options, and other special provisions. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, the license(s) will be granted to the auction winner.[203] We seek comment on this proposal.

g. Petitions to Deny and Limitations on Settlements

109. As we have determined, the petition to deny procedures in Section 22.130 of the Commission's rules,[204] as well as Section 90.163, adopted in the *CMRS Third Report and Order*, will apply to the processing of applications for the paging services.[205] Thus, a party filing a petition to deny against a paging services application will be required to demonstrate standing and meet all other applicable filing requirements. We also have adopted restrictions in Section 90.162 and Section 22.129 to prevent the filing of applications and pleadings, or threats of the same, designed to extract money from paging services applicants.[206] Thus, we will limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner.

110. With respect to petitions to deny, the Commission need not conduct a hearing before denying an application if it determines that an applicant is not qualified and no substantial and material issue of fact exists concerning that determination.[207] In the event the Commission identifies substantial and material issues of fact, Section 309(i)(2) of the Communications Act permits the submission of all or part of evidence in written form in any hearing and allows employees other than administrative law judges to preside over the taking of written evidence.[208]

h. Transfer Disclosure Requirements

111. In Section 309(j) of the Communications Act, Congress directed the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue

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[203] *See generally* 47 C.F.R. §§ 90.163-90.166.

[204] 47 C.F.R. § 22.130.

[205] *CMRS Third Report and Order,* 9 FCC Rcd at 8000, ¶ 21; 8138, ¶ 337; and 8142, ¶ 347.

[206] *See* 47 C.F.R §§ 22.129, 90.162.

[207] *Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2328, ¶ 202.

[208] 47 C.F.R. § 309(i)(2).

licenses and permits."[209] In the *Competitive Bidding Second Report and Order*, the Commission adopted safeguards designed to ensure that the requirements of Section 309(j)(4)(E) are satisfied.[210] We decided that it was important to monitor transfers of licenses awarded by competitive bidding to accumulate the necessary data to evaluate our auction designs and to judge whether "licenses [have been] issued for bids that fall short of the true market value of the license."[211] Therefore, we imposed a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether by a designated entity or not.[212]

112. We tentatively conclude that the transfer disclosure requirements of Section 1.2111(a) should apply to all paging services licenses obtained through the competitive bidding process. Generally, licensees transferring their licenses within three years after the initial license grant would be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license. As we indicated in the *Competitive Bidding Second Report and Order*, we would give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, so that we may determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context.[213] We seek comment on these proposals.

i. Performance Requirements

113. Section 309(j)(4)(B) of the Communications Act requires the Commission to establish rules for auctionable services that "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittee, and to promote investment in and rapid deployment of new technologies and services."[214] In the *Competitive Bidding Second Report and Order*, we decided that in most auctionable services, existing construction and coverage requirements provided in our service

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[209] 47 U.S.C. § 309(j)(4)(E).

[210] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2384-88, ¶¶ 210-216, 258-265.

[211] *See* House Report at 257; *Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2385, ¶ 214.

[212] *See* 47 C.F.R. § 1.2111(a).

[213] *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2385, ¶ 214. We note that these transfer disclosure requirements are in addition to the unjust enrichment provisions discussed in this *Notice* at ¶¶ 130-131, *infra.*

[214] 47 U.S.C. § 309(j)(4)(B).

rules would be sufficient to meet this standard, and that it was unnecessary to impose additional performance requirements. As discussed in Section III(A)(4), *supra*, we have proposed service rules for paging that would require geographic licensees either to meet minimum population coverage requirements or demonstrate substantial service in their licensing areas. We tentatively conclude that these proposed coverage requirements are sufficient to meet the requirements of Section 309(j)(4)(B) of the Communications Act. As discussed *infra*, we propose that failure to meet these requirements would result in automatic license cancellation. Accordingly, we do not propose to adopt additional performance requirements for paging services. We seek comment on this proposal.

4. Treatment of Designated Entities

a. Overview and Objectives

114. Section 309(j)(3)(B) of the Communications Act provides that in establishing auction eligibility criteria and bidding methodologies, the Commission shall "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[215] Section 309(j)(4)(A) provides that to promote the statute's objectives the Commission shall "consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods . . . and combinations of such schedules and methods."[216]

115. In the *Competitive Bidding Second Report and Order*, we established eligibility criteria and general rules regarding special measures for small businesses, rural telephone companies, and businesses owned by women and minorities (sometimes referred to collectively as "designated entities").[217] We also identified several measures, including installment payments, spectrum set-asides, and bidding credits, from which we could choose when establishing rules for auctionable services. We stated that we would decide whether and how to use these special provisions, or others, when we developed specific competitive bidding rules for particular services. In addition, we set forth rules designed to prevent unjust enrichment, by designated entities who transfer ownership in licenses obtained through the use of these special measures or who otherwise lose their designated entity status.

116. When deciding which provisions to adopt to encourage designated entity participation in particular services, we have closely examined the specific characteristics of the

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[215] 47 U.S.C. § 309(j)(3)(B).

[216] 47 U.S.C. § 309(j)(4)(A).

[217] *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388, ¶ 227.

service and determined whether there were any particular barriers to accessing capital by designated entities. In accordance with our statutory directive, we have adopted measures designed both to enhance the ability of designated entities to acquire licenses and to increase the likelihood that designated entity licensees will become strong competitors in the provision of wireless services. In narrowband PCS, for instance, we have provided installment payments for small businesses and bidding credits for minority-owned and women-owned businesses.[218] In broadband PCS, we designated certain spectrum blocks as entrepreneurs' blocks, allowed entrepreneurs' block licensees to make installment payments, and provided bidding credits for designated entities.[219] In 900 MHz SMR, we provided bidding credits, installment payments, and reduced down payments for small businesses.[220]

117. As in other auctionable services, we fully intend our paging rules to meet the statutory objectives of promoting economic opportunity and competition, avoiding excessive concentration of licenses, and ensuring access to new and innovative technologies by designated entities. As discussed in greater detail below, therefore, we seek comment on the type of designated entity provisions that should be incorporated into our competitive bidding procedures for paging services. We particularly urge commenters to address: (1) the capital requirements of the paging service in comparison to other wireless services, (2) the degree to which designated entities currently provide paging service, and (3) whether designated entities, and small businesses in particular, face barriers to entry into paging service based on lack of access to capital or other factors.

b. Eligibility for Designated Entity Provisions

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[218] *Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2978-79, ¶ 87. Minority and women-owned businesses received a 25 percent bidding credit in the nationwide narrowband PCS auctions. *Id.* at 2970-71, ¶ 72. In the regional narrowband auctions, the bidding credit was increased to 40 percent. *See* Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PP Docket No. 93-253, 10 FCC Rcd 175, 201, ¶ 58 (1994) (*Competitive Bidding Third Memorandum Opinion and Order*).

