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FCC 96-52

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

In the Matter of	)	
	)	
Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

NOTICE OF PROPOSED RULE MAKING

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By the Commission: Commissioners Ness and Chong issuing separate statements.

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I. INTRODUCTION

1. By this Notice of Proposed Rule Making (*Notice*), we examine ways to promote continued growth and preserve vigorous competition in the paging industry through revisions to our common carrier and private paging regulations. Specifically, we seek to establish a comprehensive and consistent regulatory scheme that will simplify and streamline licensing procedures and provide a flexible operating environment for all paging services. Toward this objective, we propose to transition to a geographic licensing approach where we issue single licenses for geographic areas that encompass many sites, rather than individual licenses on a transmitter-by-transmitter basis. We also propose to adopt competitive bidding rules for mutually exclusive paging applications, so that available channels may be assigned rapidly to applicants who will expedite service to the public.

2. We examine our paging regulations in light of the statutory objective of regulatory symmetry for all Commercial Mobile Radio Services (CMRS) established in the Omnibus Budget Reconciliation Act of 1993.[1] As we stated in the *CMRS Third Report and Order*, we believe that common carrier paging and private carrier paging, though regulated differently in the past, are substantially similar services that should be subject to comparable regulation.[2] We also seek to ensure that our rules for existing paging services are consistent with our rules for new competing services, such as narrowband Personal Communications Services (PCS),[3] so that competitive success is dictated by the marketplace, rather than by regulation. Interested parties are invited to comment on a variety of issues, including methods of transitioning to licensing within a pre-determined geographic area ("geographic licensing") and auction procedures for competing applications.

II. BACKGROUND

3. The Commission currently allocates paging channels in the following bands:[4]

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[1] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (1993 Budget Act), Title VI § 6002(b)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*).

[2] Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 7988, 8026, ¶ 67 (1994) (*CMRS Third Report and Order*).

[3] The Commission's rules generally define narrowband PCS as "PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands." 47 C.F.R. § 24.5. We previously have indicated our expectation that narrowband PCS would include advanced voice paging, two way acknowledgment paging, data messaging, both one-way and two-way messaging and facsimile, as well as other services. *See, e.g.,* Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, 8 FCC Rcd 7162, ¶ 1 (1993).

[4] *See* 47 C.F.R. §§ 22.531, 22.561, 90.494, 90.555. Additionally, paging service may be provided using the leased sub-carriers of broadcast stations. *See, e.g.,* 47 C.F.R. § 22.531(c).

	Band	Number of Channels
Common Carrier	35 MHz	16
	43 MHz	16 (developmental channels)
	152 MHz	4
	152/158 MHz	18 paired (for 1-way or 2-way use)
	454/459 MHz	26 paired (for 1-way or 2-way use)
	931 MHz	40
	Total	120
Private Carrier	152/158 MHz	4
	462 MHz	8
	465 MHz	1 (low power)
	929 MHz	40
	Total	53

4. The Commission first allocated spectrum for the common carrier paging (CCP) service in 1949.[5] Initially, paging service growth was slow due to the unreliability and limited applications of tone-only pagers, which notified the customer that a message had been received without identifying the caller's telephone number.[6] To retrieve the message, the customer had to call an answering service.[7] In the early 1980s, however, improvements in paging technology spurred demand for paging service.[8] Digital display pagers, which were introduced in 1982, allow a caller to transmit a numeric message to the subscriber and permit the recall of any message on demand.[9] In response to the growth in demand for paging services, CCP operators obtained additional capacity by applying for licenses on two-way channels in the Domestic Public Land Mobile Radio Service. These channels were available for paging services because the advent of cellular telephone service had decreased the demand for these channels by traditional radiotelephone services, such as Improved Mobile Telephone

[5] *See* General Mobile Radio Service, Allocation of Frequencies, *Report and Order*, Docket No. 8658 *et al.*, 13 F.C.C. 1190, 1215 (1949).

[6] Salomon Brothers, *The Wireless Telecommunications Review* (Spring 1994) at 20 (*Salomon Brothers Report*). The trend towards making pagers increasingly small and lightweight has certainly contributed to their popularity.

[7] *Id.*

[8] *Id.*

[9] *Id.* As noted in the *Salomon Brothers Report*, eighty-five percent of all subscribers used digital display pagers.

Service (IMTS).[10] The Commission further 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.[11] In 1984, in response to the continued development of paging technology, alphanumeric pagers were introduced.[12]

5. Private carrier paging (PCP) was established by the Commission as a service distinct from CCP and historically has been subject to different regulatory treatment. Initially, the Commission authorized PCP 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.[13] In 1982, however, 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.[14] As the paging market grew, demand for PCP channels increased among commercial paging operators, particularly as CCP channels in major markets became congested. The Commission responded by allowing PCP operators access to the pool of 929 MHz channels set aside to meet the internal communications needs of Business Radio Service eligibles, and expanding the classes of users eligible to obtain service from PCP licensees and paging licensees in the Business Radio Service.[15] Finally, in 1993, the

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[10] These channels may be used either for one-way or two-way mobile radio service, but paging has become the predominant mobile radio use of these channels. *See* 47 C.F.R. § 22.725 *et seq*. In addition, as discussed in Section III(A)(1), *infra*, these channels also are used by Basic Exchange Telephone Radio Systems (BETRS) in the Rural Radiotelephone Service.

[11] Amendments of Parts 2 and 22 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service, *First Report and Order*, GEN Docket No. 80-183, 89 F.C.C. 2d 1337 (1982) (*900 MHz Paging Allocation Order*), *recon.* 93 F.C.C. 2d 908 (1983).

[12] *Id.* Alphanumeric pagers allow subscribers to receive, store, and display full text messages of up to 80-160 characters that are sent from either a data entry device or an operator.

[13] *See, e.g.,* Amendment of Part 90 of the Commission's Rules to Allocate Certain Unassigned Band-Edge Frequencies in the 150.8-162 Mc/s Band *et al.*, *Report and Order*, Docket No. 16777, 9 F.C.C. 2d 666, 667 (1967) (establishing paging frequencies in the Business Radio Service).

[14] *900 MHz Paging Allocation Order*, 89 F.C.C. 2d 1337 at ¶ 14. The Commission expected PCP systems to function as the logical counterpart to two-way specialized mobile radio (SMR) systems in the 800 MHz band. *Id. See also* Frederick J. Day, *Policies and Practices in the Regulation of Private Radio Communications Systems* 11-4 (1994); 47 C.F.R. Part 90.

