licensed in the 931 MHz band should continue to be protected based on our existing tables of standard radii if geographic licensing is adopted for 931 MHz channels. The Commission tentatively concludes that the eight-radial contour method and mathematical formulas used for the lower band CCP channels may be preferable to a fixed table of standard radii, because it will more reasonably predict potential interference to incumbents and provide geographic licensees with greater flexibility in placing their facilities. The Commission invites comment on this tentative conclusion.

29. The Commission seeks comment on the appropriate mathematical formula for determining service and interference contours if the eight-radial contour method for 931 MHz channels is adopted. The Commission proposes to use the following mathematical formula,

which is similar to the formulas used in the lower band CCP services:

$$d = k \times h^x \times p^y$$

The proposed formula is derived from the form of equations commonly used for propagation path loss. In this formula, "d" is the radial distance to the contour, "h" is the antenna center of radiation height above average terrain along the cardinal radial, "p" is the radial effective radiated power. The remaining factor "k" and exponents "x" and "y" are numerical figures that can be determined experimentally by matching the resulting curve to that of an established propagation model for a given signal field strength. The Commission proposes to assume a median field strength of 47 dBμV/m as the basis for the service contour to determine the appropriate formula for the 931 MHz service and interference contour calculations. Statistically, this equates to a reasonably strong field strength (in the 32 to 40 dBμV/m range) at more than 90% of locations in a suburban environment. The Commission proposes to assume a median field strength of 21 dBμV/m as the basis for the interfering contour. The Commission proposes to derive corresponding distances from these field strengths by using the Okumura 900 MHz propagation curves as the propagation model. The specific formulas would be:

$$\text{Service: } d_{km} = 0.108 \times h_m^{0.61} \times p_w^{0.32}$$

$$\text{Interfering: } d_{km} = 3.033 \times h_m^{0.38} \times p_w^{0.16}$$

In these formulas, "km" represents kilometers, "m" represents meters, and "w" represents watts. The Commission seeks comment on these formulas and their suitability for calculating service and interfering contours for 931 MHz paging systems. Applying the formula, a paging station operating at 1000 watts effective radiated power with an antenna height of 305 meters (1000 feet) above average terrain would have a service contour of approximately 32.2 kilometers (20 miles), which is consistent with the service radius afforded under the current rules. The Commission seeks comment on whether any variations in the formula are needed, and on the field strength proposed for service and interfering contours.

30. *929 MHz Exclusive Channels.* Interference protection for exclusive 929 MHz licensees currently is provided by rules requiring standard minimum geographic separations between stations, which are based on station height and power. These separations are based on the same height-power table that is used for 931 MHz paging. The PCP rules, unlike the CCP rules, do not

formally define a protected service contour or interference contour for each station. The Commission proposes to adopt service and interference contour criteria for 929 MHz paging using the same methodology proposed for 931 MHz paging.

31. *Non-Exclusive PCP Channels.* Rules for paging systems on non-exclusive PCP channels prescribe operating requirements such as monitoring prior to transmitting to determine if the channel already is in use, minimizing the length of messages, and yielding to others transmitting communications related to the immediate safety of life. The Commission requests comment on whether incumbent licensees should receive interference protection.

b. Maximum Power and Height-Power Limits

32. *Maximum Power Limits.* In the *Part 22 Rewrite* proceeding, the Commission concluded that a maximum power limit of 3500 Watts ERP is appropriate for paging facilities in the 931 MHz band, because it allows for the use of high power facilities where needed, yet provides sufficient protection from intermodulation interference and receiver desensitization. The Commission tentatively concludes that the maximum ERP limit for these facilities should be raised to a maximum of 3500 Watts in order to bring the rules governing non-nationwide 929 MHz facilities into conformity with those already in effect for 931 MHz, nationwide 929 MHz, and Narrowband PCS facilities. This would provide 929 MHz licensees with the benefits of higher power operation without unduly increasing the risk of interference. The Commission proposes to retain the current maximum ERP limits for the various lower band paging channels and seeks comment on this proposal and any alternatives.

33. *Maximum Height-Power Limits.* Height-power limits serve to limit the service and interfering range of a facility to a constant distance. The Commission proposes to eliminate the height-power limit for 929 MHz licensees. With respect to the lower band channels, most of which continue to be occupied by smaller systems, the Commission proposes to maintain the current height-power limits, to continue to limit the range of each facility and promote spectrum efficiency.

c. Adjacent Geographic Licensees

34. The Commission tentatively concludes that geographic licensees should provide interference protection either by (1) reducing the signal level at

their service area boundary (e.g., by positioning directional antennas in such a way that the contour does not encroach on a geographic licensee's adjacent territory), or (2) negotiating some other mutually acceptable agreement with all potentially affected geographic licensees in adjacent areas. The Commission seeks comment on this proposal and any alternatives.

f. Licensing in Mexican and Canadian Border Areas

35. In the Mexican and Canadian border areas, paging channel availability may be restricted by treaty and limitations on ERP and antenna height may be placed on additional channels. The Commission tentatively concludes that all geographic areas should be licensed on a uniform basis without distinguishing border from non-border areas, even if some spectrum is unusable, if paging services are converted to geographic licensing. The Commission proposes that geographic licensees be entitled to use any available border-area channels, subject to the relevant rules regarding international assignment and coordination of such channels.