[219] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5591, ¶ 133. *See also* Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253, 10 FCC Rcd 403, 453, 459, ¶¶ 99, 103 (1994) (*Competitive Bidding Fifth Memorandum Opinion and Order*). Originally, small businesses applying for broadband PCS licenses in the entrepreneurs' blocks were eligible for a 10 percent bidding credit, businesses owned by minorities and/or women were to receive a 15 percent bidding credit, and small businesses owned by women and/or minorities were to receive an aggregated bidding credit of 25 percent. In light of the Supreme Court decision in *Adarand Contractors, Inc. v. Peña,* 115 S.Ct. 2097 (1995) (*Adarand*) discussed *infra*, we eliminated race and gender-based provisions in our C block rules in order to avoid further delay of the auction. *See* Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Sixth Report and Order*, PP Docket No. 93-253, FCC No. 95-301, 60 Fed. Reg. 37,786 (1995) (*Competitive Bidding Sixth Report and Order).*

[220] *900 MHz Second Order on Reconsideration,* 60 Fed. Reg. 48,913 at ¶¶ 131-170.

118. Small Businesses. We tentatively conclude that it is appropriate to establish special provisions in our paging rules for competitive bidding by small businesses. We note that Congress specifically cited the needs of small businesses in enacting auction legislation. The House Report states that the statutory provisions related to installment payments were enacted to "ensure that all small businesses will be covered by the Commission's regulations, including those owned by members of minority groups and women."[221] It also states that the provisions in Section 309(j)(4)(A) relating to installment payments were intended to promote economic opportunity by ensuring that competitive bidding does not inadvertently favor incumbents with "deep pockets" over new companies or start-ups.[222]

119. In addition, Congress made specific findings with regard to access to capital in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit."[223] As a result of these difficulties, Congress resolved to consider carefully legislation and regulations "to ensure that small business concerns are not negatively impacted" and to give priority to passage of "legislation and regulations that enhance the viability of small business concerns."[224] For these reasons, and as discussed in greater detail below, we believe that small businesses applying for paging licenses should be entitled to some form of bidding credit and should be allowed to pay their bids in installments. We seek comment on this tentative conclusion.

120. Minority and Women-Owned Businesses. Prior to the Supreme Court's decision in *Adarand,* we concluded that in licensing of broadband and narrowband PCS, minority and women-owned businesses might have difficulty accessing sufficient capital to be viable auction participants or service providers in the absence of special provisions in our auction rules.[225] We therefore adopted special provisions for minorities and women in these services. We further determined that such provisions were constitutional under the "intermediate scrutiny" standard used in *Metro Broadcasting, Inc. v. FCC.*[226]

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[221] *See* H.R. Rep. No. 111, 103rd Cong., 1st Sess. (1993) at 255.

[222] *Id.*

[223] Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 331(a)(3), 106 Stat. 1007.

[224] *Id.* at § 331(b)(2), (3).

[225] *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2391, ¶ 242; *Competitive Bidding Fifth Report and Order,* 9 FCC Rcd at 5572, ¶ 96.

[226] *Metro Broadcasting, Inc. v. FCC,* 497 U.S. 547, 564-565 (1990). *See Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5571-80, ¶¶ 93-112.

121. In *Adarand*, however, the Supreme Court ruled that racial classifications imposed by the federal government are subject to strict scrutiny.[227] This holding will apply to any proposal to incorporate race-based measures into our paging rules; thus, it introduces an additional level of complexity to implementing Congress' mandate to ensure that businesses owned by minorities and women are provided "the opportunity to participate in the provisions of spectrum-based services."[228] We emphasize that we have not concluded that race or gender-based measures are unconstitutional or otherwise inappropriate for spectrum auctions we will hold in the future.[229] At a minimum, however, we believe that *Adarand* requires us to build a thorough factual record concerning the participation of minorities and women in spectrum-based services to support race- and gender-based measures. At this time, we do not believe we have a sufficient factual record with respect to spectrum-based services generally or paging services specifically to sustain such measures under strict scrutiny.[230]

122. In light of these considerations, we propose to limit designated entity provisions for paging services to small businesses, and we seek comment on this proposal. We believe that such provisions can be structured in a way that would increase the likelihood of participation by women- and minority-owned businesses. In adopting race- and gender-specific measures for PCS, for example, we noted that such targeted provisions might not be necessary in services that are less capital intensive.[231] Paging is perhaps the least capital-intensive of all wireless services. In addition, our proposal to license each channel separately on a geographic area basis means that licenses will be more numerous than in PCS, which should lead to lower entry costs for applicants. We also expect that the vast majority of minority and women-owned businesses will be able to qualify as small businesses under any definition we adopt. For example, U.S. Census Data shows that approximately 99 percent of all women-owned businesses and 99 percent of all minority-owned businesses generated net receipts of $1 million or less.[232] We seek comment on this proposal.

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[227] *Adarand*, 115 S. Ct. at 2113.

[228] 47 U.S.C. § 309(j)(4)(D).

[229] *See generally Competitive Bidding Sixth Report and Order*, 60 Fed. Reg. 37,786.

[230] *Id.* at ¶ 6.

[231] *See Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2391, ¶ 242; *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5572, ¶ 96.

[232] *Women-Owned Businesses*, WB 87-1, 1987 Economic Census, p. 144, Table 8; *Survey of Minority-Owned Business Enterprises*, MB 87-4, 1987 Economic Census, pp 81-82, Table 8. For purposes of this data, these are entities that earned at least $500 and filed an IRS Form 1040, Schedule C, and in which at least 51 percent of the assets are owned by minorities or women. This definition of minorities was used for the 900 MHz SMR service. *See 900 MHz Second Order on Reconsideration*, 60 Fed. Reg. 37,786 at ¶ 152-153. *See also* 47 C.F.R. §§ 90.814(e), 90.814(f).

