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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC MAIL SECTION  
FCC 94-218

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In the Matter of

Amendment of the Commission's  
Rules to Establish New Narrowband  
Personal Communications Services

) GEN Docket No. 90-314  
) ET Docket No. 92-100 DISPATCHED BY  
)  
) RM-7617, RM-7760, RM-7782, RM-7860,  
) RM-7977, RM-7978, RM-7979, RM-7980

## SECOND MEMORANDUM OPINION AND ORDER

Adopted: August 16, 1994;

Released: August 25, 1994

By the Commission:

### INTRODUCTION

1. By this action, we are amending the rules concerning the licensing of "response channels" in the narrowband personal communications services (PCS). Response channels are channels that are set aside to provide existing paging systems with two-way capability, including acknowledgement of a page or advanced messaging capability. Specifically, we are modifying the definition of an existing paging licensee, the requirement that an existing paging licensee operate a base station in the area for which it is applying for a response channel and the rule limiting existing paging licensees to two response channels in any given geographic area. These changes are in response to a Petition for Reconsideration of the Memorandum Opinion and Order in this matter that was filed by the National Association of Business and Educational Radio, Inc. (NABER).<sup>1</sup> We are also modifying the attribution standards with regard to narrowband PCS channels and revising the Basic Trading Area (BTA) service area definition to provide two local service areas in Puerto Rico. We believe these changes will improve the fairness of the licensing process for narrowband PCS and provide for more effective use of the narrowband PCS spectrum.

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<sup>1</sup> See Memorandum Opinion and Order, 9 FCC Rcd 1309 (1994). The Memorandum Opinion and Order was issued in response to petitions for reconsideration and clarification of the First Report and Order, 8 FCC Rcd 7162 (1993).

## BACKGROUND

2. In the First Report and Order, we allocated three megahertz of spectrum at 900 MHz for the narrowband PCS service and adopted rules to govern narrowband PCS operation.<sup>2</sup> As part of this action, we allotted eight 12.5 kHz wide response channels exclusively for use by existing common carrier and private paging licensees. In the Memorandum Opinion and Order, we designated four of the eight response channels for licensing at the Major Trading Area (MTA) level and four for licensing at the BTA level.<sup>3</sup> We also defined an existing paging licensee as a paging licensee authorized under Part 22 or Part 90, as of June 24, 1993, the adoption date of the First Report and Order.<sup>4</sup> Additionally, we stated that to be eligible for a response channel license, an existing paging licensee must operate at least one base station in the MTA or BTA for which it requests a license. Finally, we limited each licensee to two paging response channels per geographic area.

3. On April 25, 1994, NABER submitted a Petition for Reconsideration of the Memorandum Opinion and Order requesting reconsideration and clarification of certain aspects of the eligibility and multiple ownership rules that apply to the response channels. Comments were filed by Paging Network, Inc. (PageNet);<sup>5</sup> no reply comments were filed.

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<sup>2</sup> See First Report and Order, *supra*. In that action, we allocated the 901-902 MHz, 930-931 MHz and 940-941 MHz bands for narrowband PCS and made two megahertz of that spectrum available for licensing.

<sup>3</sup> See Memorandum Opinion and Order, *supra* at ¶ 16. See also Rand McNally, 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39. Rand McNally organizes the 50 States and the District of Columbia into 47 MTAs and 487 BTAs. For PCS licensing purposes, we adopted service areas based on the Rand McNally MTA and BTA definitions with certain exceptions. In particular, we separated Alaska from the Seattle MTA and added five insular areas: Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. In our rules, the insular areas are treated as five BTA service areas and three MTA service areas, see Section 24.102 of the Commission's Rules.

<sup>4</sup> See Memorandum Opinion and Order, *supra* at ¶ 26.

<sup>5</sup> PageNet's comments were filed 33 days late. In a petition for acceptance of late-filed comments, PageNet states that it did not focus on NABER's petition until it was reviewing the proposed auction rules for the response channels. In the interest of considering a full record in this matter, we are accepting PageNet's comments.