g. Eligibility

36. The Commission tentatively concludes that both incumbents and new entrants should be allowed to apply for geographic licenses without restrictions on eligibility. In cases where there are multiple co-channel incumbents in a geographic area, the Commission tentatively concludes that incumbents can form consortia or joint ventures and apply collectively for the geographic license, or enter into partitioning agreements. The Commission seeks comment on these proposals. In particular, commenters are requested to discuss the relationship between the coverage already provided by an incumbent in a geographic area and the perceived value of the geographic license to that incumbent and other potential applicants.

h. Channel Aggregation Limit

37. The Commission proposes to assign geographic licenses on a channel-by-channel basis. The Commission seeks comment on whether an aggregation limit is appropriate for paging frequencies, and if so, what that limit should be. The Commission seeks comment on whether it would be more appropriate to cap the combined aggregation of paging and narrowband PCS spectrum rather than imposing a limit on paging only.

B. Competitive Bidding Issues

a. Auctionability of Paging Services

38. The Commission proposes to adopt comparable competitive bidding procedures for both exclusive PCP channels and CCP channels, and seeks comment on this proposal. The Commission seeks comment on what competitive bidding methods should be used to award licenses in conjunction with the proposal to adopt geographic licensing for CCP services. The Commission also seeks comment on whether to adopt equivalent competitive bidding procedures for competing applications for exclusive PCP channels.

b. Competitive Bidding Design

a. Bidding Methodology

39. In the *Competitive Bidding Second Report and Order*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Second Report and Order*, PP Docket No. 93–253, 59 Fed. Reg. (May 4, 1994) (*Competitive Bidding Second Report and Order*), the Commission established criteria to select which auction design method to use for particular auctionable services. The two most important design elements are the number of auction rounds (single or multiple), and the order in which licenses are auctioned (sequentially or simultaneously). These two elements can be combined to create four basic auction designs: sequential single round, simultaneous single round, sequential multiple round, and simultaneous multiple round. The Commission seeks comment on which of the above auction methodologies should be used for the auction of paging licenses.

40. In the *Competitive Bidding Second Report and Order*, the Commission stated that simultaneous multiple round auctions would be the preferred method where licenses have strong value interdependencies. The Commission seeks comment on whether simultaneous multiple round auctions would be too burdensome to implement from an administrative perspective, given the large number of paging licenses, and whether simultaneous multiple round auctions or another competitive bidding methodology such as oral outcry is most appropriate for the paging services.

b. License Grouping

41. Depending upon the auction methodology chosen, there are several alternatives for grouping of paging licenses. The Commission seeks comment on how paging licenses should be grouped for competitive

bidding purposes and on possible license groupings.

#### c. Bidding Procedures

42. In the *Competitive Bidding Second Report and Order*, the Commission established general procedures for simultaneous multiple round auctions, including bid increments, duration of bidding rounds, stopping rules, and activity rules. The Commission seeks comment on the bidding procedures that should be used for licensing of paging services.

43. *Bid Increments*. If a multiple round auction is used, the Commission proposes to establish minimum bid increments for bidding in each round of the auction, based on the same considerations in prior orders. The Commission proposes to adopt a minimum bid increment of five percent of the high bid in the previous round or \$0.01 per activity unit, whichever is greater. The Commission proposes to retain the discretion to vary the minimum bid increments for individual licenses or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts. The Commission also proposes to retain the discretion to keep an auction open if there is a round in which no bids or proactive waivers are submitted.

44. *Stopping Rules for Multiple Round Auctions*. In a multiple round auction, a stopping rule must be established for determining when the auction is over. Markets may close individually, simultaneously, or a hybrid approach may be used. The Commission seeks comment on whether a stopping rule is needed and if so, which one should be used. A market-by-market stopping rule would be the least complex approach from an administrative perspective, if a multiple round auction is used. Under a market-by-market approach, bidding closes on each license after one round passes in which no new acceptable bids are submitted for that particular license. With a simultaneous stopping rule, bidding remains open on all licenses until there is no bidding on any license. Under a hybrid approach, a simultaneous stopping rule, coupled with an activity rule designed to bring the markets to close within a reasonable period of time, could be used to close auctions with high value licenses. For lower value licenses, the simpler market-by-market closing could be employed.

45. *Activity Rules*. The Commission tentatively concludes that it is unnecessary to implement an activity rule if a market-by-market stopping rule

is employed. An activity rule is less important when markets close one by one, because failure to participate in any given round may result in a lost opportunity to bid at all, if that round turns out to be the last. The Commission seeks comment on this tentative conclusion.