123. We also request comment on the possibility that in addition to small business provisions, separate provisions for women and minority-owned entities should be adopted for paging services. To comply with the Supreme Court's ruling in *Adarand*, any race-based classification must be a narrowly tailored measure that furthers a compelling governmental interest.[233] We also believe that gender-based provisions, although not addressed in *Adarand*, should be subject to the broadest possible comment.[234] We therefore ask that commenters discuss whether the capital requirements of paging pose a barrier to entry by minorities and women, and whether assisting women and minorities to overcome such a barrier, if it exists, would constitute a compelling governmental interest. In particular, we seek comment on the actual costs associated with acquisition, construction, and operation of paging systems and the proportion of existing paging businesses that are owned by women or minorities. We also seek comment on the analytical framework for establishing a history of past discrimination in the paging industry and urge parties to submit evidence (statistical, documentary, anecdotal, or otherwise) about patterns or actual cases of discrimination in this and related communication services. Assuming that a compelling governmental interest is established, we seek comment on whether separate provisions for women and minorities are necessary to further this interest, and whether such provisions can be narrowly tailored to satisfy the strict scrutiny standard.

c. Set-Aside Spectrum

124. In the *Competitive Bidding Fifth Report and Order*, we established entrepreneurs' blocks on which only qualified entrepreneurs, including designated entities, could bid.[235] In this *Notice*, we tentatively conclude that it is not necessary to adopt an entrepreneurs' block for paging. It appears that the capital requirements of this service are not so substantial that certain blocks of spectrum should be insulated from very large bidders in order to provide meaningful opportunities for designated entities. We seek comment on our proposal to not create a separate entrepreneurs' block for designated entities.

d. Bidding Credits

125. Bidding credits allow eligible designated entities to receive a payment discount (or credit) on their winning bid in an auction. In the *Competitive Bidding Second Report and Order*, we determined that competitive bidding rules applicable to individual services would specify the entities eligible for bidding credits and the bidding credit amounts for each particular service.[236] As a result, we have adopted a variety of bidding credit provisions for small businesses and other designated entities in auctionable services. In the nationwide

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[233] *See Adarand*, 155 S. Ct. at 2113.

[234] *See Lamprecht v. F.C.C.*, 958 F2d 382 (D.C. Cir. 1992).

[235] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5580-86, ¶¶ 113-123.

[236] *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2391, ¶ 241.

narrowband PCS auction, for example, we established a 25 percent bidding credit for minority and women-controlled businesses, while a 40 percent credit was used in the regional narrowband PCS auction.[237] In broadband PCS, our pre-*Adarand* entrepreneurs' block rules included a 10 percent bidding credit for small businesses, a 15 percent credit for businesses owned by minorities or women, and an aggregated 25 percent credit for small businesses owned by women and/or minorities.[238] In the *900 MHz Second Report on Reconsideration*, we adopted a 10 percent bidding credit for small businesses with gross revenues of up to $15 million for the preceding three years. For those small businesses with revenues not exceeding $3 million gross revenues, we adopted a 15 percent bidding credit.[239] In the *MDS Report and Order*, we allowed small businesses a 15 percent bidding credit.[240] Finally, in the 220 MHz *Second Memorandum Opinion and Order*, we proposed a 40 percent small business bidding credit for nationwide and regional licenses and a 10 percent bidding credit for smaller EA licenses.[241]

126. We seek comment on the appropriate level of bidding credit for paging in comparison to the above services. For example, paging bears some similarities to narrowband PCS and 220 MHz service, both of which are narrowband services. In those services, we have proposed or adopted high bidding credits (*e.g.*, 40 percent) where licenses are offered on a nationwide or regional basis, but have proposed lower credits (*e.g.*, 10 or 25 percent) for smaller-area licenses. Similarly, we adopted a relatively low bidding credit in 900 MHz SMR, which will be licensed on an MTA basis. We believe a similar approach is appropriate in paging. Although some discount may be needed to put small businesses on equal footing with larger applicants, neither the capital requirements nor the licensing areas involved appear to call for a high bidding credit level.

127. We also seek comment on the possibility of offering "tiered" bidding credits for different sizes of small businesses. We note that small businesses may vary in their ability to raise capital depending on their size and gross revenues. By offering different levels of bidding credits depending on the size of the small business, we could increase the likelihood that the full range of small businesses would be able to participate in an auction and potentially provide service. We therefore propose to establish two levels of bidding credits: a 10 percent bidding credit for all small businesses and a 15 percent credit for small businesses that meet a more restrictive gross revenue threshold. These two levels of bidding credits

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[237] *See Competitive Bidding Third Memorandum Opinion and Order*, 10 FCC Rcd at 201, ¶ 58.

[238] *Competitive Bidding Sixth Report and Order*, 60 Fed. Reg. 37,786 at ¶¶ 47-48.

[239] *Id.*

[240] *MDS Report and Order*, 10 FCC Rcd at 9669, ¶ 188.

[241] *See 220 MHz Second Memorandum Opinion and Order*, 60 Fed. Reg. 46,564 at ¶ 162.

would not be cumulative.[242] We believe that tiered bidding credits can help achieve our statutory objective under Section 309(j)(3)(B) by providing varying sizes of small businesses with a meaningful opportunity to obtain paging licenses. We seek comment on this proposal.

128. We also seek comment on the appropriate definition of "small business" to be applied for purposes of the bidding credits proposed above. In the *Competitive Bidding Second Memorandum Opinion and Order*, we stated that we would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.[243] In broadband PCS and regional narrowband PCS, we defined small businesses based on a $40 million annual revenue threshold.[244] In the 220 MHz service, we have proposed two small business definitions: (1) for purposes of bidding on a nationwide or regional license, small businesses would be defined as entities with $15 million in average gross revenues for the preceding three years; and (2) for purposes of bidding on EA licenses, small businesses be would be defined as entities with $6 million in average gross revenues for the preceding three years.[245] After considering the record in the 900 MHz proceeding, we concluded that both $15 million and $3 million small business definitions were warranted, which would entitle applicants for geographic area licenses to 10 percent and 15 percent bidding credits respectively.[246]

129. In conjunction with our proposal to provide two levels of bidding credits, we propose to establish two small business definitions: to obtain the 10 percent bidding credit, an applicant would be limited to $15 million in average gross revenues for the previous three years; to obtain a 15 percent credit, the applicant would be limited to $3 million in gross revenues for the previous three years. In both cases, we would require the applicant to aggregate the gross revenues of its affiliates and attributable investors for purposes of determining eligibility. If a control group is formed, we would require the applicant to aggregate the gross revenues of its affiliates and attributable investors (which is discussed in further detail in ¶ 129, *infra*) for purposes of determining eligibility. These proposed thresholds are comparable to what we have adopted in the 900 MHz SMR service,[247] and they reflect our tentative view of the capital requirements and potential barriers to entry in the

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[242] Under this proposal a qualified small business could, depending on its gross revenue threshold, either obtain a 10 percent bidding credit or a 15 percent bidding credit, but not both.

[243] *Competitive Bidding Second Memorandum Opinion and Order*, 9 FCC Rcd at 7269, ¶ 145.

[244] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5608, ¶ 175; *Competitive Bidding Third Memorandum Opinion and Order*, 10 FCC Rcd at 196, ¶ 46.

