

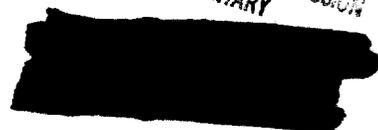
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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)
)
Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

**REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION ON GEOGRAPHIC LICENSING
AND COMPETITIVE BIDDING PROPOSALS**

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April 2, 1996

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**REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION ON GEOGRAPHIC LICENSING
AND COMPETITIVE BIDDING PROPOSALS**

The Personal Communications Industry Association ("PCIA"), by its attorneys, hereby submits its reply comments with respect to the Commission's proposals for adopting geographic licensing and competitive bidding rules for paging authorizations¹ and the opening comments filed in response thereto.² PCIA continues to believe that adoption of market area licensing, in certain paging bands and subject to necessary conditions and transition mechanisms, will effectively serve the public interest. In

¹ See *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems*, FCC 96-52 (Feb. 9, 1996) (Notice of Proposed Rule Making) ("*Notice*"). PCIA filed comments on March 1, 1996, and March 11, 1996, urging the Commission to revise the terms of the freeze imposed on the filing and processing of paging applications during the pendency of this rulemaking. Comments on the substantive proposals contained in the *Notice* were filed on March 18, 1996.

² References in these comments are to the comments of parties filed on March 18, 1996, with respect to the market area licensing and competitive bidding proposals contained in the *Notice*.

order to obtain these benefits, however, the Commission must resolve the substantive issues pending in this proceeding and resume the processing and granting of paging authorizations at the earliest possible date. In addition, the Commission should take steps to ensure that existing service offerings relied upon by subscribers are not disrupted.

I. SUMMARY

The opening comments in this proceeding recognize the value of geographic licensing for some of the Part 22 and Part 90 paging bands, but also admonish the Commission to proceed with care in implementing market-based licensing rules and competitive bidding policies. Care is required because paging is a highly vibrant industry, with the spectrum already heavily used in support of the provision of service to the public. It is essential that adoption of policies as contemplated by the Commission not interfere with or undercut established service arrangements used by the public.

In that regard, the Commission should adopt market area licensing for the 929 MHz exclusive frequencies, the 931 MHz band, and the lower band common carrier channels. Market area licensing for shared frequencies, however, should not be adopted at this time. Rather, the Commission should resume the acceptance of applications for shared frequencies and separately address the numerous issues that

must be first resolved before market area licensing for such frequencies can be rationally considered.

The Commission's transition to market area licensing can be structured in a way that significantly reduces the potential for disruption to the subscribers of paging services. In effect, existing licensees already providing coverage of the market at the five year build out level should be given an opportunity to seek the geographic license without having to confront speculators and other entities attempting to misuse the competitive bidding process to gain an anticompetitive advantage.

The license areas should be based on major trading areas ("MTAS"), which most effectively reflect the current service areas of a large number of licensees and will permit the build out of competitive operations on an efficient basis. Smaller systems can readily be accommodated within the MTA-based licensing structure, as a result of incumbent interference protection policies, partitioning, and opportunities to form bidding consortia.

The parties agree with the Commission that incumbents' existing operations should be fully protected from interference from the geographic licensee. The formulas proposed by the Commission for assessing such interference, however, are unacceptable. The Commission should instead employ the current Part 22 standards for 931 MHz authorizations, applying those standards to 929 MHz exclusive frequencies as well. Also, the parties support the Commission concepts for protecting against

interference between adjacent operators, so long as the adopted policies also guard against no-coverage zones along the borders.

To ensure that service is provided to the public and speculative activity is deterred, the Commission also should:

- Adopt build out benchmarks;
- Require applicants to specify on their short form application each frequency in each market for which they intend to bid, and make an upfront payment for each such frequency;
- Modify its anti-collusion rules so as not to interfere with the ongoing business activities of a competitive marketplace;
- Conduct simultaneous auctions with non-simultaneous closing rules; and
- Decline to grant any special benefits to designated entities, since such benefits are not needed and would distort competition.