## DISCUSSION

### Eligibility for Response Channel Licenses

4. As indicated above, we limited eligibility for acquiring narrowband PCS response channels to existing paging licensees and defined an existing paging licensee to be a paging licensee authorized under Part 22 or Part 90 of our rules as of June 24, 1993. We also required that the existing paging licensee operate at least one base station in any MTA or BTA for which it requests a response channel.

5. In its petition, NABER requests that the eligibility requirement to operate a base station in the service or trading area for which a response channel is sought be changed to a requirement that the applicant merely provide coverage within the trading area.<sup>6</sup> NABER argues that basing eligibility on the location of a transmitter instead of coverage area could prevent operators from obtaining response channels. It states that the coverage provided by a single base station may include more than one BTA and that thus, under the adopted rules, the operator would not be eligible for response channels in all of the BTAs in which it provides conventional one-way paging services. NABER recommends that we allow paging licensees to apply for response channels in trading areas that are within 25 miles of the geographic coordinates of any base station licensed as of May 10, 1994, the release date of the Third Report and Order in PP Docket No. 93-253.<sup>7</sup>

6. NABER also requests that we clarify whether the June 24, 1993, date for determining whether an entity is an existing paging licensee is applicable in determining the area of operation for license eligibility purposes. It notes that an existing carrier, initially licensed as of June 24, 1993, may have expanded or constructed its system into adjacent areas after June 24, 1993. NABER contends that such a carrier should be able to include its current coverage area for purposes of obtaining response channels so as to make its entire system compatible and competitive even though parts of it were constructed or put into operation after June 24, 1993.

7. PageNet, in its comments, generally supports the rule modifications suggested by NABER. In addition, PageNet requests that the rule limiting applicants to only Part 22 and Part 90 licensees as of June 24, 1993, be eliminated or modified. It argues that this restriction is not needed to prevent speculative or frivolous applications under an auction regime and that the ability to improve service should not be arbitrarily restricted to those that were licensees on a certain date. PageNet requests that the rules be modified to permit applications for response channels by any licensee operating a system serving at least some portion of the market on the date the application is filed.

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<sup>6</sup> See NABER Petition at pages 5 and 6.

<sup>7</sup> This recommendation was submitted by NABER in an ex parte presentation to the Commission's staff on June 29, 1994.

8. Our decision to license the response channels on an MTA and BTA basis and to require operation of a base station transmitter in the service area was intended to facilitate our licensing process and provide a simple method for determining mutually exclusive applications. Existing paging stations are currently licensed on a mileage separation basis rather than an MTA and BTA basis. We concur with the parties that there are advantages to basing eligibility on the coverage area of existing base stations. As noted by NABER, a single base station may often cover more than one BTA. We therefore find that a coverage area standard for response channel eligibility would better conform with the service needs of existing paging operations. Accordingly, we are amending our rules to permit licensees to obtain response channels sufficient to upgrade existing paging systems over their entire coverage area.

9. We also believe that a simple "brightline" test is needed for determining the coverage area of existing paging systems in order to facilitate the licensing of response channels. In considering this issue, we note that while existing paging operations include several classes of operations with varying service radii, a 20-mile (32.2 kilometer) radius of reliable service is typical of paging operations. We therefore believe that a 20-mile service radius would better reflect the service areas of most existing paging operations than the 25-mile standard suggested by NABER. At the same time, we recognize that, as specified in our rules, some paging operations have service areas larger than 20 or 25 miles. Accordingly, we will consider the service radius of a paging transmitter to be 20 miles for purposes of determining eligibility for response channel licenses, except that for certain classes of high-powered paging stations we will use a graduated series of wider service radii specified in our paging rules.<sup>8</sup> This standard will establish a clear and concise test for all applicants and minimize the administrative burden on our resources. Existing paging licensees will be eligible for response channels in any BTA or MTA that encompasses an authorized base station or which is partly or wholly overlapped by the paging system's service area as defined above.