[245] *220 MHz Second Memorandum Opinion and Order*, 60 Fed. Reg. 46,564 at ¶ 171.

[246] *See 900 MHz Second Order on Reconsideration*, 60 Fed. Reg. 48,913 at ¶¶ 152-153.

[247] *Id.*

paging service. We seek comment on whether these thresholds, and the proposed bidding credit amounts associated with them, are sufficient for paging in light of the build-out costs associated with constructing a paging system throughout a market area, or whether alternative definitions would be more suitable. We also seek comment on whether our proposed small business definitions are sufficiently restrictive to protect against businesses receiving bidding credits when in fact they do not need them.

130. We also seek comment on the degree to which the revenues of affiliates and major investors should be considered in determining small business eligibility. For example, in determining whether a PCS applicant qualifies as a small business, we include the gross revenues of the applicant's affiliates and investors with ownership interests of 25 percent or more in the applicant, but we do not attribute the gross revenues or assets of investors who hold less than a 25 percent interest in the applicant if the applicant forms a control group.[248] In the 900 MHz SMR service, we do not attribute the gross revenues of investors who hold up to a 20 percent interest in the application.[249] We seek comment on which attribution threshold should be applied to paging applicants seeking to qualify as small businesses. Would a lower attribution threshold be more appropriate? We also seek comment on whether, alternatively, we should count the gross revenues and assets of controlling principals of the applicant. For purposes of defining controlling principals, we would consider a "controlling principal" to mean a person or entity with majority voting equity ownership, any general partnership interest, or any means of actual working control, including negative control, over the operation of the licensee, in whatever manner exercised.[250]

131. We propose to make the small business bidding credit available on all paging channels that are licensed on a geographic basis, rather than limiting its availability to certain channels. We recognize that this would be a departure from the approach taken in our PCS rules, in which bidding credits were available only on designated channels.[251] Our proposal is consistent, however, with our rule for 900 MHz SMR and our proposal for 220 MHz, in which we proposed to offer bidding credits to small businesses on any available channel

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[248] *See, e.g.,* 47 C.F.R. § 24.720(j)(1); § 24.320(b)(2)(iv).

[249] *See 900 MHz Second Order on Reconsideration,* 60 Fed. Reg. 48,913 at ¶ 155.

[250] *See, e.g.,* 47 C.F.R. § 24.204(d) (narrowband PCS).

[251] In both narrowband PCS and broadband PCS we limited the channel blocks on which bidding credits were available to designated entities. *See Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2941, ¶ 72 (narrowband PCS). *See also Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5532, ¶ 131 (broadband PCS). In IVDS, we permitted the use of bidding credits on both available channels, but imposed a limit of one bidding credit per service area. *See* Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fourth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2330, 2337, ¶ 39 (1994).

block.[252] Because of the presence of incumbents on all paging channels, we believe it would be impractical and inequitable to choose certain blocks for bidding credits to the potential prejudice of incumbents occupying those blocks. Additionally, we believe that we can provide greater opportunities for small businesses if we provide credits across all blocks. We seek comment on this proposal. We also seek comment on whether there is a reasonable basis for providing credits on some channels and not others.

e. Installment Payments

132. We propose to adopt an installment payment option for small businesses that successfully bid for paging licenses. As we noted in the *Competitive Bidding Second Report and Order*, allowing installment payments reduces the amount of private financing needed by prospective small business licensees and therefore mitigates the effect of limited access to capital by small businesses.[253] Under this proposal, licensees who qualify for installment payments would be entitled to pay their winning bid amount in quarterly installments over the ten-year license term, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent.[254] In addition, we propose to tailor installment payments to reflect the needs of different size entities. Under our proposal, small businesses with $3 million or less in gross revenues for the preceding three years would make interest-only payments for the first five years of the license term, while small businesses with $15 million or less in gross revenues for the preceding three years would make interest-only payments during the first two years. We believe that this installment payment structure will enable entities with less immediate access to capital to increase their chances of obtaining licenses. Timely payment of all installments would be a condition of the license grant and failure to make such timely payment would be grounds for revocation of the license. We seek comment on this proposal.

133. Additionally, we tentatively conclude that small businesses eligible for installment payments may pay a reduced down payment. Five percent of the winning bid would be due five days after the auction closes, with the remaining five percent down payment due five days after Public Notice that the license is ready for grant.[255] Under this proposal, we would grant the license within ten business days after receiving such down payment. We seek comment on this proposal. We also seek comment on the need, if any, for a reduced upfront payment for entities qualifying as a small business.

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[252] *See 900 MHz Second Order on Reconsideration,* 60 Fed. Reg. 48,913 at ¶ 164. *See also 220 MHz Second Memorandum Opinion and Order,* 60 Fed. Reg. 46,564 at ¶ 162 (proposing that bidding credits be made available on all EA and Regional channels).

[253] *Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2389, ¶¶ 231-232.

[254] *See, e.g., Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5593-94, ¶ 139.

[255] *See, e.g., 900 MHz Order on Reconsideration*, 60 Fed. Reg. 48,913 at ¶¶ 168-170.

f. Unjust Enrichment Provisions

134. In the *Competitive Bidding Second Report and Order,* licensees that received bidding credits and installment payments, and also chose to transfer their licenses to entities not eligible for these benefits, were required to repay the amount of the bidding credit on a graduated basis until no repayment would be required six years after the license grant.[256] In addition, the ineligible transferee would not have the benefit of installment payments, and principal and accrued interest would come due.[257] For the 900 MHz SMR and narrowband PCS services, we likewise imposed a five year graduated reimbursement requirement.[258] In the *Competitive Bidding Fifth Report and Order*, we adopted restrictions on the transfer or assignment of broadband PCS entrepreneurs' block licenses to ensure that designated entities do not take advantage of special provisions by immediately assigning or transferring control of the licenses.[259]

135. Permitting an immediate transfer of a discounted license to an entity that is not a small business could undermine our basis for offering special provisions to small businesses, but we note that in services with no entrepreneurs' block, we have limited unjust enrichment to repayment of bidding credits or installment payments.[260] We therefore seek comment on whether, in services such as paging, where there is no entrepreneurs' block to further restrict the class of entities eligible for substantial governmental benefits, we would better serve the public interest by adopting an approach similar to that used in the narrowband PCS context, in which bidding credits and installment payments immediately become due upon transfer to an ineligible entity. We also seek comment on whether an approach to unjust enrichment similar to that adopted for the 900 MHz SMR service, in which a holding period was imposed, would be optimal for the paging services.

g. Rural Telephone Company Partitioning

136. The Communications Act directs the Commission to ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services.[261] Rural areas, because of their more dispersed populations, tend to be less profitable to serve

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[256] *Competitive Bidding Second Report and Order,* 9 FCC Rcd at 2384-2388, ¶¶ 210-226, and 2394-2395, ¶¶ 258-265.