Finally, the Commission should act to resolve these issues as quickly as possible and ensure that paging licensees once again have a full opportunity to respond to the needs of consumers.

II. THE COMMISSION SHOULD PROMPTLY ADOPT CAREFULLY CRAFTED MARKET AREA LICENSING RULES AND RESUME THE PROCESSING OF APPLICATIONS FOR PAGING AUTHORIZATIONS

In proposing to adopt market area licensing for Part 22 and Part 90 paging operations, the Commission must overlay its proposed regulatory structure on top of frequencies that are heavily utilized and that involve a highly competitive marketplace. While adoption of market area licensing for most of the paging frequency bands at this

time will have clear benefits for the public, the Commission, and licensees, the plan must take into account established existing operations and their proven ability to respond to customer demand. The nature of these present operations also underscores the fact that prolonged uncertainty and delay in resolving this proceeding will have harmful effects for existing paging operations and their users.³

A. The Commission Should Adopt Market Area Licensing for the 929 MHz, 931 MHz, and Lower Band Common Carrier Channels

PCIA reiterates its support for adoption of market area licensing policies for paging authorizations in the 931 MHz and 929 MHz exclusive frequencies and the lower band common carrier channels.⁴ As PCIA and numerous other commenters

³ *E.g.*, A+ Network, Inc. at 12-13 ("A+ Network"); AirTouch Paging at 3 ("AirTouch"); Joint Comments of Arch Communications Group and Westlink Licensee Corporation at 3 ("Arch/Westlink").

The *Notice* also imposed a freeze on the acceptance of Part 22 and Part 90 applications, with certain exceptions, and set forth the Commission's plans for the processing of applications already on file as of the adoption of the *Notice*. The record compiled in response to the freeze decision and the Commission's proposed interim licensing procedures overwhelmingly demonstrates the nature of the serious harms that have resulted and that will only worsen the longer the current freeze is in place. PCIA continues to urge the Commission to act promptly to grant relief from its freeze order and to permit paging operators more effectively to serve the needs of existing and future subscribers.

⁴ *See* PCIA at 8-13; A+ Network at 2; AirTouch at 7; Arch/Westlink at 3-4; AT&T Wireless Services, Inc. at 4 ("AT&T"); Mobile Telecommunications Technologies Corp. at 4-5 ("Mtel"); Pacific Bell at 2; Paging Network, Inc. at 4-6 ("PageNet"); Paging Partners Corporation at 2 ("Paging Partners"); Source One Wireless, Inc. at 2 ("Source One"). PCIA previously endorsed the Commission's
(continued...)

pointed out, market area licensing will afford a number of benefits consistent with the goals of the Communications Act, including:

- Allowing licensees to engage in longer term, rational planning for and engineering of their systems;
- Permitting licensees to respond more quickly and effectively to customer demand for services;
- Reducing the number of regulatory filings with the Commission;
- Minimizing processing delays;
- Providing greater parity with narrowband personal communications services ("PCS") licensees; and
- Strengthening the ability of carriers to obtain capital by providing with a more understandable package of rights.⁵

The opening comments confirm the Commission's own conclusions about the benefits of market area licensing.⁶

A number of commenting parties oppose the adoption of market area licensing in any form for paging frequencies. In general, many of these parties believe that market area licensing is inconsistent with the ability of small paging operators to maintain their existing operations and to retain the ability to grow their systems on an

⁴(...continued)

proposal to exclude from market area licensing those frequencies where nationwide exclusive licenses already have been granted. PCIA at 11; *see Notice*, ¶ 26. Nothing in the opening comments suggests that the Commission's tentative conclusion should be altered.

⁵ *See, e.g.*, PCIA at 9.

⁶ *E.g.*, *Notice*, ¶¶ 21, 25.

incremental basis consistent with public requests for service and the operator's ability to add facilities.