[15] Of the 40 channels allocated to 929 MHz paging, 30 channels originally were designated for private internal use and 10 channels for PCP use. In 1985, the PCP allocation was increased to 20 channels, and PCPs were authorized to share the non-commercial channels. Amendment of the Commission's Rules to Make Additional Channels Available for Private Carrier Paging Operations in the 929-930 MHz Band, *Report and Order*, PR Docket 85-102, 58 RR 2d (P&F) 1290 (1985); Amendment of Part 90 of the Commission's Rules to

Commission allowed PCP operators to provide service to the public on virtually the same unrestricted basis as CCP operators.[16]

6. In the past few years, the growth in consumer demand for paging service has accelerated markedly, and this trend is continuing. A study by Economic and Management Consultants International estimates that the paging industry grew by 29 percent in 1993.[17] In 1994, the paging industry grew by an additional 38 percent, bringing total subscribership to more than 27.3 million.[18] Analysts project that penetration could approach at least 15 percent of the population (or 41.5 million subscribers) by the year 2000.[19]

7. Increased competition, technological improvements, and declining subscription costs have helped to spur the dramatic growth in the paging industry.[20] At present, more than 600 licensed paging operators compete for business, offering customers a wide array of options in terms of coverage area, transmission quality, system reliability, and price.[21] In the future, industry growth is likely to be fueled by technical advancements in the narrowband services, such as two-way and acknowledgement paging, advanced data applications, and

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Expand Eligibility and Shared Use Criteria in the Private Land Mobile Services, Report and Order, PR Docket No. 89-45, 6 FCC Rcd 542 (1991); *see also* 47 C.F.R. § 90.75 (defining eligibility in the Business Radio Service).

[16] Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals, *Report and Order*, 8 FCC Rcd 4822 (1993).

[17] As Paging Prices Keep Declining, Subscriber Numbers Increase, *Land Mobile Radio News* (July 1, 1994). The United States currently leads the international paging market, boasting at least 15 million more subscribers than any other country. RCR's Top 20 International Paging Markets, *Radio Communications Report* (Jan. 9, 1995) at 16.

[18] Telephony, *Communications Daily* (June 30, 1995).

[19] *Salomon Brothers Report* at 20. The Personal Communications Industry Association (PCIA) estimates that the industry could grow to as many as 56.2 million subscribers by the year 2000. MTel, Metrocall Draw Top Grades from Analyst Evaluating Six Paging Strategies, *Land Mobile Radio News* (Apr. 7, 1995).

[20] As Paging Prices Keep Declining, Subscriber Numbers Increase, *Land Mobile Radio News* (July 1, 1994); *Salomon Brothers Report* at 21.

[21] *Salomon Brothers Report* at 21; As Paging Prices Keep Declining, Subscriber Numbers Increase, *Land Mobile Radio News* (July 1, 1994); Looking For Growth, Paging Companies Eye PCS Opportunities, *Advanced Wireless Comm. Telecom Publishing* (June 22, 1994).

digital voice pagers.[22] The introduction of narrowband PCS promises to provide additional competition, innovation, and growth to the paging industry.[23]

8. In addition to growth in the size and scope of the paging industry, paging has been the subject of significant regulatory changes. The 1993 Budget Act amended the Communications Act to divide all mobile services into two categories -- CMRS and private mobile radio service (PMRS) -- and mandated that "substantially similar" mobile services receive comparable regulatory treatment.[24] Based on the statute, we concluded in the *CMRS Second Report and Order* in GN Docket No. 93-252 that PCP services were subject to reclassification as CMRS as of August 10, 1996.[25] In the *CMRS Third Report and Order*, we further concluded that PCP and CCP are substantially similar services that should be subject to comparable regulation to the extent feasible, and that geographic licensing (analogous to PCS licensing) should be considered in both services.[26] Consideration of these issues was deferred to a future proceeding, however, which we initiate by this *Notice*.[27]

A. Common Carrier Paging

1. Current Licensing Procedures

9. Under current rules, a CCP channel is assigned to a single licensee in each area on an exclusive basis.[28] Licensees' protected service areas are based upon predicted coverage of

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[22] As Paging Prices Keep Declining, Subscriber Numbers Increase, *Land Mobile Radio News* (July 1, 1994); Wide-Area Paging Study Indicates Alphanumeric On Verge Of Rapid Growth, *Land Mobile Radio News* (Nov. 4, 1994). A study conducted by Malarkey-Taylor Associates Inc./Economic and Management Consultants International Inc. predicts that "22 percent of existing paging users will pay at least $3 additional per month for acknowledgment paging with pre-coded messages."

[23] Paging service and its competitive conditions are also described in the Commission's first annual report to Congress concerning competition in CMRS, Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *First Report*, 10 FCC Rcd 8844, 8854-55, 8863-68 (1995).

[24] 1993 Budget Act, Pub. L. No. 103-66, Title VI § 6002(b)(2)(A), (B), *codified at* 47 U.S.C. § 332(c).

[25] Implementation of Sections 3(n) and 332 of the Communications Act, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1452, ¶ 97 (1994) (*CMRS Second Report and Order*). Under Section 6002(c)(2)(B) of the Budget Act, reclassified PCP licensees retain their PMRS status on a grandfathered basis until three years after the date of enactment of the legislation which occurred on August 10, 1993. Paging service provided on FM Subcarrier frequencies, however, became immediately reclassified as CMRS on August, 10, 1993.

[26] *CMRS Third Report and Order*, 9 FCC Rcd at 8035, 8142, ¶¶ 77, 347.

[27] *Id.* at 8053, ¶ 122.