46. The Commission tentatively concludes that if an activity rule is used, the Milgrom-Wilson approach should be used. The Commission seeks comment on this tentative conclusion. Under the Milgrom-Wilson approach, the minimum activity level, measured as a fraction of the self-declared maximum eligibility, will increase during the course of the auction. During the first stage of the auction, a bidder is required to be active on licenses encompassing at least 60 percent of the activity units for which it is eligible. The penalty for falling below that activity level is a reduction in eligibility. During the first stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-thirds (5/3). In the second stage, a bidder who wishes to maintain its current eligibility is required to be active on 80 percent of the activity units for which it is eligible in the current round. During the second stage, if activity is below the required minimum level, eligibility in the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In the third stage, a bidder who wishes to maintain its current eligibility is required to be active on licenses encompassing 95 percent of the activity units for which it is eligible in the current round. In the final stage, if activity in the current round is below the required activity level, eligibility in the next round will be calculated by multiplying the current round activity by twenty-nineteenths (20/19).

47. *Duration of Bidding Rounds*. The Commission proposes to retain the discretion to vary the duration of bidding rounds or the interval at which bids are accepted (e.g., run two or more rounds per day rather than one), in order to move the auction toward closure more quickly. If this mechanism is used, the Commission would most likely shorten the duration and/or intervals between bidding rounds where there are relatively few licenses to be auctioned, where the value of the licenses is relatively low, or in early rounds to speed the auction process. Where license values are expected to be high or where large numbers of licenses are being auctioned, the Commission proposes to increase the duration and/or intervals between bidding rounds. The Commission proposes to announce

by Public Notice the duration and intervals between bidding rounds. The Commission also proposes to announce by Public Notice, before each auction, the stopping rule to be used. The Commission seeks comment on these proposals.

48. *Anti-Collusion Rules*. In the *Competitive Bidding Second Report and Order*, the Commission adopted a special rule designed to prevent collusive conduct in the context of competitive bidding. The Commission tentatively concludes that the anti-collusion rules should be applied to the auctions for paging services. The Commission proposes to apply Section 1.2105(c) of the rules, which prohibits bidders that have applied for any of the same geographic license areas from communicating with one another regarding the substance of their bids or bidding strategies after short-form applications (FCC Form 175) have been filed. Additionally, applicants may not discuss the substance of their bids or bidding strategies with bidders, other than those identified on the short-form application, that are bidding in the same geographic license areas. The post-filing deadline prohibition on discussions extends to providing indirect information that affects bids or bidding strategy. Communications among bidders concerning matters unrelated to the license auction would be permitted. Even when an applicant has withdrawn its application after the short-form filing deadline, the applicant may not enter into a bidding agreement with another applicant bidding on the geographic license areas from which the first applicant withdrew. In addition, once the short-form application has been filed, a party with an attributable interest in one bidder may not acquire a controlling interest in another bidder bidding for licenses in any of the same geographic license areas. Additionally, the Commission proposes to amend Section 22.129 of the rules to prohibit settlements between applicants after the short-form deadline has passed. The Commission also proposes to require winning bidders to submit with their long-form application a detailed explanation of the terms, conditions, and parties involved in any auction-related consortium, joint venture, partnership, or other agreement entered into prior to the close of bidding.

49. There are three exceptions to the rule prohibiting discussions with other applicants after the filing of the short-form application. First, an applicant may modify its short-form application to reflect formation of bidding agreements or changes in ownership at any time before or during the auction, as long as

the changes do not result in change of control of the applicant, and the parties forming the bidding agreement have not applied for licenses in any of the same geographic license areas. Applicants may also make agreements to bid jointly for licenses, so long as the applicants have not applied for licenses in any of the same geographic license areas. Finally, a holder of a non-controlling attributable interest in an applicant may acquire an ownership interest in, or enter into a bidding agreement with other applicants in the same geographic license area, if the owner of the attributable interest certifies that it has not communicated and will not communicate bids or bidding strategies of more than one of the applicants in which it holds an attributable interest or with which it has a bidding agreement, and the arrangements do not result in any change of control of an applicant.

50. Bidders who are found to have violated the Commission's anti-collusion rules or who are in violation of U.S. antitrust laws in connection with participation in the auction process may, among other sanctions, be subject to the loss of their down payment or their full bid amount, cancellation of their licenses, and may be prohibited from participating in future auctions. The Commission seeks comment on these proposals.

#### c. Procedural and Payment Issues

##### a. Pre-Auction Application Procedures

51. As geographic licensees gain use of a large geographic area and the freedom to locate base stations anywhere within that larger geographic region, they differ from the existing paging service licenses that are essentially confined to a smaller region. Accordingly, the Commission proposes to treat all geographic applicants as initial applicants for Public Notice, application processing, and auction purposes, regardless of whether they are already incumbent operators.

52. In the *Competitive Bidding Second Report and Order*, the Commission determined that only a short-form application prior to competitive bidding should be required, and that only winning bidders should be required to submit a long-form license application after the auction. The Commission proposes to extend the application of these rules to the competitive bidding process for paging services.

53. Under this proposal, before a paging services auction, the Wireless Telecommunications Bureau would release an initial Public Notice announcing the auction. The initial

Public Notice would specify the licenses to be auctioned and the time and place of the auction in the event that mutually exclusive applications are filed. The Public Notice would specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, and the deadline by which short-form applications must be filed and the amounts and deadlines for submitting the upfront payment. Applications submitted before the release of the Public Notice would be returned as premature. Likewise, applications submitted after the deadline specified by Public Notice would be dismissed, with prejudice, as untimely.