PCIA previously has recognized the concerns of smaller operators and the need to design a mechanism to ensure that they can continue to participate effectively in the paging marketplace.⁷ These concerns need not be a roadblock to the adoption of geographic licensing for certain of the paging bands. Rather, these comments suggest that the Commission's market area licensing plan must ensure that it accommodates these smaller licensees, who have formed an important part of the paging marketplace for years. PCIA believes that this can be accomplished by, for example, permitting the partitioning of service areas and allowing competitive bidding by consortia of smaller licensees.⁸

While implementation of market area licensing is appropriate for 931 MHz, 929 MHz exclusive,⁹ and lower band common carrier frequencies, opening round commenters agree with PCIA that market area licensing should not be adopted at this

⁷ *E.g.*, PCIA at 18.

⁸ *See* discussion at Section III.A, *infra*.

⁹ PCIA renews its request that the Commission clarify that any 929 MHz exclusive frequency licensees with time remaining on their exclusivity construction periods, as specified in Section 90.495 of the Commission's Rules, may complete system build out and retain their exclusive licenses. PCIA at 12-13; *see Notice*, ¶ 26. Only if the licensee fails to meet the construction requirements at the end of its build out period should its authorization be modified.

time for the Part 90 shared frequencies.¹⁰ As PCIA explained, and others agreed, market area licensing simply is not feasible for the shared frequencies at this time. Rather, a number of issues must be addressed and resolved before consideration of market area licensing makes any sense.¹¹ In order to ensure that the Commission does not adversely affect this important segment of the paging industry and does not unduly delay action on the proposals for other paging bands, it should separate the shared channel issues from the remainder of the subject proceeding and immediately lift the freeze on the filing and processing of shared channel applications. At a later date, the Commission can undertake a separate, comprehensive review of the shared channel issues.¹²

¹⁰ PCIA at 14-17; *see, e.g.*, A+ Network at 15-16; Paging Licensees at 1-10; ProNet, Inc. at 3-6.

¹¹ PCIA reiterates its request that the Commission consider its proposals for "earned exclusivity" and key-up overlap guidelines. PCIA at 15, 17 n.32. *See* Amendment of the Commission's Rules and Regulations Concerning Shared Use of 150 MHz and 460 MHz Paging Frequencies, Petition for Rule Making of the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. [now PCIA], RM-7986 (filed July 11, 1994).

¹² During this review of the shared channel regulatory issues, the Commission should continue to accept and process applications for shared channel authorizations. To impose a freeze during the consideration of such issues would impose unacceptable hardships on the current operators in these shared frequency bands.

B. The Opening Comments Underscore the Need for the Commission To Adopt Market Area Licensing Policies That Minimize Disruption to the Services Currently Obtained by the Public

There is no dispute that the paging marketplace is highly competitive -- the Commission already has reached this conclusion and the opening comments underscore this finding. Paging licensees serve over 34 million customers, meeting a variety of needs. In support of their activities, paging licensees make heavy use of the frequencies allocated under Parts 22 and 90 for paging operations.

These facts -- which reflect the high value the public places on the paging services available to them -- necessarily must be a significant consideration in the action taken by the Commission in this proceeding in determining how to implement market area licensing. Unless handled deftly, market area licensing could be highly disruptive to existing licensees and their subscribers, interfering with the ability of customers to obtain the services to which they are accustomed.

In this regard, PCIA believes that there are several steps that can be taken in the design of the market area licensing and competitive bidding rules that can help to minimize unacceptable disruption stemming from the implementation of market area licensing and the potential for speculative or other inappropriate filings.¹³ Equally important, PCIA and other commenters have emphasized to the Commission that the public interest would be far better served by adopting a transition plan that recognizes

¹³ PCIA's proposals are discussed in Section IV, *infra*.

those licensees that already are providing significant service on a particular frequency within a particular service area.¹⁴ If a current licensee already meets or exceeds the build out requirement as of the fifth year of service, there appears to be no valid need for holding an auction to award the market area license for that frequency. Rather, holding an auction in those cases would provide an incentive for entities to file competing applications with the sole purpose -- perhaps in support of gaining a competitive advantage -- of running up the auction price the current licensee would have to pay in order to protect its existing operations and investments.