[28] *See* 47 C.F.R. § 22.351.

the transmitters in their systems, and licensees must apply for additional transmitter locations when expanding their systems.[29] On all CCP allocations other than 931 MHz (hereinafter collectively referred to as "lower band" CCP channels), applicants specify the channels they want, and applications filed within the designated filing window for the same channel in the same area are mutually exclusive.[30] Part 22 defines applications as mutually exclusive if: (1) more than one application is pending, and (2) the grant of one application would preclude the grant of the other(s) under applicable Commission rules.[31] Mutually exclusive CCP applications are subject to selection by competitive bidding, although no specific competitive bidding procedures have been adopted.[32]

10. By contrast, in the 931 MHz band, applications are not channel-specific.[33] Although an applicant may express a preference for a particular channel, the Commission has the discretion to assign a channel different from the one requested. Consequently, 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, however, the number of applications often exceeds the number of available channels, resulting in all applications being treated as mutually exclusive. This has led to backlogs and delays in the processing of applications, as well as pending litigation regarding the grouping of 931 MHz applications in some markets.[34]

2. *Part 22 Rewrite Order*

11. In the *Part 22 Rewrite Order*, the Commission revised its licensing rules for all Part 22 services and specifically adopted new licensing rules for 931 MHz paging frequencies,

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[29] *See* 47 C.F.R. §§ 22.3, 22.105, 22.123(e), 22.537, and 22.567.

[30] 47 C.F.R. § 22.131.

[31] *Id.*

[32] Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2359, ¶ 61 (1994) *(Competitive Bidding Second Report and Order)*.

[33] We note, however, that three channels in the 931 MHz band were allocated for nationwide network paging and have been assigned to licensees on a nationwide basis. *See* 47 C.F.R. §§ 22.531(b), 22.551. As a result, these three licensees do not have to face competing applications when expanding their systems. *See also* Section III(A)(1), *infra*, for a discussion of Mobile Telecommunications Technologies Corporation's (MTel) use of 931.4375 MHz for its nationwide paging service.

[34] *See* Public Mobile Services Lottery, Lottery No. PMS-31, 5 FCC Rcd 7430 (1990) (applications for review pending).

which were intended to correct the problems that had impeded licensing under the old rules.[35] 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.[36] The *Part 22 Rewrite Order* further provided that 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.[37] The *Part 22 Rewrite Order* did not establish competitive bidding procedures for mutually exclusive applications; thus, pending mutually exclusive applications cannot be resolved until such rules are adopted.

12. However, on December 30, 1994, the Commission stayed the effective date of new Section 22.131 (formerly 47 C.F.R. § 22.541) of our rules as it applies to 931 MHz paging, as well as the opening of the 60-day filing window for amendment of pending 931 MHz applications.[38] We stayed the effective date of the new rules because certain paging applications that previously had been granted, denied, or dismissed under the old rules remained before us in the form of petitions for reconsideration and applications for review.[39] We concluded that these pending reconsideration petitions and applications for review should be decided, to the extent possible, under our old rules rather than the new rules.[40] At the same time, however, the Commission recognized that if remaining unresolved applications can not be resolved under existing rules, they should be returned to pending status. Thus, until these licensing disputes are resolved, we are not requiring that 931 MHz applications be channel-specific. In addition, we will use a 30-day filing window to define mutually exclusive applications as provided under our old paging rules, rather than the 60-day filing window adopted in the *Part 22 Rewrite Order.*[41]

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[35] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket No. 92-115, 9 FCC Rcd 6513, 6533, ¶¶ 95-105 (1994) (*Part 22 Rewrite Order*).

[36] *Part 22 Rewrite Order,* 9 FCC Rcd at 6534, ¶ 98.

[37] *Id.*

[38] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Order*, CC Docket No. 92-115, 10 FCC Rcd 4146, 4147-48, ¶ 5 (Jan. 18, 1995) (*Part 22 Stay Order*).

[39] *Part 22 Stay Order*, 10 FCC Rcd at 4147-48, ¶ 5. *See also CMRS Third Report and Order*, 9 FCC Rcd 7988, Appendix B at 13, 19. We note that 47 C.F.R. § 22.131 superseded former 47 C.F.R. § 22.541 on January 2, 1995.

[40] *Part 22 Stay Order*, 10 FCC Rcd at 4147-48, ¶¶ 2-5.

[41] *Id.* The Personal Communications Industry Association (PCIA) also requested that we stay our new application processing rules for 931 MHz paging. In the *Part 22 Stay Order*, we determined that no action was necessary with respect to PCIA's stay request in view of our decision to stay the new procedures relating to 931 MHz applications on our own motion. *Part 22 Stay Order,* 10 FCC Rcd at 4147-48, ¶ 5. *See also* discussion *infra* in Section III(C)(1), (2).

3. Availability of CCP Channels

13. According to our records, CCP channels are heavily licensed, particularly in major markets. The VHF and UHF paging channels in the 152 and 454 MHz bands have been available for licensing the longest and appear to be more heavily licensed than the 931 MHz CCP channels. Current licensing activity on the lower paging bands is confined largely to the addition of fill-in sites and minor expansion by existing licensees. Such activity suggests that there is relatively little desirable spectrum that remains available for licensing on these channels.

14. Our records indicate greater availability of channels in the 931 MHz band, but these channels also are scarce in virtually all major markets and most mid-sized markets. In Chicago, for example, only two of 37 channels are unlicensed within 70 miles of city center. Channel availability in New York, Philadelphia, Baltimore, and Washington D.C. is roughly equivalent to availability in Chicago. Moreover, in all of these markets, the number of pending applications (some of which date back as far as 1990) exceeds the number of available channels. Nevertheless, while vacant CCP spectrum may be scarce in major markets, it is possible that some additional spectrum is recoverable through license cancellations.

B. Private Carrier Paging

1. Current Licensing Procedures

15. Historically, PCP channels have been licensed on a shared basis, *i.e.*, licensees do not obtain exclusive rights to a particular channel and may be required to share the channel with others in the same area. Under our current rules, PCP applicants for all non-929 MHz PCP channels and five of the forty 929 MHz channels[42] must submit their applications to a frequency coordinator who recommends a channel to be assigned by the Commission.[43] Because multiple licenses may be granted for the same channel, these PCP applicants have not been subject to competing applications or mutual exclusivity selection procedures, such as lotteries, comparative hearings, or auctions.

16. In October 1993, we adopted a *Report and Order* in PR Docket No. 93-35, which established a mechanism for exclusive licensing on thirty-five of the forty 929 MHz PCP

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[42] 47 C.F.R. §§ 90.555, 90.494(b).