10. We also find merit in NABER's request to allow existing licensees that expand their service areas after June 24, 1993, to be eligible for response channels in the expanded service areas. This request is consistent with our decision to provide opportunities for upgrading existing paging operations. We further agree with PageNet that any licensee operating a system that serves some portion of a market should be eligible to apply for response channels in that market, regardless of whether the licensee was operating before June 24, 1993. In this regard, we see no reason why operators of existing systems that have been expanded into adjacent trading areas after June 24, 1993, should be entitled to bid for response channels in newly served areas while operators of new systems authorized after that date should be barred from bidding for those channels. We therefore conclude that, as a

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<sup>8</sup> In the case of "F," "G," "H," or "K" class paging stations under both Sections 22.502(c) and 90.495(b)(1) of our rules, the service area for purposes of response channel eligibility will be defined by the service area radius specified in Section 22.504(b)(2).

matter of equity, the eligibility criterion should be modified to permit any paging licensee to apply for the response channels in a market, so long as the licensee's system serves some portion of that market on the date the application is filed. In particular, we note that on October 21, 1993, we adopted amendments to our private paging rules that resulted in the issuance of substantial numbers of new licenses for conventional paging.<sup>9</sup> We find that licensees of both expanded systems and new systems authorized after June 24, 1993, should have an opportunity to purchase the response channels. Accordingly, we are amending the eligibility requirements for holding narrowband PCS response channels as follows. Existing paging licensees will be defined as paging licensees authorized under Part 22 or Part 90 of our Rules as of the deadline for filing applications to participate in the competitive bidding for the paging response channels.<sup>10</sup> This application filing deadline will be established in a public notice.

#### Acquisition of Multiple Response Channels

11. In the Memorandum Opinion and Order, we limited existing paging licensees to acquisition of two response channels in a given geographic area. Our intent in imposing this limit was to allow an opportunity for at least four existing paging licensees to upgrade their operations. NABER agrees that the two channel limit is useful as it relates to the initial auctioning of frequencies and that it should serve as a protective measure against the hoarding of response channels by a few carriers. NABER is concerned, however, that this rule could interfere with the orderly operation of the marketplace if maintained on a long term basis. It states that when paging licensees merge or are acquired, the response channels used with their systems should be transferred as an integral part of the new system. Such transfers would not be permitted under the current rules if the acquiring operator would end up with more than two response channels in a particular service area. NABER recommends that we modify the two channel limit to provide that, under certain conditions, existing paging licensees would not be subject to a limit on the number of response channels they could acquire at any time

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<sup>9</sup> See Amendment of the Commission's Rules to Provide Channel Exclusivity To Qualified Private Paging Systems At 929-930 MHz, Report and Order, 8 FCC Rcd 8318 (1993).

<sup>10</sup> Mercury Communications, Inc (Mercury) filed a petition for clarification of the Third Report and Order in the competitive bidding proceeding (PP Docket No. 93-253) requesting that the June 24, 1993 date apply only to the initial auction and that this date not apply should response channels remain available following the initial auction. Mercury states that it is an applicant to provide private carrier paging service at numerous locations in the New York City metropolitan area, but was not authorized in that area as of June 24, 1993. Mercury argues that it would not serve the public interest to forever preclude companies not authorized as of June 24, 1993 because paging is a dynamic, evolving industry. We believe that the revised rules we are adopting herein will remedy the inequity to which Mercury refers.

after the initial grants of the licenses for those channels are final.<sup>11</sup> Under NABER's proposal, aggregation of response channels would be limited to parties that acquire the channels as part of an existing system or to supplement their own existing system. It suggests that approval for such acquisitions be conditioned on a review by the Commission to ensure that the purpose of the rule would not be violated and that this scrutiny be relaxed after one year.

12. Our purpose in adopting the two-channel limit was to ensure that at least four existing paging licensees will have the opportunity to upgrade their one-way services. We now believe that once the existing paging licensees have had an opportunity to obtain response channels and the competitive structure of narrowband PCS markets have taken form, it will not be necessary to limit the number of response channels a paging licensee may hold.<sup>12</sup> We agree with NABER that in cases where paging systems are merged or acquired, the seller should be permitted to transfer the response channels as well. At that point, the response channels would be integral to the individual systems that are merged, and we see no reason to require that they be divested. We also agree with NABER that eliminating the rule immediately after the initial licensing auction could encourage frivolous bidding in the auction process. We therefore find that NABER's initial suggestion for providing a sunset period is reasonable, and believe that a period of two years will be sufficient to discourage such speculation. Accordingly, we are amending the rules to provide that the two response channel per market limit will expire two years after the date of initial license grant. We believe that this sunset provision addresses NABER's concerns and that additional scrutiny by the Commission of response channel acquisitions would impose an unnecessary administrative burden.