When Congress authorized the Commission to use auctions for the purpose of awarding licenses in particular services, the Congress made clear that the Commission was *not* to structure its licensing rules in order just to obtain revenues.¹⁵ Rather, Congress specifically directed the Commission to take all steps possible to minimize the creations of mutually exclusive application situations.¹⁶ Thus, to the extent that the proposed licensing structure appears designed primarily to raise funds, it would be inconsistent with the Commission's authorization to employ competitive bidding.

¹⁴ See PCIA at 28-29; A+ Network at 8-9; AirTouch at 40-41; Arch/Westlink at 20-22; Metrocall, Inc. at 8-9 ("Metrocall"); PageNet at 39-41; Paging Partners at 3; Source One at 2.

¹⁵ See 47 U.S.C. § 309(j)(7).

¹⁶ See 47 U.S.C. § 309(j)(6)(E).

PCIA believes that its proposal for a transition from the current licensing environment to market area licensing strikes the appropriate balance between the competing considerations. Under that plan:

- The only entities eligible for the initial round of applications for market area licenses would be existing licensees desiring to obtain a market area license and that can certify that they can cover at least 70 percent of the population of a particular license area.
- Existing licensees meeting this criteria would be granted a geographic license for the particular service area, and that market on that frequency would be removed from the pool of licenses available for auction.
- The Commission would then open a subsequent window for the filing of applications for those markets where authorizations are not granted in the first round; eligibility for submitting applications in this round would be open.
- If mutually exclusive applications were filed for any such market, the competitive bidding rules and policies adopted in this proceeding would be applied to determine the license holder.

Under this plan, opportunities for competitive abuse by means of the auction process would be minimized while legitimate opportunities for competitive bidding to occur would be preserved. Moreover, the services on which consumers currently rely would be subject to less disruption, and licensees would be able to devote their resources to system improvements in response to public demand.

III. THE GEOGRAPHIC LICENSING RULES MUST TAKE INTO ACCOUNT THE NATURE OF EXISTING OPERATIONS WHILE FULLY PROMOTING COMPETITION AND ENSURING THAT SERVICE PROVIDERS HAVE ADEQUATE OPPORTUNITIES TO MEET CUSTOMER DEMAND

A. MTAs Are the Appropriate Service Area Definition

A number of opening parties oppose the use of major trading areas ("MTAs") as the geographic licensing area. In some cases, the opposition to the use of MTAs is intertwined with the commenters' opposition to market area licensing generally. In other cases, commenters argue that MTAs are simply too big and do not accurately reflect the existing, established service areas of many smaller carriers. Opponents of MTAs argue that many of these smaller carriers are not interested in serving the full MTA, and could not afford to pursue the MTA market license even if they did want to do so. In lieu of MTAs, parties suggest use of basic trading areas ("BTAs"), Commerce Department defined economic areas ("EAs"), or MSAs/RSAs, as were used in cellular licensing.

A number of the opening comments support the use of MTAs.¹⁷ Like other commenters, PCIA acknowledges that MTAs are not a perfect fit for existing paging systems. In some cases, wide area paging systems are larger than MTAs. In other circumstances, as many of the commenters have pointed out, existing systems are far

¹⁷ *E.g.*, A+ Network at 3; AirTouch at 15; American Paging, Inc. at 3 ("API"); Arch/Westlink at 6-7; AT&T at 5; Mtel at 6; PageNet at 6-7.

smaller than an MTA. Service areas based on MTAs, however, strike a better balance of competing interests than those based on smaller geographic areas. Adoption of MTAs ensures that licensees will have access to a service area that permits successful operation, enhances their ability to meet customer needs, and improves their ability to engage in rational system design and engineering. As A+ Network underscores, "geographic-based paging systems will provide consumers with effective and efficient service only if the specified geographic service areas are based on existing regional activity patterns without regard to artificial political boundaries."¹⁸ A+ Network's experience, like that of other licensees, confirms that such areas most closely approximate MTAs.¹⁹

Smaller service areas, such as BTAs, EAs, or MSAs/RSAs, do not effectively meet the needs of the paging industry considered overall. These areas simply are far too small when compared with the actual coverage of many existing systems,²⁰ or with the size of the systems many licensees would like to be able to implement in the near future. A licensee may find it necessary to pursue authorizations for several adjacent BTAs, for example, in order to cover its existing system operations. This provides additional opportunities for a speculator to interfere with the existing operator's services by obtaining the authorization for a BTA involving a critical part of

¹⁸ A+ Network at 2.