[43] The Commission has certified the National Association of Business and Educational Radio (NABER) as the exclusive frequency coordinator for PCP channels and the Business Radio Service (which includes lower band paging channels). NABER recently merged with PCIA. For purposes of this proceeding, we refer to the combined entity as "PCIA."

channels in order to encourage the development of wide-area paging systems.[44] We allowed licensees whose systems operate on these channels to "earn" exclusivity on a local, regional, or nationwide basis, by constructing multi-transmitter systems that meet certain minimum criteria (*i.e.*, six contiguous transmitters for a local system, 70 for a regional system, and 300 for a nationwide system).[45] Those PCP systems, licensed prior to October, 1993, that qualified for exclusivity under the new rules were granted exclusive licenses.[46] We grandfathered the remaining incumbents, enabling existing systems to continue operating without being forced to change channels or location.[47] The licensing scheme adopted in the *PCP Exclusivity Order* resembles CCP licensing in that co-channel interference protection (except in the case of nationwide systems) is site-specific, rather than based on Commission-defined service areas. Unlike CCP applicants, however, 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.

2. Availability of PCP Channels

17. Our licensing records indicate that, at the time the *PCP Exclusivity Order* was adopted, significant licensing already had occurred on PCP channels, much of it by CCP operators seeking additional spectrum to establish regional or nationwide systems. In May, 1994, pursuant to the *PCP Exclusivity Order*, the Private Radio Bureau awarded conditional exclusivity (*i.e.*, exclusivity conditioned on completion of construction and commencement of service) to ten nationwide systems (two of them on the same channel), 14 regional systems, and approximately 130 local systems that had been licensed prior to the new rules.[48] Many of these licensees also operate CCP systems.

18. Since the grant of exclusivity to grandfathered PCP licensees, additional licensing has occurred at a rapid pace and new nationwide, regional, and local systems are under development. As a result, the 35 exclusive PCP channels are nearly as occupied as the 931 MHz CCP channels, and soon there may be insufficient spectrum available to allow coordination of new systems (as opposed to "fill-in" sites) in most major or mid-sized markets. While it is likely that some of this spectrum can be recovered from licensees who

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[44] 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, 8 FCC Rcd 8318 (1993) (*PCP Exclusivity Order*).

[45] *Id.* at 8321, ¶¶ 9-15.

[46] *Id.* at 8329, ¶ 31.

[47] *Id.* This protection applied only to new co-channel licensing. To the extent that grandfathered licensees already were sharing channels, their mutual cooperation and non-interference obligations continued to apply.

[48] *See Public Notice,* "Private Radio Bureau Announces 929-930 MHz Paging Operators Qualifying for Local, Regional, and Nationwide Exclusivity," DA 94-546, May 27, 1994.

fail to construct, sufficient spectrum still may not be available to allow licensing of any significant new systems on these frequencies.

III. DISCUSSION

A. Geographic Licensing Proposal

1. Overview

19. To date, paging operators have chosen the areas they seek to serve by applying for licenses on a site-by-site basis. Thus, the boundary of the licensee's service area is derived from the composite service areas of existing base stations. In other CMRS services, such as cellular, PCS, and Specialized Mobile Radio (SMR), we have recognized that licensing based on pre-defined service areas poses significant advantages over site-based licensing, because of the greater flexibility it gives licensees and the greater ease of administration for the Commission.[49] We believe that adopting geographic licensing for paging channels offers the same potential benefits and would enhance regulatory symmetry with other CMRS services.

20. In the *Part 22 Rewrite* proceeding, we received numerous comments suggesting that we adopt geographic licensing procedures for paging instead of continuing to license paging systems on a transmitter-by-transmitter basis.[50] Commenters asserted that a geographic licensing approach would expedite the licensing process, reduce regulatory delays, encourage wide-area service, achieve substantial administrative savings, and reflect the realities of the marketplace.[51] In the *Part 22 Rewrite Order*, we agreed with commenters that market-area licensing in the paging context might be desirable, but concluded that we lacked sufficient notice to implement such a licensing scheme. We also concluded that the geographic licensing issue would be more appropriately considered in a proceeding encompassing all substantially similar CMRS services, instead of only Part 22 paging services.[52] In this *Notice*, therefore, we consider geographic licensing in the context of all paging channels, including 931 MHz, 929 MHz, and lower band CCP and PCP channels.

21. We tentatively conclude 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. We believe that geographic licensing is particularly suitable for paging, because the

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[49] *See, e.g., CMRS Third Report and Order*, 9 FCC Rcd at 8044, ¶ 98.

[50] *See Part 22 Rewrite Order*, 9 FCC Rcd at 6515, ¶ 9.

[51] *Id.; see* comments filed in *Part 22 Rewrite* proceeding, *e.g.*, Telocator Comments at 8 and Reply Comments at 2-3; Paging Network, Inc. Comments at 5-10.

[52] *Part 22 Rewrite Order*, 9 FCC Rcd at 6516, ¶ 11.

service has evolved away from single-site systems toward multi-site systems that cover large geographic areas. 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. Geographic licensing also would (1) enhance regulatory symmetry between paging and narrowband PCS and (2) eliminate inefficiencies in our current rules that effectively create a vast web of relationships between applications for individual transmitter sites at various locations.[53] As a result, the grouping of mutually exclusive applications for selection would be simplified.

22. We also recognize that our proposal must take into account the large number of paging systems already licensed and operating under site-specific authorizations, particularly in major markets. In fact, we anticipate that in many instances, these existing licensees will seek and obtain geographic licenses for areas where they already operate, enabling them to consolidate and expand their operations under a more flexible regulatory regime. In those instances where an incumbent does not obtain a geographic license, however, we believe it is essential that the incumbent's rights to operate under its existing authorizations not be diminished. Therefore, as discussed in greater detail in Section III(A)(3), *infra*, we propose that under any geographic licensing scheme adopted in this proceeding, all incumbent systems will 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. In this regard, we propose that any request for transfer or assignment of an incumbent authorization to the geographic licensee be presumed within the public interest, although we also intend to review each such request as required by Section 310(d) of the Communications Act of 1934, as amended (Act).[54] In addition, if an incumbent fails to construct, discontinues operations, or otherwise has its license terminated by the Commission, we propose that the geographic area covered by the incumbent's authorization revert automatically to the geographic licensee. To the extent we adopt geographic licensing, we propose to eliminate the finder's preference.