[257] *Id.*

[258] *900 MHz Second Order on Reconsideration,* 60 Fed. Reg. 48,913 at ¶¶ 173-174 (900 MHz SMR); *Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2975-76, ¶ 80 (narrowband PCS).

[259] *See Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5588, ¶ 128.

[260] *Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2975-2976, ¶ 80.

[261] 47 U.S.C. § 309(j).

than more densely populated urban areas. Rural telephone companies, however, are well positioned because of their existing infrastructure to serve these areas. In other services, such as broadband PCS, we have acknowledged this fact by allowing rural telephone companies to partition their licenses on a geographic basis, thereby increasing the likelihood of rapid introduction of service into rural areas.[262] We seek comment on whether we should incorporate similar provisions into our paging rules. Commenters are specifically encouraged to provide information on the extent to which paging service is available in rural areas. Would the public interest be served by establishing special provisions to encourage rural telephone company participation in paging?

137. Assuming we adopt provisions for rural telephone companies, we believe that geographic partitioning should be made available to rural telephone companies on the same basis as in PCS.[263] Such a partitioning scheme would provide rural telephone companies with the flexibility to serve areas in which they already provide service, while the remainder of the service area could be served by other providers.[264] Under this proposal, rural telephone companies would be permitted to acquire partitioned paging licenses in one of two ways: (1) by forming bidding consortia consisting entirely of rural telephone companies to participate in auctions, and then partitioning the licenses won among consortia participants, or (2) by acquiring partitioned paging licenses from other licensees through private negotiation and agreement either before or after the auction.[265] We also would require that partitioned areas conform to established geopolitical boundaries (such as county lines) and that each area include all portions of the wireline service area of the rural telephone company applicant that lies within the PCS area.[266] In addition, if a rural telephone company receives a partitioned license post-auction from another PCS licensee, the partitioned area must be reasonably related to the rural telephone company's wireline service area that lies within the PCS service area.[267] We also propose to use the definition for rural telephone companies implemented in the *Competitive Bidding Fifth Report and Order* for broadband PCS. Rural telephone companies would be defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates.[268]

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[262] *See Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5598-5599, ¶ 150. *See also 900 MHz Second Report and Order*, 10 FCC Rcd at 6939-40, ¶¶ 144-145.

[263] *See Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5597-98, ¶ 150.

[264] *Id.*

[265] *Id.* at ¶ 151.

[266] *Id.*

[267] *Id.* A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

[268] *Id.* at ¶ 193.

138. Although generally we only have afforded rural telephone companies the partitioning option, we ask for comment on whether CCP and PCP paging applicants would benefit from expanding this concept to other designated entities or to all paging licensees in general. In the recent *MDS Report and Order*, we did not limit availability of partitioning to rural telephone companies and instead made it broadly available to any qualified applicants.[269] We also seek comment on whether partitioning should be extended to small businesses that may be able to provide niche services in a specific geographic area. Additionally, would extending partitioning to all licensees increase the possibility of rapid build-out of service to rural areas which otherwise might not receive services expeditiously due to lack of marketplace incentive? We seek comment on whether we should develop measures to encourage licensees to partition underserved areas. We also ask commenters to address whether we should allow applicants and licensees to disaggregate their spectrum, and whether to allow spectrum disaggregation in addition to, or instead of, geographic partitioning.

C. Interim Licensing

1. Freeze on New Applications

139. Because of the fundamental changes we are proposing in our paging licensing rules, we are suspending acceptance of new applications for paging channels as of the adoption date of this *Notice*, except as provided below. We believe that after the public has been placed on notice of our proposed rule changes, continuing to accept new applications under the current rules would impair the objectives of this proceeding. We also note that this is consistent with the approach we have taken in other existing services where we have proposed to adopt geographic area licensing and auction rules.[270] We stress that the interim policy described below will not apply to assignment or transfer of control applications, which will continue to be processed under existing procedures.

140. We are mindful that an across-the-board freeze on all applications could impair the ability of existing licensees to make certain necessary modifications to their systems to respond to consumer demand while the rulemaking is pending. It is our desire to allow incumbent licensees to continue operating their businesses and meeting public demand for paging services during this rulemaking. Therefore, during the pendency of this proceeding, we will allow incumbent licensees to add sites to existing systems or modify existing sites, provided that such additions or modifications do not expand the interference contour of the

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[269] *See MDS Report and Order*, 10 FCC Rcd at 9666, ¶ 180.

[270] *See* Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz Bands, DA 95-2119, *Order*, 60 Fed. Reg. 61554 (rel. Oct. 4, 1995); *see also* Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, RM No. 8553, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz, PP Docket No. 93-253, *Notice of Proposed Rulemaking and Order*, FCC 95-500, 61 Fed. Reg. 02452, ¶¶ 121-124 (rel. Dec. 15, 1995).

incumbent's existing system.[271] Under our current Part 22 rules, such additions or modifications are allowed by common carrier paging licensees without prior Commission approval if the added site is within both existing service and interference contours.[272] We find that the public interest is served by continuing to allow such modifications because they will give incumbents the flexibility to make internal site modifications without affecting spectrum availability to others. We also believe that it serves the public interest to exempt incumbents from the requirement that the service area not be modified so long as the licensee's interference contour is maintained. Using the interference contour as the sole basis for modification provides the same protection to other licensees as our current rules but provides a simpler analysis of determining permissible modifications.

141. We believe that it is in the public interest to allow 929 MHz licensees on exclusive channels the same flexibility as Part 22 licensees to make system changes within their interference contours. Although our Part 90 rules do not provide protection to 929 MHz licensees based on interference contours, 929 MHz licensees would otherwise be disadvantaged in comparison to Part 22 licensees during the pendency of this proceeding. We believe such modifications afford incumbents flexibility and will not prejudice other licensees, as no expansion is allowed beyond the incumbent's interference contour. We also believe that such modifications will not affect any auction for geographic area licenses, as the size of an incumbent's protected interference contour will not change.

142. In the case of CCP and PCP licensees who have obtained nationwide exclusivity on a paging channel, we will allow applications for additional sites without restrictions. Because we do not propose to apply geographic licensing to such channels, and no other applicant may apply for them, the addition of such sites by the nationwide licensee will not affect the spectrum available to others and is consistent with the goals of this rulemaking.