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<sup>11</sup> This description of NABER's recommendation includes clarifications that were submitted in its *ex parte* presentation to the Commission's staff on June 29, 1994. NABER had initially suggested that this problem be resolved by providing for waivers of the rule or by establishing a sunset date after which the rule would be automatically eliminated.

<sup>12</sup> We do not believe that it is necessary to maintain the two channel limit in order to ensure a competitive market for narrowband PCS services in the long run. In this regard we note that our rules provide for twenty-one 50 kHz based narrowband PCS licenses with associated response channels at any geographic point. Nine of these response channels are 50 kHz (five nationwide, two regional, and two MTA channels) and twelve are 12.5 kHz (three nationwide, four regional, three MTA, and two BTA channels). Thus, existing paging licensees that operate narrowband PCS services using response channels will compete with other narrowband PCS licensees in each area.

## Ownership Attribution

13. The narrowband PCS rules provide that licensees shall not have an ownership interest in more than three narrowband PCS channels in any geographic area. The rules further provide that, for the purpose of this restriction, a licensee is any person or entity with an ownership interest of five or more percent in an entity holding a narrowband PCS license.<sup>13</sup> On our own motion, we reconsider this attribution requirement as it applies to indirect ownership of narrowband PCS licenses. In cases where a party has indirect ownership, through an interest in an intervening corporation or partnership that has less than a controlling ownership in a narrowband PCS license, we consider whether to apply a "multiplier" to determine the effective ownership interest of that party. A multiplier is currently used in our attribution rules for broadcast licenses,<sup>14</sup> and has recently been adopted for broadband PCS licenses,<sup>15</sup> by multiplying together each non-majority, non-controlling interest in a license to determine the effective ownership interest of a party whose interest is held through intervening entities. For example, if Party X owns a 25 percent non-controlling interest in Corporation Y that holds a 10 percent non-controlling interest in Licensee Z, Party X would be deemed to have a 2.5 percent effective ownership interest in Licensee Z. Use of a multiplier allows the Commission to accurately take account of a party's "actual involvement with the ultimate licensee" as well as the party's ability to exert control over that licensee.<sup>16</sup>

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<sup>13</sup> See Section 24.101 of the Commission's Rules and Memorandum Opinion and Order, supra at ¶ 25. As we have stated in addressing interests acquired at auction, where common non-controlling ownership exists between two or more bidders and such bidders cumulatively obtain more licenses than permitted, we permit divestiture of non-controlling interests to bring the entities into compliance if completed within 90 days of license grant. Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, PP Docket No. 93-253, GEN Docket No. 90-314, and ET Docket No. 92-100, FCC 94-219 at ¶ 29 (adopted August 16, 1994). Further, both investors and corporate licensees have a continuing obligation to be vigilant in monitoring relevant holdings to ensure compliance. See Memorandum Opinion and Order, File No. BTCCT-920514KE, 7 FCC Rcd 6058 at 6067 (1992); Attribution of Ownership Interests, 97 FCC 2d at 1033, ¶ 77.

<sup>14</sup> See 47 C.F.R. § 73.3555, n. 2(d).

<sup>15</sup> See Further Order on Reconsideration (Further Order), GEN Docket No. 90-314, 59 FR 39704 (August 4, 1994).

<sup>16</sup> See Further Order; see also Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities, 97 FCC 2d 997, 1018 (1984), recon., 58 RR 2d 604 (1985), further recon., 1 FCC Rcd 802 (1986).