23. We invite comment on our geographic licensing proposal. Specifically, we seek comment on the costs and benefits of converting paging to geographic licensing in each of the CCP and PCP frequency bands. Is geographic licensing practicable in all bands? What are the likely effects on incumbent systems and potential new entrants? We note that our tentative conclusion in favor of geographic licensing does not require us to adopt identical rules in all paging bands, if there are differences between the bands that would justify varying our approach. In particular, we encourage commenters to support their views regarding

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[53] For example, Applicant A seeks a license for proposed operations which overlap the service area created by Applicant B's proposed operations, which overlap the service area created by Applicant C's proposed operations, with overlapping service areas continuing *ad infinitum*.

[54] 47 U.S.C. § 310(d). We also note that these applications would be subject to a petition to deny under 47 U.S.C. § 309.

geographic licensing with detailed empirical data on the size of existing paging systems, their service areas, and the amount of unlicensed spectrum in each band.

24. 931 MHz and 929 MHz Channels. We believe geographic licensing is particularly appropriate for 931 and 929 MHz paging channels, because of the large number of paging operators who are developing wide-area systems in these bands. In both bands, we already have made changes in our rules to allow greater flexibility for licensees seeking to build multi-site systems. In the *Part 22 Rewrite Order*, we allowed 931 MHz licensees to add or modify internal sites in their systems without prior Commission notification or approval.[55] In the *PCP Exclusivity Order*, we granted exclusivity to licensees operating multi-site systems, based on the aggregate area covered by their sites.[56] Notwithstanding these changes, our rules for both 931 and 929 MHz continue to rely on site-specific licensing. Moreover, although the two services are technically identical and virtually indistinguishable from the customer's point of view, certain differences in their respective regulations persist, based on the pre-1993 Budget Act dichotomy between common carrier and private radio services.

25. We believe that updating and conforming our 931 and 929 MHz rules is consistent with the objectives of the Act and principles of regulatory symmetry.[57] Under our geographic licensing proposal, 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 use of pre-defined service area boundaries would eliminate the need for licensees to notify the Commission of changes in a system's coverage in their respective geographic area. Geographic licensees also would be able to self-coordinate system modifications within their service areas, *i.e.*, to add, subtract, move, and otherwise modify their base station facilities, without prior Commission approval or notification.[58] In sum, we tentatively conclude 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. We seek comment on this tentative conclusion.

26. Nationwide Channels. While we generally propose to use geographic licensing for 931 and 929 MHz channels, we propose to exclude from our plan those channels that

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[55] *Part 22 Rewrite Order*, 9 FCC Rcd at 6518, ¶¶ 22-28; *see also* 47 C.F.R. § 22.163.

[56] *See generally PCP Exclusivity Order*, 8 FCC Rcd at 8319-20, ¶¶ 6-8.

[57] *See CMRS Third Report and Order*, 9 FCC Rcd at 7994-95, ¶¶ 4-9.

[58] Under our proposal, these licensees still would be required to ensure that their operations do not have a significant effect on the environment as defined in Part 1 of the Commission's rules and to comply with applicable air safety requirements as outlined in Part 17 of the Commission's rules. Licensees also would be required to comply with 47 C.F.R. § 90.177 concerning the protection of certain radio receiving locations.

already have been assigned to single licensees on a nationwide basis under our existing rules. We propose to exclude 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*. We will announce, by Public Notice, the specific PCP channels excluded for nationwide use at a later time. Because these channels are not open to further licensing, we believe there is no practical need to assign them on a geographic basis. In addition, we believe that the development of nationwide systems that has been fostered by nationwide assignment of certain channels will benefit the public and should be allowed to continue without disruption. We seek comment on whether 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. We tentatively conclude that such licenses should be issued for 929 MHz licensees who meet our coverage requirements. We emphasize, however, that licensees who have qualified for nationwide exclusivity on a channel must meet the construction and service requirements set forth under our current rules in order to retain their nationwide assignments.[59] If the licensee fails to comply with such requirements, we tentatively conclude that 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.[60] We seek comment on the exclusion of nationwide channels from our proposed geographic licensing scheme. If a channel designated for nationwide use reverts back to the Commission for any reason (*e.g.*, the licensee fails to construct within the time limit), should the channel be auctioned as a nationwide channel?

27. In addition, we note that MTel, which is the licensee of one of the three nationwide CCP channels, also occupies a second channel (931.4375 MHz) on virtually a nationwide basis. MTel uses this second channel to augment its paging network on its nationwide channel, 931.9375 MHz. Although MTel uses 931.4375 MHz for its nationwide paging service, it remains allocated as a local paging channel and has not been reallocated as a nationwide channel.[61] Therefore, we seek comment on whether this channel also should be

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[59] *See* 47 C.F.R. § 90.495 (setting forth construction and service requirements with respect to exclusivity for 929-930 MHz private carrier paging systems).

[60] Protection of incumbent systems is discussed further in Section III(A)(5)(a), *infra*.

[61] *See* Mobile Telecommunications Technologies Corporation Request for a Declaratory Ruling Concerning Preemption of State Regulation for Nationwide and Multistate Paging Service on Frequency 931.4375 MHz, *Memorandum Opinion and Order*, 7 FCC Rcd 4061, 4063 n.7 (1992) (*MTel Order*) (stating that MTel's use of 931.4375 MHz for nationwide paging is not a *de facto* reallocation of the channel, because Commission rules do not limit use of the channel to local paging, nor do the rules prohibit use of the channel for nationwide paging service). In the *MTel Order*, the Commission affirmed the Common Carrier Bureau's decision to preempt state entry, technical, and rate regulation of MTel's integration of its paging service on 931.4375 MHz into its existing nationwide paging network on 931.9375 MHz. *MTel Order*, 7 FCC Rcd at 4061, ¶ 1.

designated a nationwide channel, and whether it should be excluded from our geographic licensing proposal.

28. Lower Band CCP Channels. We also tentatively conclude that geographic licensing should be extended to CCP channels in the 35, 43, 152, and 454 MHz bands. We believe that the advantages of geographic licensing described above also potentially are applicable to lower band paging services. At the same time, our records indicate that the demand for lower band channels appears to be less than for the upper bands, and our existing licensing rules have not caused application backlogs of the type found in the 931 MHz band. In light of these differences, we ask commenters to address the relative costs and benefits of converting lower band channels to geographic licensing.