143. We also seek comment on an expedited basis on whether, during the pendency of this proceeding, incumbents should be allowed to file new applications that would expand or modify their existing systems beyond their existing interference contours with such modifications receiving only secondary site authorization. Secondary operations may not cause interference to operations authorized on a primary basis, and they are not protected from interference from primary operations. Thus, under this alternative, applications to expand an incumbent's existing interference contour would receive no interference protection in the event that we ultimately adopt the geographic licensing proposals in this *Notice*. Such an approach would be similar to our interim licensing policy in the 900 MHz SMR service, in which we have continued to authorize Phase I incumbents to obtain secondary sites until MTA licenses are awarded.[273] We seek comment on this alternative and on whether any

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[271] The interference contour is based on a median field strength of 21 dBμV/m. See ¶ 52, *supra*.

[272] 47 C.F.R. §§ 22.163, 22.165. *See also* ¶ 39, *supra*.

[273] *See 900 MHz Second Order on Reconsideration*, 60 Fed. Reg. 48,913 at ¶¶ 43-47.

limitations on secondary licensing are needed. For example, we seek comment on how to address situations where two licensees file applications for secondary sites that would conflict with one another if they were granted on a primary rather than a secondary basis. Because of the urgency of interim licensing as an issue for incumbent paging licensees, we are requesting comment on the above issues under an expedited comment cycle separate from the comment cycle for other issues raised by this *Notice*.

2. Processing of Pending Applications

144. With respect to paging applications that were filed prior to the adoption of this *Notice* and that remain pending, we will process such applications provided that (1) they are not mutually exclusive with other applications as of the adoption date of this *Notice*, and (2) the relevant period for filing competing applications has expired as of the adoption date of this *Notice*. We believe that this approach gives the appropriate consideration to those applicants who filed applications prior to our proposed changes and whose applications are not subject to competing applications. Processing of mutually exclusive pending applications and applications for which the relevant period for filing competing applications has not expired will be held in abeyance until the conclusion of this proceeding. Upon the adoption of an order in this proceeding, we will process or dismiss all remaining pending applications in accordance with such new rules as are adopted.

a. Licensing of 931 MHz CCP Frequencies

145. As discussed *supra* in Section II(A)(2), the Commission adopted new processing rules for 931 MHz CCP licenses in the *Part 22 Rewrite Order* based on channel-specific applications and use of competitive bidding to select licensees in the event of mutually exclusive applications.[274] PCIA requested that we stay implementation of these procedures on the grounds that there is a substantial backlog of paging applications filed under our old rules and that significant confusion would result from attempting to process this backlog under the new procedures.[275] On our own motion, we issued a temporary stay of the new Part 22 licensing rules for 931 MHz until we resolved certain pending applications.[276] By this *Notice*, we retain the existing stay of the new Part 22 licensing rules until competitive bidding procedures are established in this proceeding. We will therefore process 931 MHz CCP applications which were pending prior to the adoption of this *Notice*, and for which the 60-day window for filing competing applications has expired, under the application procedures in effect prior to January 1, 1995. Consequently, pending 931 MHz CCP applications that are not mutually exclusive with other applications will be processed, while mutually exclusive 931 MHz applications will be held pending the outcome of this proceeding. Upon the adoption of

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

[275] PCIA Petition for Partial Stay at 4-5.

[276] *Part 22 Stay Order*, 10 FCC Rcd 4146.

an order in this proceeding, we will process or dismiss all remaining pending applications in accordance with such new rules as are adopted.

b. Licensing of Lower Band CCP Channels

146. We will process non-mutually exclusive VHF band CCP applications under our existing rules, provided that the window for filing competing applications has closed as of the date of this *Notice*.[277] The processing of applications where the filing window has not closed will be held in abeyance until the closing of the proceeding. However, we will continue to hold all mutually exclusive lower band CCP applications until competitive bidding rules are established.

c. Licensing of 929 MHz PCP Exclusive Channels

147. We will process non-mutually exclusive PCP applications that were filed before the adoption date of this *Notice,* pending the outcome of this proceeding.[278] Because these applications are subject to coordination, they are generally not subject to mutually exclusive applications.[279] Nonetheless, to the extent that pending mutually exclusive applications may exist, processing of such applications will be held in abeyance until the conclusion of the rulemaking.

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

d. Licensing of Non-Exclusive PCP Channels

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[277] These applications are subject to a 30-day filing window. Thus, applications filed prior to January 8, 1996 will be processed provided they are not subject to mutually exclusive applications.

[278] *See* 47 C.F.R. Part 90, Subparts G, H, and P.

[279] Applications are considered mutually exclusive only if filed on the same day. 47 C.F.R. § 90.495(f).

149. We will to process pending applications for non-exclusive PCP channels pending the outcome of this proceeding.[280] Applications will be processed through the frequency coordinator under existing procedures.

IV. CONCLUSION

150. We adopt this *Notice of Proposed Rule Making* to solicit public comment regarding methods of converting to wide-area licensing, competitive bidding procedures for competing applications, and interim licensing. This *Notice* proposes revision of Part 22 and Part 90 of the Commission's rules to facilitate the future development of paging systems.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

151. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.[281]

B. Ex Parte Rules Non-Restricted Proceeding

152. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules.[282]

C. Comment Dates

153. Interim Licensing Proposal. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on our interim licensing proposal or before March 1, 1996, and reply comments on or before

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[280] Because these channels are shared under our current rules, there is no possibility of mutually exclusive applications.

[281] Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

[282] *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

March 11, 1996.[283] To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

154. Notice of Proposed Rulemaking -- Revision of Part 22 and Part 90. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments to this Notice of Proposed Rulemaking on or before March 18, 1996, and reply comments on or before April 2, 1996.[284] To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

D. Ordering Clause

155. Authority for issuance of this *Notice* is contained in Sections 2(a), 3(n), 4(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c), 332(d), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 152(a), 153(n), 154(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c) and 332(d).

156. IT IS ORDERED that pending applications for paging licenses that are not mutually exclusive with other paging applications will be processed to the extent possible under our existing licensing rules.

157. IT IS FURTHER ORDERED that applications for paging licenses, requests for PCP exclusivity and waiver requests received after the adoption date of this *Notice* will be held in abeyance and not processed until further notice, except as otherwise indicated in paragraphs 139 through 148 hereof. The imposition of these changes in application processing is procedural in nature and, therefore, is not subject to the notice and comment and

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[283] *See* 47 C.F.R. §§ 1.415 and 1.419.

[284] *See* 47 C.F.R. §§ 1.415 and 1.419.

effective date requirements of the Administrative Procedure Act (APA).[285] In any event, good cause exists for imposing immediately the processing changes without notice and comment because notice and comment is unnecessary. These changes will allow incumbent licensees the flexibility to make internal site modifications during the pendency of this proceeding without interfering with any other licensees' operations or affecting the spectrum availability to future applicants. Thus we believe that these changes would be noncontroversial and unlikely to provoke public comment. Moreover, since we believe that these rule changes provide limited relief to incumbent licensees without interfering with other licensees' operations or affecting the spectrum availability to future applicants, we believe that good cause exists for noncompliance with the 30-day effective date provision of the APA.