¹⁹ *E.g.*, A+ Network at 3.

²⁰ *See, e.g.*, Ameritech Mobile Services, Inc. at 9 ("Ameritech").

the incumbent licensee's service offerings. Even if the speculator eventually loses the license for failure to meet the build out requirements, the existing licensee will be prevented from making significant system modifications necessary to meet customer need during that interim period. Similarly, an unscrupulous competitor would have an increased number of opportunities to bid up prices for BTA authorizations.

Using BTAs, EAs, or MSAs/RSAs would substantially increase the number of auctions to be conducted, creating unnecessary complexity in the auctioning process. Decisions about appropriate auction groupings also would be more difficult. This would lead to delays in granting market area licenses and in allowing operators to return their focus to providing service to the public.

Beyond the problems with smaller service areas, PCIA believes it is possible effectively to accommodate small systems within a geographic licensing structure based on MTAs. *First*, as PCIA reiterates below, the authorized facilities of existing licenses should be fully protected from interference from the market area licensee in the same MTA. Thus, existing operations would be fully protected, and such licensees would have the ability to make certain system changes so long as the composite interference contour is not increased. Moreover, the incumbent operator would have an opportunity to seek to reach an agreement with the market area licensee permitting the incumbent to expand its operations.

Second, meeting the needs of small incumbent operators highlights the importance of Commission rules that explicitly authorize the partitioning of the

geographic license to any eligible entity.²¹ This would permit a smaller operator to pursue arrangements with a market area licensee for a partial assignment of the service area to accommodate the small licensee's own business operations.

Third, the Commission should permit interested parties to form bidding consortia to obtain a market area license that in turn could be divided among the consortium members in order to accommodate smaller systems.²² It seems that it should be a manageable task to identify the other licensees in a market that might be interested in joining such a consortium effort. This would permit each of the licensees to obtain a service area more tailored to its existing operations as well as its business plans.²³

²¹ The Commission also should permit spectrum disaggregation in the paging service to the extent that it is technically feasible.

²² See also *Ameritech* at 16.

²³ Despite its conclusion that MTAs are the most appropriate geographic unit for defining paging service areas, PCIA remains open to addressing any proposals that would prescribe smaller license areas that can accommodate the concerns outlined in these comments.

B. The Opening Comments Reflect a General Consensus That Incumbent Operators With Exclusive Frequency Authorizations Should Receive Full Interference Protection for Their Authorized Facilities

The opening comments reflect strong support for the Commission's proposal to grant full interference protection to incumbents.²⁴ PCIA reiterates that the components of that protection should include:

- Incumbent licensees should be able to operate their systems consistent with all outstanding, effective authorizations.
- Incumbent licensees should be protected from interference based upon their interference contours.
- Incumbent licensees should be permitted to make modifications so long as no interference is caused to the market area licensee, the composite grandfathered interference contour is not increased, the incumbent makes all necessary filings with the Commission, and the incumbent licensee serves copies of *all* technical system changes on the market licensee.
- Incumbent licensees and market area licensees would be permitted to enter into voluntary arrangements permitting the incumbent to undertake expansion of its system.
- Geographic licensees and incumbent licensees would be free to enter into voluntary negotiations regarding the purchase or relocation of the incumbents' facilities.
- If an incumbent fails to construct, discontinues operation, or otherwise has its license terminated, the geographic area covered by the subject authorization would revert automatically to the market area licensee.