29. We note that the paired 152/158 and 454/459 MHz channels, in addition to their use for paging, also are used by Basic Exchange Telephone Radio Systems (BETRS).[62] The Rural Radiotelephone Service, including BETRS, is a fixed service regulated under Subpart H of Part 22 of our rules.[63] Because the areas served by BETRS are sparsely populated, they typically are not sought by paging operators. Nonetheless, it is possible for paging and BETRS applications to be mutually exclusive. In the *Competitive Bidding Second Report and Order* we determined that, because of the public interest in extending basic telephone service to sparsely populated areas, competitive bidding should not be used to select between BETRS and Public Mobile applicants.[64]

30. In light of the shared use of these channels by paging licensees and BETRS operators, we consider it important to ensure that any changes to our paging rules do not prevent BETRS from providing service to areas that otherwise would lack basic telephone service. However, because new wireless services, such as PCS, are expected to provide service to these remote areas, we seek comment on whether competitive bidding should be used to select among mutually exclusive paging and BETRS applications. We also seek comment on whether to allow geographic partitioning of licensing areas to make spectrum available to BETRS operators in sparsely populated regions. This would be similar to the partitioning system established for rural telephone companies in broadband PCS, which allows rural telephone companies to form bidding consortia or acquire a partitioned license from the

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[62] BETRS is a radio service in which a multiplexed digital radio link is used as the last segment of the local loop. Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, *Notice of Proposed Rule Making*, 8 FCC Rcd 7635, 7662, ¶ 165 (1993).

[63] *See* 47 C.F.R. §§ 22.600-22.610.

[64] *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2356, ¶ 46.

broadband PCS licensee through private negotiation before or after the licensing of the geographic area.[65]

31. Shared PCP Channels. We also seek 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. In the *PCP Exclusivity Order*, we concluded that the record did not support converting these channels to exclusive licensing.[66] We tentatively conclude that if we were to convert to exclusive licensing of shared paging channels, a geographic licensing approach would be appropriate. On the other hand, in lieu of exclusive licensing, PCIA submitted a petition for rulemaking to restrict additional licensing on shared paging channels once a certain number of contiguous transmitters affiliated with a particular channel (*i.e.*, six transmitters for a local system and 70 transmitters for a regional system) have been constructed and are in operation.[67] We therefore incorporate the PCIA petition into this rulemaking proceeding and seek comment on the best way to license these channels.

32. Specifically, we ask for 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*. We request comment on the costs and benefits of continuing to license some channels on a shared basis versus licensing all channels on an exclusive basis, and how such licensing plans would affect the rights of incumbent licensees. We seek comment on whether a geographic plan is the most practical way in which to begin licensing these channels on an exclusive basis. PCIA also has petitioned the Commission to implement guidelines to prevent simultaneous transmission on a shared channel ("key-up overlap") by licensees who operate in the same service area.[68] We request comment on whether such guidelines should be adopted and, if so, what the guidelines should be. We note that the former Private Radio Bureau denied a similar request previously filed by PCIA.[69] As a result of the Private Radio Bureau's decision, licensees were expected to establish mutually agreeable guidelines on a voluntary

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[65] *See* Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5598, ¶ 151 (1994) (*Competitive Bidding Fifth Report and Order)*.

[66] *PCP Exclusivity Order*, 8 FCC Rcd at 8331-32, ¶¶ 36-38.

[67] *See* Amendment of the Commission's Rules and Regulations Concerning Shared Use of 150 MHz and 460 MHz Paging Frequencies, Petition for Rule Making, filed by The Association for Private Carrier Paging Section of NABER, Jul. 11, 1994 at 10.

[68] *Id.* at 13.

[69] *See* Amendment of Section 90.173 of the Commission's Rules and Regulations Concerning Shared Use of Paging Frequencies, 7 FCC Rcd 1591 (1992).

basis.[70] We ask commenters to discuss whether this approach has been successful and to provide examples where the procedure has been unsuccessful, *e.g.*, where licensees have chosen to degrade their service quality rather than reach agreement.

2. Defining the Service Areas

33. As part of our geographic licensing proposal, we must determine the size of the geographic areas that will be used to define paging service area boundaries. We have used several different geographic definitions in other CMRS services. Cellular service areas are based on Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs).[71] We have used Basic Trading Areas (BTAs),[72] Major Trading Areas (MTAs),[73] Regional Areas,[74] and a nationwide geographic area for PCS licensing. Other alternatives exist as well, including the Economic Areas (EAs) developed by the Bureau of Economic Analysis of the U.S. Department of Commerce,[75] and regions defined by state boundaries. We believe that the geographic definition used should correspond as much as possible to the geographic area that paging licensees seek to serve.

34. We tentatively conclude 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. At the same time, MTAs offer more opportunities for entry than larger regional areas, while affording paging operators

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[70] *See id.*

[71] The U.S. and its possessions are divided into 734 cellular markets: 306 MSAs (including the Gulf of Mexico Statistical Area) and 428 RSAs.

[72] Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs. *See* Rand McNally, Inc., *Commercial Atlas & Marketing Guide*, 123rd Edition, pp. 38-39 (1992).

[73] *Id.*

[74] Narrowband PCS regional licenses are awarded for five regional areas (Northeast, South, Midwest, Central, and West) that are made up of MTAs. *See* 47 C.F.R. § 24.102(b).

[75] The Department of Commerce's Bureau of Economic Analysis has divided the U.S. into 172 EAs for purposes of economic analysis. Each EA consists of one or more economic nodes -- metropolitan areas or similar areas that serve as centers of economic activity -- and the surrounding counties that are economically related to the nodes. *See* "Final Redefinition of the BEA Economic Areas," 60 Fed. Reg. 13,114, 13,114-118 (Mar. 10, 1995). We have proposed to use EAs for the assignment of 60 channels in the 220 MHz band. *See* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking,* PR Docket No. 89-552, FCC 95-312, 60 Fed. Reg. 46,564, 46,564-565, ¶¶ 117-118 (1995) (*220 MHz Second Memorandum Opinion and Order*).

the opportunity to aggregate if they seek to provide regional or nationwide service. We tentatively conclude that if we adopt MTA service areas we would establish three licensing regions in addition to the 47 Rand McNally MTAs 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. We also would license Alaska as a single area separate from the Seattle MTA. This is consistent with our MTA-based service area definitions for broadband PCS and the 900 MHz SMR service.[76]

35. We note that 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.[77] Currently, paging services are not covered by a blanket copyright license agreement. While current and prospective paging providers and other parties interested in using the copyrighted materials may negotiate their own licensing arrangement with Rand McNally, as in other services, we encourage interested parties and Rand McNally to explore the possibility of entering into blanket license agreements similar to those noted above. 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.