E. Further Information

158. For further information concerning this proceeding, contact Mika Savir or Rhonda Lien, Legal Branch, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418-0620.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[285] *See Neighborhood TV Co., Inc. v. FCC*, 742 F.2d 629 (D.C. Cir. 1984); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963).

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *Notice of Proposed Rule Making* (*Notice*). Written public comments are requested on the IRFA.

Reason for Action: This rulemaking proceeding was initiated to secure comment on proposals for establishing a flexible regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services, which would promote efficient licensing and promote competition in the commercial mobile radio marketplace. The proposals advanced in the *Notice* also are designed to implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services, as described in Section 3(n) and 332 of the Communications Act, 47 U.S.C. §§ 153(n), 332, as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). The Commission also seeks to adopt rules regarding competitive bidding in the 929 and 931 MHz paging services based on Sections 309(j) of the Communications Act, 47 U.S.C. § 309 (j), which grants authority to the Commission to use auctions to select among mutually exclusive initial applications in certain services, including 929 and 931 MHz paging services.

Objectives: The Commission proposes changes to its rules for the paging services to foster competition and innovation in these services. Specifically, the Commission seeks to enhance regulatory parity between PCP and CCP, and between paging generally and PCS. The Commission intends to establish geographic licensing for both CCP and PCP, for greater flexibility and administrative efficiency. It also seeks to encourage more efficient use of spectrum in congested areas and to accommodate technologically advanced systems. Finally, the *Notice* seeks to establish a new licensing mechanism for the private carrier paging service that will promote competition among services and ensure that comparable mobile services receive similar regulatory treatment.

Legal Basis: The proposed action is authorized under the Communications Act, Sections 2(a), 3(n), 4(i), 303(r), 309(i), 309(j), 332(a), 332(c), 332(d), 47 U.S.C. §§ 152(a), 153(n), 154(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c) and 332(d), as amended.

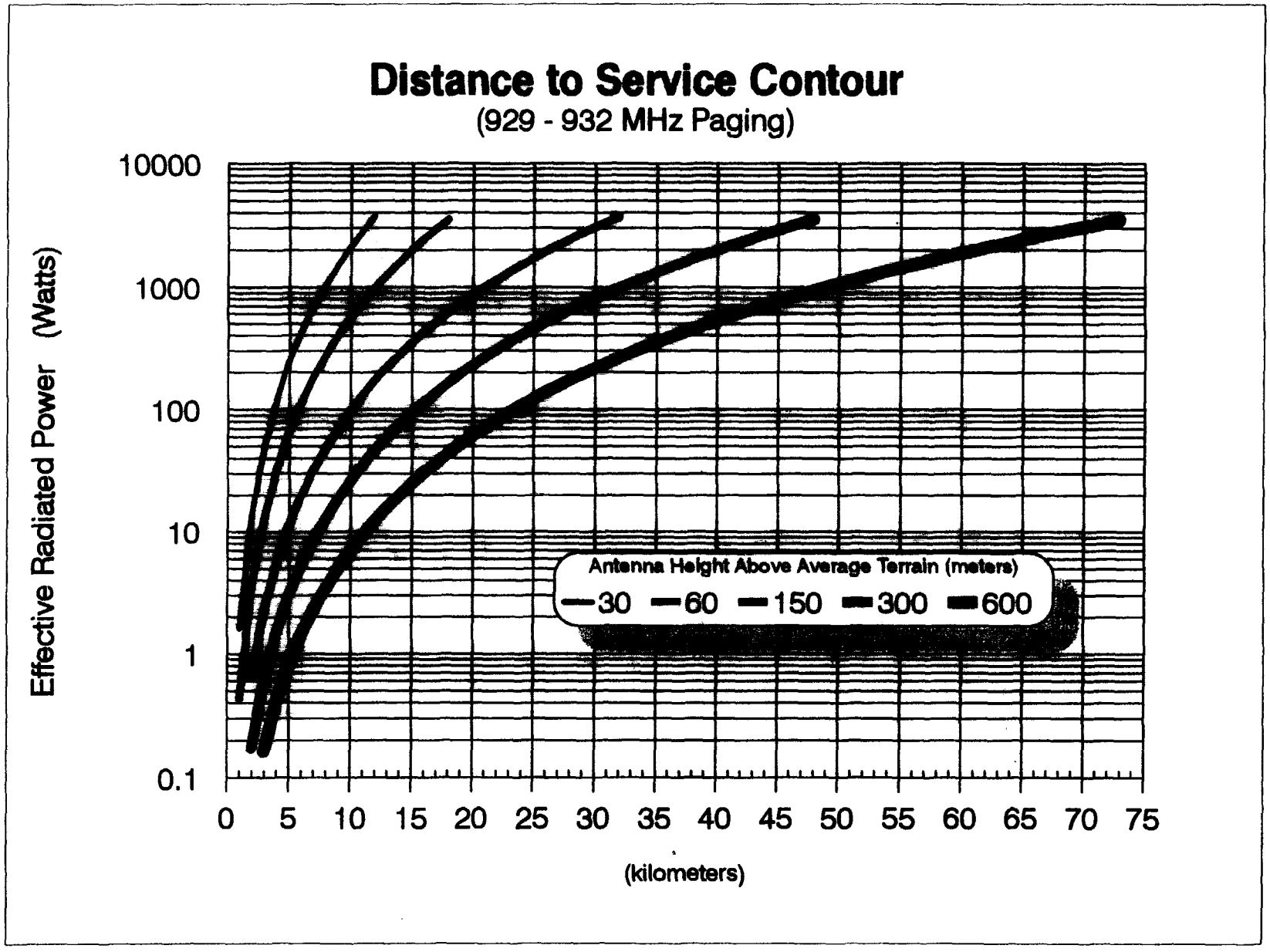
Reporting, Recordkeeping, and Other Compliance Requirements: Under the proposal contained in the *Notice*, paging licensees who obtain wide-area licenses may be required to report information regarding location of their facilities and coverage of their service areas. Paging applicants seeking treatment as "small businesses" also may be subject to reporting and recordkeeping requirements to demonstrate compliance with our competitive bidding rules.