Adoption of these policies would afford the incumbents full rights to operate their facilities free from unacceptable interference from the eventual market are licensing.

²⁴ *E.g.*, AirTouch at 16-17; Mtel at 6-7; PageNet at 8-9.

C. The Commission's Proposed Formulas for Protecting Against Co-Channel Interference Between Incumbents and Geographic Licensees at 931 MHz and 929 MHz Are Unacceptable

The opening comments concur in the Commission's plan for retaining the existing interference protection rules for lower band common carrier channels. Likewise, the commenters are in general agreement that the Commission should apply a uniform interference standard for 929 MHz and 931 MHz. Finally, the commenters addressing the issue all conclude that the formulas proposed by the Commission for determining the service and interference contours for 931 MHz and 929 MHz are unacceptable.²⁵

The Commission's proposed formulas are deficient in a number of respects. First, the proposed service and interference contours do not accurately predict actual service and interference areas. In many cases, the proposed formulas would vastly understate the area where reliable service is available. Adoption of the formulas in light of real world performance characteristics would result in actual interference, thus creating serious problems for licensees and their subscribers.

Second, the comments further point out that licensees currently do not have access to the information needed to complete the calculations to permit them to provide

²⁵ See, e.g., Ameritech at 2-6; Arch/Westlink at 11-13; Comp Comm, Inc. at 1-6 ("Comp Comm"); Liberty Cellular, Inc. at 4-6; Mtel at 7-9, PageMart, Inc. at 2-7; Paging Coalition at 10-13; PageNet at 11-18; Pioneer Telephone Cooperative, Inc. at 12-15.

protection to incumbent operations. The vast majority of the information necessary for such determinations is not filed with the FCC. Collection of that information by the Commission would be a heavy and unnecessary burden for the Commission and licensees alike.

Third, aside from the deficiencies identified above, the proposed formulas are more burdensome to implement in system design as well as in providing necessary interference protection. The formulas add complexity to the calculation process, as compared to what is required now under the Commission's rules, that has no value or other apparent purpose. Rather, the additional calculations create burdens for licensees and the Commission staff.

Fourth, the proposed formula represents a wholesale revision to the basis on which current systems are designed. Current systems were implemented in reliance on a particular set of assumptions about service and interference contours. To preserve those protected areas under the formulas proposed in the *Notice*, existing licensees would need to undertake a complete reengineering and rebuilding of their systems. Given the fact that the formulas do not accurately represent actual service and interference areas, this is a wasteful diversion of resources that could instead be used to expand and improve the service provided to the public.

Instead of adopting the formulas proposed in the *Notice*, the Commission should retain the standards embodied in Tables E-1 and E-2 of Section 22.537 of the

Commission's Rules.²⁶ Those standards should be applied to both 929 MHz exclusive frequency and 931 MHz operations to ensure that unacceptable interference is not created between incumbent operations and the market area licensee's facilities.²⁷

D. The Commission Must Adopt Rules To Ensure That Unacceptable Interference Does Not Occur Between Adjacent Geographic Licensees While Not Creating Unacceptable Dead Spots in Service

In its opening comments, PCIA supported the Commission's proposals for policies governing the prevention of interference between adjacent market area licensees.²⁸ The opening comments also substantially support adoption of the Commission's recommended approach. Clearly, the Commission should encourage adjacent market licensees to reach agreements regarding operations at border areas. This will best ensure full market coverage in each service area and the full availability of service to the public.

The Commission also must have in place rules governing the nature of protected operations in the event that the adjacent licensees do not enter into an agreement that addresses such interference concerns. PCIA recommends that each geographic licensee be accorded interference protection based on a 20-mile service area contour and a 50-

²⁶ 47 C.F.R. § 22.537 (1995). *See* Caraway Communications at 2.

²⁷ The record also supports adoption of the Commission's proposals to increase the maximum power for 929 MHz non-nationwide facilities to 3500 Watts and to eliminate the height-power limit for 929 MHz licensees.