36. We invite discussion both on the use of MTAs and on other options for defining service areas for all of the various paging services. Specifically, commenters should provide empirical data on the area covered by existing paging systems and how such coverage areas compare to MTAs. Would an alternative geographic definition better correspond to the service area of existing paging systems? Should different size geographic areas be used for 929 MHz and 931 MHz paging, or for lower band paging channels? What effect does the service area definition have on the potential for entry and aggregation? Should we designate any channels for national or regional licensing, such as the nationwide and the five regional areas we designated for licensing in narrowband PCS?

3. Treatment of Incumbents

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[76] *See* 47 C.F.R. §§ 24.102 and 90.7.

[77] The Rand McNally Commercial Atlas is available for public inspection in the Federal Communications Commission Library, 1919 M St., N.W., Room 639, Washington, D.C.

37. An important issue associated with our geographic licensing proposal is its potential impact on paging systems that have been licensed already on a site-specific basis. As noted in Section III(A)(1), *supra*, we tentatively conclude that the public interest would be best served by allowing all incumbent paging licensees either (1) to continue operating under existing authorizations or (2) to trade in their site-specific licenses for a single system-wide license, demarcated by the aggregate of the service contours around each of the incumbent's contiguous sites operating on the same channel. We also tentatively conclude that there is no feasible or equitable means of requiring incumbents to relocate to alternative channels, because there are no alternative channels to accommodate incumbents on this basis. Under our proposal, 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[78] and into the geographic licensee's territory, however, without the consent of the geographic licensee (unless, of course, the incumbent in question is itself the geographic licensee for the relevant channel).[79] This proposal is similar to the rules we adopted for the benefit of incumbent licensees in the 900 MHz SMR service, where we have established a geographic licensing scheme.[80] We seek comment on this proposal.

38. We also note that some non-commercial services (*e.g.*, internal paging systems) operate on PCP channels. Consistent with our decision in the *PCP Exclusivity Order*, we propose to treat incumbent commercial and non-commercial services similarly.[81] Thus, commercial and non-commercial incumbents would be permitted to continue to operate under their existing authorizations, and they would receive the same level of co-channel protection.[82] We seek comment on this proposal. We also ask commenters to discuss whether there are

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[78] An interfering contour refers to the "locus of points surrounding a transmitter where the predicted median field strength of the signal from that transmitter is the maximum field strength that is not considered to cause interference at the service contour [area in which a transmitter provides reliable service to mobile stations] of another transmitter." 47 C.F.R. § 22.99.

[79] Specific interference protection criteria are discussed in Section III(A)(5), *infra*.

[80] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands, FCC No. 95-159, *Second Report and Order and Second Further Notice of Proposed Rule Making*, GN Docket No. 93-252, 10 FCC Rcd 6884, 6901, ¶ 47 (*900 MHz Second Report and Order*).

[81] *PCP Exclusivity Order*, 8 FCC Rcd at 8325, ¶ 20 (eliminating the division of 929-930 MHz into separate pools for commercial and non-commercial service).

[82] Co-channel protection refers to certain technical assignment criteria designed to ensure that signals sent from a transmitter to a receiver within the transmitter's service area (area reliably served by the transmitter, 47 C.F.R. § 22.99) are protected from interference caused by the operation of independent co-channel stations. *See* 47 C.F.R. §§ 22.537, 22.567.

any circumstances under which commercial and non-commercial incumbents should be treated differently.

39. We believe that it is in the public interest to give incumbents the flexibility to modify or augment their systems as long as they do not encroach on adjacent operations of a geographic licensee. We note that under current rules, CCP licensees may make modifications to their stations or add internal transmitters without obtaining prior Commission approval, as long as such modifications do not affect their service contours or interference contours.[83] We propose that incumbent licensees, both CCP and PCP licensees, should be allowed to make such modifications. Under this proposal, we would use the interference contour as the outermost boundaries of modification, in lieu of using both the interference and service contours. This would allow PCP incumbent licensees the same flexibility currently afforded to the CCP licensees, and would also enable incumbents to fill in "dead spots" in coverage or to reconfigure their systems to increase capacity within their service area and better serve the public. In addition, we emphasize that incumbents would be free to negotiate voluntary arrangements with geographic licensees to allow incumbent expansion within a geographic area. We seek comment on whether this proposal strikes a proper balance between the competing interests of geographic and incumbent licensees. For example, we recognize that there may be circumstances in which an incumbent should be permitted to make minor modifications to its service area to preserve system viability (*e.g.,* moving a transmitter to another location because a newly-constructed building interferes with signal transmission). We ask commenters to address whether there are any circumstances under which incumbents should be permitted to expand into unserved areas without the geographic licensee's consent.

4. Coverage Requirements

40. We seek comment on whether geographic paging licensees should be subject to minimum coverage requirements as a condition of licensing. We have imposed such requirements on licensees in other CMRS services to ensure that spectrum is used effectively and service is implemented promptly. For example, in narrowband PCS, we require MTA licensees to construct base stations that serve 37.5 percent of the population or to provide coverage to a composite area of 75,000 square kilometers or 25 percent of the geographic area within five years of the initial license grant.[84] In the 900 MHz SMR service, licensees must provide coverage to one-third of the population of their service area within three years and to two-thirds of the population within five years or, in the alternative, demonstrate that they are

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[83] *Part 22 Rewrite Order*, 9 FCC Rcd at 6518-19, ¶¶ 22-28 (adopting 47 C.F.R. § 22.163 and 47 C.F.R. § 22.165).