***Federal Rules Which Overlap, Duplicate or Conflict With These Rules*:** None.

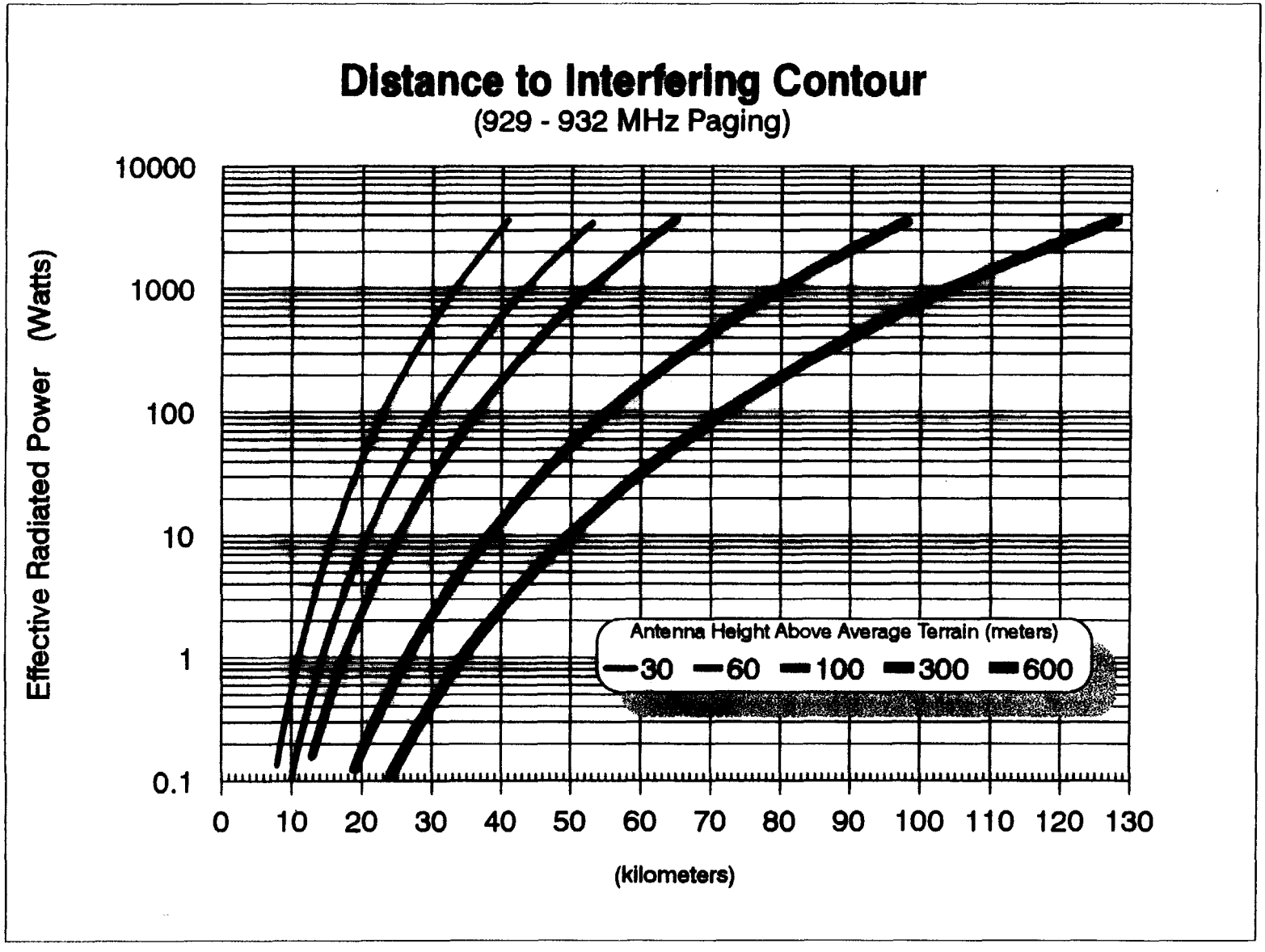
***Description, Potential Impact, and Number of Small Entities Involved*:** The competitive bidding proposals contained in the *Notice*, if adopted, are expected to benefit small entities. These proposals would establish special provisions designed to facilitate small businesses' ability to access capital and to enter the wireless market. The proposed changes to Commission rules also will increase the flexibility of small businesses and lessen the administrative burden on small entities. After evaluating comments filed in response to the *Notice*, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

***Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives*:** This *Notice* solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

***IRFA Comments*:** We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the comment deadlines set forth in this *Notice*.


Distance to Service Contour
(929 - 932 MHz Paging)
Effective Radiated Power (Watts)
10000
1000
100
10
1
0.1
0 5 10 15 20 25 30 35 40 45 50 55 60 65 70 75
(kilometers)
Antenna Height Above Average Terrain (meters)
30 60 150 300 600

APPENDIX B


Distance to Interfering Contour
(929 - 932 MHz Paging)
Effective Radiated Power (Watts)
10000
1000
100
10
1
0.1
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20
30
40
50
60
70
80
90
100
110
120
130
(kilometers)
Antenna Height Above Average Terrain (meters)
30
60
100
300
600

APPENDIX C

SEPARATE STATEMENT
OF
COMMISSIONER SUSAN NESS

Re: *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*

The Notice of Proposed Rulemaking we adopt today is one more chapter in our implementation of the 1993 Budget Reconciliation Act. The transition to geographic licensing and competitive bidding we propose for paging services should facilitate continued growth of the paging industry and its efficient use of the spectrum.

The Notice recognizes that paging is a mature service and a competitive one. For that reason, we are taking measures that will allow existing paging businesses to continue to meet customer demand during the pendency of this proceeding without undermining our objectives.

We will also process pending non-mutually exclusive applications. The question of whether to permit interim licensing has arisen repeatedly as we move to geographic licensing and competitive bidding for wireless services. In each instance, I have based my decision on the particular circumstances surrounding the service at issue. Where interim licensing would undermine our transition to competitive bidding, I have not supported it.

In the case of paging services, I am persuaded that processing the pending non-mutually exclusive applications can benefit consumers without a negative impact on our ultimate goals. Paging is a thriving industry with established licensees who must regularly expand or modify their facilities in order to meet customer demand and increase their competitiveness in the market. The Commission has developed, with the help of the industry, an algorithm that will allow us to clear the backlog of pending applications. We are now prepared to do that.

It is my understanding that over 70% of the pending non-mutually exclusive applications that we plan to process have been filed by incumbents, seeking to fill-in or incrementally expand coverage of their existing systems. The spectrum sought by these applicants is unlikely to be of practical value to anyone other than the applicant and yet it may be of critical importance to the incumbent's ability to maintain its position in this highly competitive market.

In these circumstances, I am persuaded that the processing of these applications will not undermine our goals and will be of benefit to thriving paging businesses and to consumers.