54. All bidders would be required to submit short-form applications on FCC Form 175 (and FCC Form 175-S, if applicable), by the date specified in the initial Public Notice. Applicants would be encouraged to file FCC Form 175 electronically. Detailed instructions regarding electronic filing would be contained in a bidder information package. Those applicants filing manually would be required to submit one paper original and one diskette original of their application, as well as two diskette copies. The short-form applications would require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's rules. Specifically, each applicant would be required to specify on its FCC Form 175 application certain identifying information, including its status as a designated entity (if applicable), its classification (*i.e.*, individual, corporation, partnership, trust, or other), the geographic areas and channel(s) or channel blocks(s) for which it is applying, and assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf. The Commission seeks comment on this proposal and specifically on whether further ownership disclosure should be required.

55. The Commission proposes that if only one application that is acceptable for filing for a particular license is received, and thus there is no mutual exclusivity, a Public Notice would be issued cancelling the auction for that license and establishing a date for the filing of a long-form application (FCC Form 600), the acceptance of which would trigger the procedures permitting petitions to deny. If no petitions to deny are filed, the application would be grantable after 30 days. The Commission would require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation

of Commission rules, and may dismiss applications not meeting those requirements prior to the competitive bidding.

##### b. Amendments and Modifications

56. To encourage maximum bidder participation, the Commission proposes to provide applicants with an opportunity to correct minor defects in their short-form applications prior to the auction. On the date set for submission of corrected applications, applicants that on their own discover minor errors in their applications (*e.g.*, typographical errors, incorrect license designations, etc.) would be permitted to file corrected applications. Applicants would not be permitted to make any major modifications to their applications until after the auction. Applicants could modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes would not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. In addition, applications that are not signed would be dismissed as unacceptable.

57. Upon reviewing the short-form applications, the Commission would release a Public Notice listing all accepted, rejected, and incomplete applications. Applicants would be given an opportunity to cure incomplete applications. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any license being auctioned would not be identified on this Public Notice as a qualified bidder. Each applicant listed on the Public Notice would be issued a bidder identification number and further information and instructions regarding auction procedures.

##### c. Upfront Payments

58. The Commission proposes to require paging auction participants to tender a substantial upfront payment as a condition of bidding, in order to ensure that only serious, qualified bidders participate in auctions and to ensure payment of the penalty in the event of bid withdrawal or default. For services that are licensed by simultaneous multiple round auction, the Commission proposes a standard upfront payment formula of \$0.02 per activity unit for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding. The Commission proposes a minimum upfront payment of \$0.02 per



activity unit or \$2,500, whichever is greater. The Commission tentatively concludes that a minimum \$2,500 upfront payment should be required regardless of the bidding methodology.

59. Upfront payments would be due approximately fourteen days before a scheduled auction. This period should be sufficient to allow the Commission time to process upfront payment data and release a Public Notice listing all qualified bidders. The specific procedures to be followed in the tendering and processing of upfront payments are set forth in Section 1.2106 of the Commission's rules.

**d. Down Payment and Full Payment**

60. The Commission proposes to apply the 20 percent down payment requirement set forth in the *Competitive Bidding Second Report and Order* to winning bidders for paging licenses. Such a down payment would be due within five business days following the Public Notice announcing the winning bidders. The Commission proposes to require paging auction winners to pay the full balance of their winning bids within five business days following Public Notice that the Commission is about to award the license.

**e. Bid Withdrawal, Default, and Disqualification**

61. The Commission proposes to adopt bid withdrawal, default, and disqualification rules for the paging services based on the procedures in the general competitive bidding rules. Under these procedures, any bidder who withdraws a high bid during an auction before the Commission declares bidding closed, or defaults by failing to remit the required down payment within the prescribed time, would be required to reimburse the Commission. The bidder would be required to pay the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. A defaulting auction winner would be assessed an additional payment of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. The additional payment would be satisfied first from the upfront payment, and additional funds would be required if necessary. In the event that an auction winner defaults or is otherwise disqualified, the Commission proposes to re-auction the license either to existing or new applicants. The Commission would retain discretion, however, to offer the license to the next highest bidder at its final bid level if the default occurs

within five business days of the close of bidding.

**f. Long-Form Applications**

62. If the winning bidder makes the down payment in a timely manner, the Commission proposes the following procedures: A long-form application would be filed by a date specified by Public Notice, generally within ten business days after the close of bidding. After the winning bidder's down payment and long-form application is received, the Commission will review the application to determine if it is acceptable for filing. In addition to the information required in the FCC Form 600, designated entities will be required to submit evidence to support their claim to any special provision available for designated entities ultimately adopted by an Order as a result of this Notice. This information may be included in an exhibit to FCC Form 600. This information will enable the Commission, and other interested parties, to ensure the validity of the applicant's certification of eligibility for bidding credits, installment payment options, and any other special provisions. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, the license(s) will be granted to the auction winner.

**g. Petitions to Deny and Limitations on Settlements**

63. The petition to deny procedures in Sections 22.130 and 90.163 of the Commission's rules will apply to the processing of applications for the paging services. Thus, a party filing a petition to deny against a paging application will be required to demonstrate standing and meet all other applicable filing requirements. The Commission will limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner.