14. In the Memorandum Opinion and Order, we adopted a flat five percent attribution rule for any party that has any ownership interest in an entity holding a narrowband PCS license to ensure that no person or entity is able to exert undue market power through partial ownership in multiple narrowband PCS licensees in a single service area. We did not specify that both direct and indirect interests in a narrowband PCS licensee were attributable. Compare Section 24.204(a), (d)(2)(viii) of the Commission's Rules. On reconsideration, we conclude that consideration of indirect ownership interests, through the use of a multiplier in future application proceedings,<sup>17</sup> will better facilitate a competitive narrowband PCS market. Under our prior rule, a party that has an ownership interest in a company that has a non-controlling ownership interest in a narrowband PCS licensee would be permitted to acquire an attributable ownership interest in three additional narrowband PCS licensees in the same area. For example, if Party A has a 40 percent non-controlling ownership interest in Company B, which in turn has a 40 percent non-controlling ownership interest in Narrowband PCS Licensee C, Party A (having only an indirect interest in Licensee C) would, under this rule, be permitted to acquire an attributable ownership interest in Narrowband PCS Licensees D, E, and F in the same area. By contrast, when considering its indirect ownership interest under the multiplier approach, Party A would be deemed to have a 16 percent effective ownership interest in Narrowband PCS Licensee C, well in excess of our five percent limitation, and would therefore be permitted to have an attributable ownership interest in only two additional narrowband PCS licensees in the same area.

15. We also find that using a multiplier to calculate the effective indirect ownership interest will better promote a competitive narrowband PCS market than attributing to a party in full the ownership interest of an intervening company in a narrowband PCS licensee. This approach would likely exclude parties that pose no threat to competition and prevent a party that has neither the ability to exert control nor a substantial financial stake in a narrowband PCS licensee from acquiring an attributable ownership interest in more than two additional narrowband PCS licensees in the same area. In the example in paragraph 13, supra, Corporation Y's 10 percent non-controlling interest in Licensee Z would be deemed in excess of the five percent threshold applicable to narrowband PCS ownership. Thus, Party X, which has a 25 percent non-controlling interest in Corporation Y, would be restricted to acquiring an attributable ownership interest in only two additional narrowband PCS licensees in the same area despite its inability to exert control or significant influence over the operations of Licensee Z. By contrast, use of a multiplier produces an effective ownership interest of only 2.5 percent by Party X in Licensee Z, permitting Party X to acquire an attributable ownership interest in three additional narrowband PCS licensees in the same area.

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<sup>17</sup> The multiplier rule will not be applied to Mobile Telecommunication Technologies Corporation's pioneer's preference license for a nationwide channel, or to the other ten nationwide channels that already have been auctioned. We do not believe that it would be equitable to apply this new rule retroactively.

16. Considerations of true economic interest in, and ability to control, a licensee are crucial in determining whether a particular indirect ownership interest could affect the degree of competition in a market and therefore should be attributed to the holder for purposes of our multiple ownership rules. These considerations apply equally in the broadband and narrowband PCS contexts. Accordingly, a multiplier similar to that used in applying our attribution rules in broadband PCS will be used to determine effective ownership interests in narrowband PCS licensing. We therefore will amend Section 24.101 of our rules to include the use of a multiplier to determine whether an entity holding an indirect non-controlling interest in a narrowband PCS licensee has an attributable interest for the purpose of our multiple ownership rules. As in our broadcast and broadband PCS rules, where an entity's ownership interest in any link in the ownership chain is greater than 50 percent or is controlling, the interest will be treated as if it were 100 percent for the purposes of applying the multiplier.