[84] Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, *Memorandum Opinion and Order*, 9 FCC Rcd 1309, 1314, ¶ 32 (1994) (*Narrowband PCS Order*).

providing substantial service to the MTA five years from license grant.[85] For the 800 MHz SMR service, we adopted the rule that EA-based licensees provide coverage to one-third of the population within their EA within three years of initial license grant and to two-thirds of the population by the end of their five-year construction period.[86]

41. We tentatively conclude 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.[87] Furthermore, as part of the election to provide a substantial service showing, each geographic licensee must, three years from license grant, indicate how it expects to demonstrate substantial service at five years.[88] We believe that these coverage requirements serve the public interest by ensuring the speedy delivery of paging service to the public and satisfy the requirement of Section 309(j) of the Act that the spectrum is used efficiently and deployed rapidly.[89] We also tentatively conclude 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. Furthermore, we believe that the three-year and five-year requirements provide geographic licensees with sufficient time to comply with our proposed coverage requirements, because of the mature nature of the industry and the large

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[85] *See, e.g.*, Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, and Implementation of Sections 3(n) and 322 of the Communications Act, *Third Order on Reconsideration*, GN Docket No. 93-252, FCC 95-429, 60 Fed. Reg. 55484, ¶ 2 (rel. Oct. 20, 1995) (*900 MHz Third Order on Reconsideration*), in which the following examples of "substantial service" are given: a licensee who provides a "niche service" to businesses, or focuses on serving populations outside of areas currently served by incumbent licensees.

[86] *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, PR Docket No. 93-144, *Eighth Report and Order*, GN Docket No. 93-252, *and Second Further Notice of Proposed Rule Making*, PR Docket No. 93-253, FCC 95-501, __FCC Rcd__, ¶¶ 104-110 (rel. Dec. 15, 1995) *(800 MHz Second Further Notice of Proposed Rulemaking)*. *See also* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Further Notice of Proposed Rule Making*, PR Docket No. 93-144, 10 FCC Rcd 7970, 7997, ¶ 48 (1994) *(800 MHz Further Notice)*.

[87] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands, *Second Erratum*, GN Docket No. 93-252, __FCC Rcd ___ (rel. Nov. 18, 1995) (*900 MHz Second Erratum*).

[88] *See 900 MHz Second Erratum*, 60 Fed. Reg. ___.

[89] 47 U.S.C. § 309(j).

number of existing systems. We propose the "substantial service" alternative because, like 900 MHz SMR and smaller PCS blocks, geographic licensees may choose to target niche markets or provide specialized services. We request comment on the costs and benefits of imposing coverage requirements on geographic licensees, the specific coverage criteria proposed, and any alternative criteria. We also seek comment on whether accelerating build-out requirements (*e.g.,* requiring provision of coverage to one-third of the population by the end of one year) is appropriate given the maturity of the services and extensive existing construction.

42. Additionally, we tentatively conclude that our transition to geographic licensing obviates the need for extensions of our construction requirements for paging systems in the 929-930 MHz spectrum. When we first contemplated granting channel exclusivity in that spectrum, we realized that construction of larger systems might extend beyond the eight month construction period.[90] Consequently, we adopted a "slow growth" option allowing systems comprised of more than 30 transmitters up to three years to construct based on a showing of reasonable need for the extension, a detailed construction timetable and cost estimate, and placement in escrow of a sum equal to the construction cost estimate or procurement of a performance bond in that amount.[91] We tentatively conclude that under our geographic licensing scheme, "slow growth" extensions 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. We therefore propose to dismiss all "slow growth" applications pending at the time an order pursuant to this *Notice* is adopted without prejudice to refile under our new geographic licensing scheme. We believe such dismissals will effectuate our geographic licensing scheme. We seek comment on our tentative conclusion concerning the dismissal of pending "slow-growth" extensions and the underlying bases for our tentative conclusions.

43. We also tentatively conclude 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. We believe 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. We also believe that our proposal of a "substantial service" option will provide an incentive for incumbents already providing substantial coverage to seek geographic licenses in the areas they serve. Thus, we propose to require the geographic licensee to meet its coverage requirement directly (*e.g.,* by utilizing vacant

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[90] Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, *Notice of Proposed Rule Making*, 8 FCC Rcd 2227, 2231-32, ¶¶ 30-31 (1993).

[91] *PCP Exclusivity Order,* 8 FCC Rcd at 8326-27, ¶¶ 23-24 (1993).

spectrum or acquiring such spectrum through buy-outs of incumbent licensees).[92] We ask commenters to address the advantages and disadvantages of these proposals and any alternatives. Finally, we seek comment on whether licensees that trade in site-specific authorizations for a system-wide authorization or partitioned license, as discussed in Section III(A)(3), should be subject to the same construction requirements within their service areas.

44. If we adopt coverage requirements, we also must consider what action we must take if the geographic licensee fails to comply. We tentatively conclude that a geographic licensee's failure to meet the coverage requirements should result in automatic cancellation of the geographic license. This sanction for failure to comply with construction requirements is consistent with the sanctions provided in our rules for broadband PCS, 900 MHz SMR, and Multipoint Distribution Services (MDS).[93] In addition, automatic cancellation of the license would allow the spectrum to be made available expeditiously to other qualified applicants. We also tentatively conclude that, if the licensee loses its geographic license for failure to comply with coverage requirements, we would reinstate any authorizations that (1) the licensee held prior to the auction and (2) are constructed and operating. We request comment on our proposal and any alternatives. If the geographic licensee loses its license for failure to comply with coverage requirements, should the licensee be prohibited from bidding on the geographic license for the same territory in the future? Is there a sanction more appropriate than automatic cancellation?

5. Co-Channel Interference Protection

45. Under our proposal to convert to geographic licensing for paging services, geographic licensees will be required to provide interference protection both to incumbent co-channel facilities and to co-channel licensees in neighboring service areas. Accordingly, we seek comment on the appropriate interference protection criteria for both situations. In addition, we propose to adopt a consistent methodology for determining interference in all paging services. We seek comment on these proposals and invite commenters to provide other options for addressing these issues.

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[92] *See, e.g.,* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Implementation of Sections 3(n) and 322 of the Communications Act, GN Docket No. 93-252, *Second Order on Reconsideration and Seventh Report and Order*, 60 Fed. Reg. 48,913 at ¶ 4 (*900 MHz Second Order on Reconsideration)* (rel. Sept. 14, 1995). *See also* 47 C.F.R. § 90.665.

[93] *See* 47 C.F.R. §§ 24.203, 90.665, and 21.930. *See also* Amendment of the Commission's Rules to Establish New Personal Communications Service, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd 7700, 7754, ¶ 134 (1993) (*PCS Second Report and Order*); *900 MHz Second Report and Order*, 10 FCC Rcd at 6899, ¶ 43; Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, *Report and Order*, FCC No. 95-230, 10 FCC Rcd 9589, 9613, ¶ 43 (1995) (*MDS Report and Order*).