**h. Transfer Disclosure Requirements**

64. The Commission tentatively concludes that the transfer disclosure requirements of Section 1.2111(a) of the Commission's rules should apply to all paging services licenses obtained through the competitive bidding process. Generally, licensees transferring their licenses within three years after the initial license grant would be required to file, together with

their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license.

**i. Performance Requirements**

65. Section 309(j)(4)(B) of the Act requires the Commission to establish rules for auctionable services that "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittee, and to promote investment in and rapid deployment of new technologies and services." The Commission decided, in the *Competitive Bidding Second Report and Order*, that in most auctionable services, existing construction and coverage requirements provided in the service rules would be sufficient to meet this standard, and that it was unnecessary to impose additional performance requirements. In this Notice the Commission proposed service rules for paging that would require geographic licensees either to meet minimum population coverage requirements or demonstrate substantial service in their licensing areas. The Commission tentatively concludes that these proposed coverage requirements are sufficient to meet the requirements of Section 309(j)(4)(B) of the Act. The Commission proposes that failure to meet these requirements would result in automatic license cancellation, and does not propose to adopt additional performance requirements for paging services.

**d. Treatment of Designated Entities**

**a. Overview and Objectives**

66. Section 309(j)(3)(B) of the Act provides that in establishing auction eligibility criteria and bidding methodologies, the Commission shall "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." The Commission seeks comment on various proposals and tentative decisions regarding designated entity provisions that should be incorporated into the competitive bidding procedures for paging services.



**b. Eligibility for Designated Entity Provisions**

67. *Small Businesses.* The Commission tentatively concludes that it is appropriate to establish special provisions in the paging rules for competitive bidding by small businesses. The Commission believes that small businesses applying for paging licenses should be entitled to some form of bidding credit and should be allowed to pay their bids in installments, and seeks comment on this tentative conclusion.

68. *Minority and Women-Owned Businesses.* Prior to the Supreme Court's decision in *Adarand Contractors, Inc. v. Peña*, 115 S.Ct. 2097 (1995) (*Adarand*), the Commission concluded that in licensing of broadband and narrowband PCS, minority and women-owned businesses might have difficulty accessing sufficient capital to be viable auction participants or service providers in the absence of special provisions in our auction rules. In *Adarand*, however, the Supreme Court ruled that racial classifications imposed by the federal government are subject to strict scrutiny. At this time, the Commission does not have a sufficient factual record with respect to spectrum-based services generally or paging services specifically to sustain such measures under strict scrutiny.

69. The Commission proposes to limit special provisions in the paging auction rules to small businesses. The Commission seeks comment on this proposal. The Commission seeks comment on the possibility that in addition to small business provisions, separate provisions for women and minority-owned entities should be adopted for paging services. To comply with the Supreme Court's ruling in *Adarand*, any race-based classification must be a narrowly tailored measure that furthers a compelling governmental interest. The Commission seeks comment on whether the capital requirements of paging pose a barrier to entry by minorities and women, and whether assisting women and minorities to overcome such a barrier, if it exists, would constitute a compelling governmental interest. The Commission seeks comment on whether separate provisions for women and minorities are necessary to further such an interest and whether such provisions can be narrowly tailored to satisfy the strict scrutiny standard.

**c. Set-Aside Spectrum**

70. The Commission tentatively concluded that it is not necessary to adopt an entrepreneurs' block for

paging. The Commission tentatively concludes that the capital requirements of the paging service are not so substantial that certain blocks of spectrum should be insulated from very large bidders in order to provide meaningful opportunities for designated entities.

**d. Bidding Credits**

71. Bidding credits allow eligible designated entities to receive a payment discount (or credit) on their winning bid in an auction. In the *Competitive Bidding Second Report and Order*, the Commission determined that competitive bidding rules applicable to individual services would specify the entities eligible for bidding credits and the bidding credit amounts for each particular service. As a result, the Commission has adopted a variety of bidding credit provisions for small businesses and other designated entities in auctionable services. The Commission seeks comment on the appropriate level of bidding credit for paging in comparison to other auctionable services.

72. The Commission also seeks comment on the possibility of offering tiered bidding credits for different sizes of small businesses. The Commission proposes to establish two levels of bidding credits: a 10 percent bidding credit for all small businesses and a 15 percent credit for small businesses that meet a more restrictive gross revenue threshold. These two levels of bidding credits would not be cumulative.

73. The Commission also seeks comment on the appropriate definition of small business to be applied for purposes of the bidding credits proposed above. In conjunction with the proposal to provide two levels of bidding credits, the Commission proposes to establish two small business definitions: to obtain the 10 percent bidding credit, an applicant would be limited to \$15 million in average gross revenues for the previous three years; to obtain a 15 percent credit, the applicant would be limited to \$3 million in gross revenues for the previous three years. In both cases, the applicant would be required to aggregate the gross revenues of its affiliates and attributable investors for purposes of determining eligibility. If a control group is formed, the applicant must aggregate the gross revenues of its affiliates and attributable investors for purposes of determining eligibility. The Commission seeks comment on whether these thresholds, and the proposed bidding credit amounts associated with them, are sufficient for paging in light of the build-out costs associated with

constructing a paging system throughout a market area, or whether alternative definitions would be more suitable. Comment is also sought on whether the proposed small business definitions are sufficiently restrictive to protect against businesses receiving bidding credits when in fact they do not need them.