#### Local Service Areas in Puerto Rico

17. In response to a suggestion by Pegasus Communications, Inc. (Pegasus) in the recent broadband PCS proceeding, we are revisiting the local service area adopted for the Commonwealth of Puerto Rico.<sup>18</sup> We currently treat Puerto Rico as a BTA for narrowband PCS licensing purposes.<sup>19</sup> In the broadband PCS proceeding, Pegasus requested that we divide the Puerto Rico service area into two local service areas and suggested that we likewise establish two BTA-like service areas in Puerto Rico for the narrowband PCS service. Pegasus argued that due to the size and mountainous terrain of the island, Puerto Rico essentially is split in half, comprising two commercial centers: San Juan and Mayagüez-Ponce. Pegasus stated that these mountains make travel to San Juan difficult for Puerto Ricans located in the southern and western portions of the island, and therefore they must conduct essentially all commerce in the port cities of Mayagüez, Aguadilla, or Ponce. Pegasus also stated that the population of its proposed Mayagüez/Aguadilla-Ponce service area is more than one million and this area would be larger in population than several of the existing BTAs. Pegasus provided a list of municipios that it suggests constitute the Mayagüez/Aguadilla-Ponce service area and suggested that the San Juan service area consist of all municipios not listed for the Mayagüez/Aguadilla-Ponce BTA-like service area.<sup>20</sup> No party responded to this petition. In

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<sup>18</sup> See Pegasus Petition for Reconsideration of the Second Report and Order, GEN Docket No. 90-314 (filed December 8, 1993); Pegasus ex parte presentation, GEN Docket No. 90-314 (filed April 4, 1994).

<sup>19</sup> See Section 24.13(b)(2) of the Commission's Rules.

<sup>20</sup> The primary political divisions of Puerto Rico are termed "municipios." See 1990 Census of Population and Housing, Summary Population and Housing Characteristics, Puerto Rico, 1990 CPH-1-53, Issued November 1991 by the Bureau of the Census, at page A-5. In its petition, Pegasus translates "municipios" to be "counties." We use the term "municipios" to avoid confusion.

our Memorandum Opinion and Order on broadband PCS, we adopted Pegasus's suggestion and provided two separate service areas in Puerto Rico, one for Mayagüez/Aguadilla-Ponce and one for San Juan.<sup>21</sup> This change recognized the difficulties created by the mountain range separating these two areas. We also stated that no parties opposed this request<sup>22</sup> and that we found this adjustment to be in the public interest.

18. We agree with Pegasus that it is desirable to modify the Puerto Rico narrowband PCS service area to specify two BTA-like service areas in the same manner as our action in the broadband PCS proceeding. The 1990 census for Puerto Rico is 3,522,037.<sup>23</sup> The population of the new Mayagüez/Aguadilla-Ponce service area is 1,048,473 and the population of the new San Juan service area is 2,473,564. Only 49 of the remaining 491 BTAs have a population of greater than 1,048,473 and only 18 BTAs have a population greater than 2,473,564.<sup>24</sup> We find that the population of each of these service areas is sufficient to support advanced narrowband PCS services.<sup>25</sup> Additionally, we conclude that the patterns of local trade caused by the mountainous terrain of the island make the proposed division economically and geographically desirable. Accordingly, we are providing two BTA-like service areas in Puerto Rico for narrowband PCS service. This modification will apply to all BTA channels in the narrowband PCS service, *i.e.*, both the eight paging response channels and the two 50 kHz paired with 12.5 kHz channels.<sup>26</sup>

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<sup>21</sup> See Memorandum Opinion and Order, GEN Docket No. 90-314, 59 FR 32820 at ¶ 58 (June 24, 1994), petitions for recon. pending.

<sup>22</sup> We note, however, that Puerto Rico Telephone Company has filed a petition for reconsideration of the broadband PCS Memorandum Opinion and Order, in which it requests that we reconsider our decision to divide Puerto Rico into two BTAs.

<sup>23</sup> See supra note 20 at page 1.

<sup>24</sup> See Rand McNally 1992 Commercial Atlas & Marketing Guide, "Population, Income and Sales Data for the 150 Largest Basic Trading Areas," at page 44, Census 4/1/90 column.

<sup>25</sup> We note that Puerto Rico is licensed as five Metropolitan Statistical Areas (MSAs) and seven Rural Service Areas (RSAs) in the Domestic Public Cellular Radio Telecommunications Service.

<sup>26</sup> A map showing the new narrowband PCS service areas in Puerto Rico is provided in Appendix B. See Sections 24.129(d) and 24.130(c) of the Commission's Rules for a listing of the BTA channels.

## ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that Part 24 of the Commission's Rules IS AMENDED as specified in Appendix A, effective 30 days after publication in the Federal Register.