²⁸ *Notice*, ¶ 62. *See* PCIA at 26-27.

mile interference contour. This formulation can be easily and readily applied by adjacent licensees to ensure that their operations do not adversely affect the service provided by a neighboring licensee on the same frequency.

At the same time, to ensure that licensees do not face regulatory-required strips of no-coverage along market area borders, they should be permitted to make a showing based on a formula that PCIA is working with industry members to develop. This formula is expected to provide alternative means for reducing signal levels near the service area boundary in order to prevent interference while permitting the geographic licensee to provide acceptable service up to the border of the licensed service area. This may be critically important at some border areas involving metropolitan areas or other locations where demand for paging services is high. PCIA will report to the Commission in the near future as to the recommendations developed by industry members for achieving this goal.

IV. THE RECORD REFLECTS THAT THE COMMISSION SHOULD ADOPT MARKET AREA LICENSING AND COMPETITIVE BIDDING RULES AND POLICIES DESIGNED TO ENSURE THAT AUCTION APPLICANTS AND MARKET AREA LICENSEES ARE SERIOUS IN THEIR INTENT TO PROVIDE SERVICE TO THE PUBLIC OVER LICENSED FACILITIES

As the Commission has acknowledged and the record in this proceeding reflects, existing licensees have built out substantial operations that are meeting the needs of the public. To minimize the likelihood that unscrupulous entities will attempt to use the geographic licensing rules and competitive bidding policies to engage in "greenmail" or

to hinder the position of competitors, and thus disrupt services to the public, the Commission must adopt safeguards to ensure the sincerity of the applicants for market area licenses. At the same time, the Commission's policies must not impede the ability of paging operators and private licensees to continue to meet service needs.

A. There Is Substantial Agreement Concerning the Need for Appropriate Build Out and Coverage Benchmarks To Ensure That Service Is Promptly Provided to the Public Pursuant to Market Area Licenses

A number of commenters agreed with PCIA that the Commission should impose the following requirements for the build out of market area systems:

1. The geographic licensee's interference contour must cover at least 10 percent of the market area population within one year of the grant of the authorization.
2. The geographic licensee's interference contour must cover at least one-third of the market area population within three years of the grant of the authorization.
3. The geographic licensee's interference contour must cover at least two-thirds of the market area population within five years of the grant of the authorization.²⁹

These benchmarks must be met by the licensee using its own facilities and thus providing the service directly to the public. Failure to meet any one of these build out

²⁹ *E.g.*, A+ Network at 5; AirTouch at 17-18; API at 3-4; Arch/Westlink at 7-8; PageNet at 31-32.

requirements should result in automatic termination of the authorization.³⁰ These coverage requirements, when coupled with automatic license cancellation for failure to meet the benchmarks, should help ensure that only legitimate applicants are seeking geographic licenses.

The Commission also should eliminate the proposed exception from these build out requirements for licensees electing to provide "substantial" service to the market.³¹ This opportunity can be too easily manipulated to impede the operations of an existing incumbent in a market, particularly one with substantial pre-existing facilities. In addition, a licensee purportedly availing itself of this option could avoid providing service to the public in substantial portions of an MTA for an extended period of time.³² These outcomes clearly are inconsistent with the mandate to ensure that licensing and operation of facilities are in furtherance of the public interest.

³⁰ See, e.g., A+ Network at 5; AirTouch at 20-21; PageNet at 33. A geographic licensee that failed to meet build out requirements but that held authorizations pursuant to the Commission's current site-by-site licensing procedures should retain its protected service areas as authorization at the time of the auction for that authorizations. See, e.g., AirTouch at 21 n.53.

³¹ E.g., A+ Network at 6 n.10; AirTouch at 18-20; Ameritech at 19; Arch/Westlink at 8-9; AT&T at 8; PageNet at 33.

³² PCIA reiterates its request that the Commission grant to licensees that requested extended implementation (which requests the *Notice* contemplates denying) a reasonable period of time to complete construction and retain their exclusive frequency authorizations if the slow growth applications in fact are dismissed.