74. The Commission seeks comment on the degree to which the revenues of affiliates and major investors should be considered in determining small business eligibility. The Commission also seeks comment on which attribution threshold should be applied to paging applicants seeking to qualify as small businesses.

75. The Commission proposes to make the small business bidding credit available on all paging channels that are licensed on a geographic basis, rather than limiting its availability to certain channels. The Commission seeks comment on this proposal, and on whether there is a reasonable basis for providing credits on some channels and not others.

**e. Installment Payments**

76. The Commission proposes to adopt an installment payment option for small businesses that successfully bid for paging licenses. Under this proposal, licensees who qualify for installment payments would be entitled to pay their winning bid amount in quarterly installments over the ten-year license term, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. In addition, the Commission proposes to tailor installment payments to the needs of different size entities. Small businesses with \$3 million or less in gross revenues for the preceding three years would make interest-only payments for the first five years of the license term, while small businesses with \$15 million or less in gross revenues for the preceding three years would make interest-only payments during the first two years.

77. The Commission tentatively concludes that small businesses eligible for installment payments may pay a reduced down payment. Five percent of the winning bid would be due five days after the auction closes, with the remaining five percent down payment due five days after Public Notice that the license is ready for grant. Under this proposal, the license would be granted within ten business days after receiving such down payment. The Commission seeks comment on this proposal, and the need, if any, for a reduced upfront payment for entities qualifying as a small business.

#### f. *Unjust Enrichment Provisions*

78. The Commission seeks comment on whether, in services such as paging, where there is no entrepreneurs' block to further restrict the class of entities eligible for substantial governmental benefits, the public interest would be served by adopting an approach similar to that used in the narrowband PCS context, in which bidding credits and installment payments immediately become due upon transfer to an ineligible entity. The Commission also seeks comment on whether an approach to unjust enrichment similar to that adopted for the 900 MHz SMR service, in which a holding period was imposed, would be optimal for the paging services.

#### g. *Rural Telephone Company Partitioning*

79. The Act directs the Commission to ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services. Rural areas, because of their more dispersed populations, tend to be less profitable to serve than more densely populated urban areas. Rural telephone companies, however, are well positioned because of their existing infrastructure to serve these areas. The Commission seeks comment on whether similar provisions should be incorporated into the paging rules. Commenters are specifically encouraged to provide information on the extent to which paging service is available in rural areas.

80. The Commission believes that geographic partitioning should be made available to rural telephone companies on the same basis as in PCS. Such a partitioning scheme would provide rural telephone companies with the flexibility to serve areas in which they already provide service, while the remainder of the service area could be served by other providers. Under this proposal, rural telephone companies would be permitted to acquire partitioned paging licenses in one of two ways: (1) by forming bidding consortia consisting entirely of rural telephone companies to participate in auctions, and then partitioning the licenses won among consortia participants, or (2) by acquiring partitioned paging licenses from other licensees through private negotiation and agreement either before or after the auction. Partitioned areas would be required to conform to established geopolitical boundaries (such as county lines) and that each area include all portions of the wireline service area of the rural telephone company applicant

that lies within each PCS area. In addition, if a rural telephone company receives a partitioned license post-auction from another PCS licensee, the partitioned area must be reasonably related to the rural telephone company's wireline service area. The Commission also proposes to use the definition for rural telephone companies implemented in the *Competitive Bidding Fifth Report and Order* for broadband PCS. Rural telephone companies would be defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates. The Commission seeks comment on whether CCP and PCP paging applicants would benefit from expanding this concept to other designated entities or to all paging licensees in general, and whether partitioning should be extended to small businesses that may be able to provide niche services in a specific geographic area.

#### C. *Interim Licensing*

##### a. *Freeze on New Applications*

81. Because of the fundamental changes proposed in the paging licensing rules, the Commission is suspending the acceptance of new applications for paging channels as of the adoption date of this *Notice*, except as provided below. This interim policy will not apply to assignment or transfer of control applications, which will continue to be processed under existing procedures.

82. Incumbent licensees will be allowed to add sites to existing systems or modify existing sites, provided that such additions or modifications do not expand the interference contour of the incumbent's existing system. Under the current Part 22 rules, such additions or modifications are allowed by CCP licensees without prior Commission approval if the added site is within both existing service and interference contours. The Commission finds that the public interest is served by continuing to allow such modifications because they will give incumbents the flexibility to make internal site modifications without affecting spectrum availability to others. The Commission also believes that it serves the public interest to exempt incumbents from the requirement that the service area not be modified so long as the licensee's interference contour is maintained. Using the interference contour as the sole basis for modification provides the same protection to other licensees as the current rules but provides a simpler analysis of determining permissible modifications.