20. IT IS FURTHER ORDERED THAT the Petition for Reconsideration filed by the Association of Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. IS GRANTED to the extent discussed above. IT IS FURTHER ORDERED THAT the Petition for Acceptance of Late-filed Comments by Paging Network, Inc. IS GRANTED.

21. Final Regulatory Flexibility Analysis. Pursuant to 5 U.S.C. Section 603, an initial Regulatory Analysis was incorporated in the Notice of Proposed Rule Making and Tentative Decision in GEN Docket No. 90-314 and ET Docket No. 92-100. Written comments to the proposals in the Notice, including the Regulatory Flexibility Analysis, was requested. A Final Regulatory Flexibility Analysis was incorporated in the First Report and Order in this proceeding.

A. Need for and Objective of Rules: Our objective is provide an allocation for PCS services that require narrower bandwidth blocks than the requests for wider bandwidth blocks at 2 GHz. We believe that the flexibility of the rules will enable a diversity of services, including enhanced paging and messaging services.

B. Issues Raised by the Public in Response to the Initial Analysis: No party suggested modifications specifically to either the initial or final regulatory flexibility analyses.

C. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives: We have reduced burdens wherever possible. The regulatory burdens that we have retained are necessary to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. In the Competitive Bidding proceeding, PP Docket No. 93-253, we have provided bidding credits and installment payments for entrepreneurial and small businesses and companies owned by woman and minorities in order to ensure that they can participate in the provision of narrowband PCS services. The Secretary will send a copy of the action to the Chief Counsel for Advocacy of the Small Business Administration.

22. This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

## **Appendix A: Final Rules**

Part 24 of Title 47 of the Code of Federal Regulations is amended to read as follows:

### **PART 24 -- PERSONAL COMMUNICATIONS SERVICES**

1. The authority citation in Part 24 continues to read as follows:

**AUTHORITY: Secs. 4, 301, 302, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. Sections 154, 301, 302, 303, and 332, unless otherwise noted.**

2. Section 24.101 is amended to read as follows:

#### **§ 24.101 Multiple ownership restrictions.**

(a) Narrowband PCS licensees shall not have an ownership interest in more than three of the 26 channels listed in Section 24.129 in any geographic area. For the purpose of this restriction, a narrowband PCS licensee is any person or entity with an ownership interest of five or more percent in a narrowband PCS license.

(b) In cases where a party applies for a license after August 16, 1994 or has a license transferred to it after that date, and the party has indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the narrowband PCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the narrowband PCS license, 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.

**EXAMPLE:** Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the narrowband PCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

3. Section 24.102 is amended by revising paragraph (d) to read as follows:

**§ 24.102 Service areas.**

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(d) The BTA service areas are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39, with the following additions licensed separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; Mayagüez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayagüez/Aguadilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Añasco, Arroyo, Cabo Rojo, Coamo, Guánica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Díaz, Lajas, Las Marías, Maricao, Maunabo, Mayagüez, Moca, Patillas, Peñuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San Germán, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

4. Paragraph (a) of Section 24.130 is revised to read as follows:

**§ 24.130 Paging response channels.**

(a) The channels listed in paragraphs (b) and (c) of this section are available to licensees of conventional one-way paging base stations licensed pursuant to Part 22 or Part 90 of this chapter as of the application filing deadline for the paging response channels. Eligibility for response channels shall be based on the authorized service area of each existing paging licensee. This service area is defined as the area within a 32.2 kilometer radius of the licensee's base stations or, in the case of "F," "G," "H," or "K" class stations under Sections 22.502(c) and 90.495(b)(1) of this chapter, as the area that is within the service area radius specified in Section 22.504(b)(2) of this chapter. Existing paging licensees are eligible to bid for any response channel in any BTA or MTA which encompasses an authorized base station or which is partly or wholly overlapped by a licensee's service area. These channels shall be used only in paired communications with existing paging channels to provide mobile-to-base station communications. Until two years after the date of initial license grant, eligible paging licensees are limited to a maximum of two response channels within the same geographic area. Licenses for paging response channels are not counted toward the multiple ownership restrictions of Section 24.101.

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