83. The Commission also finds that it is in the public interest to allow 929 MHz licensees on exclusive channels the same flexibility as Part 22 licensees to make similar changes within their interference contours. Such modifications afford incumbents flexibility and will not prejudice other licensees, as no expansion is allowed beyond the incumbent's interference contour. The Commission believes that such modifications will not affect any auction for geographic area licenses, as the size of an incumbent's protected interference contour will not change.

84. CCP and PCP licensees with nationwide exclusivity on a paging channel will be allowed to apply for additional sites without restrictions. The addition of such sites by the nationwide licensee will not affect the spectrum availability to others.

85. The Commission seeks comment on an expedited basis on whether during the pendency of this proceeding, incumbents should be allowed to file new applications that would expand or modify their existing systems beyond their existing interference contours with such modifications receiving only secondary site authorization. Secondary operations may not cause interference to operations authorized on a primary basis, and they are not protected from interference from primary operations. Thus, under this alternative, applications to expand an incumbent's existing interference contour would receive no interference protection in the event that the Commission ultimately adopts the geographic licensing proposals in this *Notice*. Such an approach would be similar to the interim licensing policy in the 900 MHz SMR service. The Commission seeks comment on this alternative and on whether any limitations on secondary licensing are needed.

##### b. *Processing of Pending Applications*

86. With respect to paging applications that were filed prior to the adoption of this *Notice* and that remain pending, the Commission will process such applications provided that (1) they are not mutually exclusive with other applications as of the adoption date of this *Notice*, and (2) the relevant period for filing competing applications has expired as of the adoption date of this *Notice*. The Commission believes that this approach gives the appropriate consideration to those applicants who filed applications prior to our proposed changes and whose applications are not subject to competing applications. Processing of mutually exclusive pending applications and applications for which the relevant period for filing

competing applications has not expired will be held in abeyance until the conclusion of this proceeding. Upon the adoption of an order in this proceeding, the Commission will process or dismiss all remaining pending applications in accordance with such new rules as are adopted.

*a. Licensing of 931 MHz CCP Frequencies*

87. The Commission adopted new processing rules for 931 MHz CCP licenses in the *Part 22 Rewrite Order* based on channel-specific applications and use of competitive bidding to select licensees in the event of mutually exclusive applications. The Commission issued a temporary stay of the new Part 22 licensing rules for 931 MHz until it resolved certain pending applications. The Commission retains the existing stay of the new Part 22 licensing rules until competitive bidding procedures are established in this proceeding. The Commission will therefore continue processing 931 MHz CCP applications which were pending prior to the adoption date of this *Notice*, and for which the 60 day window for filing competing applications has expired, under the application procedures in effect prior to January 1, 1995. Consequently, pending 931 MHz CCP applications that are not mutually exclusive with other applications will be processed, while mutually exclusive 931 MHz applications will be held pending the outcome of this proceeding. Upon the adoption of an order in this proceeding, the Commission will process or dismiss all remaining pending applications in accordance with such new rules as are adopted.

*b. Licensing of Lower Band CCP Channels*

88. The Commission will process non-mutually exclusive lower band CCP applications under the existing rules, provided that the window for filing competing applications has closed as of the adoption date of this *Notice*. The Commission will continue to hold all mutually exclusive lower band CCP applications until competitive bidding rules are established.

*c. Licensing of 929 MHz PCP Exclusive Channels*

89. The Commission will continue to process non-mutually exclusive PCP applications that were filed before the adoption date of this *Notice*, pending the outcome of this proceeding. Because these applications are subject to coordination, they are generally not subject to mutually exclusive applications. Nonetheless, to the extent

that pending mutually exclusive applications may exist, processing of such applications will be held in abeyance until the conclusion of the rulemaking.

90. Under the current PCP exclusivity rules, applicants are granted conditional exclusivity when they are licensed, and permanent exclusivity is awarded when the licensee demonstrates that it has constructed and is operating a qualified system. As a result, numerous requests for conditional and permanent exclusivity are pending before the Commission. Because of the proposed changes to the PCP rules in this proceeding, the Commission believes that consideration of such requests should be postponed while this proceeding is pending. In the event that the geographic area licensing proposals are adopted, all existing PCP facilities would receive full protection as incumbents, and such pending exclusivity requests would be moot. The Commission will therefore suspend action on all pending exclusivity requests until the conclusion of this rulemaking.

*d. Licensing of Non-Exclusive PCP Channels*

91. The Commission will continue to process pending applications for non-exclusive PCP channels pending the outcome of this proceeding. Applications will be processed through the frequency coordinator under existing procedures.

**IV. Procedural Matters and Ordering Clauses**

*Final Regulatory Flexibility Analysis*

*Summary:* This *Notice* contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

*Dates:* Written comments by the public on the proposed and/or modified information collections are due March 18, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the **FEDERAL REGISTER**.

*Address:* In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be

submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington D.C., 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington D.C. 20503, or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

*Further Information:* For additional information concerning the information collections contained in this *Notice*, contact Dorothy Conway at (202) 418-0217 or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

*Supplementary Information:*

*Paperwork Reduction Act:* This *Notice* contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due on March 18, 1996, at the same time as the other comments in the *Notice*. OMB comments are due 60 days from the date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*Title:* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding.

*Form No.:* N/A.

*Type of Review:* New Collection.

*Respondents:* Existing and prospective private paging and common carrier paging licensees.

*Number of Respondents:*

Approximately 750 existing licensees; approximately 525 auction winners.

*Estimated Time Per Response:*

Approximately 845 hours for list of existing transmitter sites; 1,221 hours for request for single authorization for multiple site licenses; 262.5 hours for demonstration of compliance with relocation notification requirements; 721 hours for ownership and gross

revenue information for small businesses; 262.5 hours for disclosure of terms of joint bidding agreements; 787.5 hours for transfer disclosure information.

**Total Annual Burden:** A one-time burden of approximately 4,099.5 hours.

**Total Respondents Costs:** \$1,008,036.

**Needs and Uses:** On February 8, 1996, the Commission adopted a *Notice of Proposed Rule Making* that examines ways to establish a comprehensive and consistent regulatory scheme that will simplify and streamline licensing procedures and provide a flexible operating environment for both common carrier and private paging services. To this end, the *Notice* proposes to establish a geographic, rather than a site-based, licensing approach. The *Notice* also proposes to adopt auction rules for mutually exclusive paging applications so that available channels may be assigned rapidly to applicants, who will, in turn, expedite service to the public.

To ensure that the process of streamlining our paging regulations correctly gauges current usage of the applicable spectrum, it may be necessary for us to request that existing paging licensees notify the Commission of the location of their various transmitter sites. The *Notice* also proposes to require that licensees submit information that they meet applicable coverage requirements. Further, the *Notice* proposes that incumbent licensees operating at multiple sites may exchange their multiple site license for a single license after the completion of the auction for the spectrum blocks within which their frequencies are included provided they submit a showing that their authorized facilities have been constructed and placed in operation and the contours associated with these facilities are contiguous and overlapping. The *Notice* also proposes that auction winners submit proof of their notification to incumbents operating on frequencies included within the auction winners' spectrum blocks of their intention to relocate such incumbent.

In addition, the proposed auction procedures include (1) a requirement that auction winners claiming status as a small business submit detailed ownership and gross revenue information necessary to determine whether they qualify as a small business pursuant to Commission rules; (2) a requirement that auction winners disclose the terms of joint bidding agreements, if any, with other auction participants in order to ensure the integrity of the market structure; and (3) a requirement that licensees who

transfer licenses within three years maintain a file of all documents and contracts pertaining to the transfer.

#### *Ex Parte Rules—Non-Restricted Proceeding*

This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules, 47 CFR §§ 1.1202, 1.1203, 1.1206(a).

#### *Ordering Clauses*

It is ordered that the pending applications for paging licenses that are not mutually exclusive with other paging applications will be processed to the extent possible under our existing licensing rules.

It is further ordered that applications for PCP exclusivity and waiver requests received after the adoption date of this *Notice of Proposed Rulemaking* will be held in abeyance and not processed until further notice, except as otherwise indicated above with respect to Interim Licensing.

#### List of Subjects

##### *47 CFR Part 22*

Communications common carriers, Recordkeeping requirements.

##### *47 CFR Part 90*

Common carriers, Recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-3657 Filed 2-15-96; 8:45 am]

BILLING CODE 6712-01-P

#### **47 CFR Part 76**

[MM Docket No. 92-260; FCC 95-503]

#### **Cable Home Wiring**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Further Notice of Proposed Rulemaking ("FNPRM") requests comment on wiring issues concerning loop-through wiring and the right of persons other than the subscriber to purchase cable home wiring. The FNPRM will assist the Commission in devising additional regulations in this area.

**DATES:** Written comments by the public on the proposed and/or modified information collections are due March 18, 1996. Interested parties may file comments on or before March 18, 1996

and reply comments on or before April 17, 1996. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before April 16, 1996.

**ADDRESSES:** In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, D.C. 20503 or via the Internet to fain\_t@al.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Lynn Crakes or Rick Chessen, Cable Services Bureau, (202) 416-0800. For additional information concerning the information collections contained in this Order and FNPRM contact Dorothy Conway at 202-418-0217, or via the Internet at dconway@fcc.gov.

#### **SUPPLEMENTARY INFORMATION:**

This is a synopsis of the Commission's Further Notice of Proposed Rulemaking in MM Docket No. 92-260, FCC No. 95-503, adopted December 15, 1995 and released January 26, 1996.

#### **I. Further Notice of Proposed Rulemaking**

##### **A. Multiple Dwelling Unit Buildings with Loop-Through Wiring**

1. We solicit comment on Liberty's request that the Commission require cable operators to allow a building owner to purchase loop-through wiring in the limited situation where all subscribers in a multiple dwelling unit building want to switch to a new service provider. We ask whether we should apply the same rules regarding compensation (i.e., wiring may be purchased at the per-foot replacement cost) and technical standards to loop-through wiring that we now apply to non-loop-through wiring. We solicit comment on the appropriate demarcation point for this limited application of the home wiring rules. We note, however, that we are concerned with allowing the multiple dwelling unit building owner to control the wiring since such control could arguably supersede subsequent subscribers' wishes. We therefore solicit comment on how to apportion control of a loop-through wiring system, including how to assure that subscribers have a choice of multichannel video programming service providers. We