DOCKET FILE COPY ORIGINAL

RECEIVED
APR - 1 1996
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	)	WT Docket No. 96-18
	)	
Implementation of Section 309(j) of the Communications Act--Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF PRONET INC. ON GEOGRAPHIC LICENSING AND COMPETITIVE BIDDING

Jerome K. Blask
Daniel E. Smith

Gurman, Blask & Freedman, Chartered
1400 Sixteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 328-8200

Its Attorneys

April 1, 1996

TABLE OF CONTENTS

		PAGE
I.	INTRODUCTION AND SUMMARY	1
	1. Exemptions	2
	2. Geographic Service Area Boundaries	2
	3. Incumbent Licensees	3
II.	EXEMPTIONS FROM GEOGRAPHIC LICENSING AND COMPETITIVE BIDDING	3
	A. Shared PCP Channels	4
	B. SERS Channels	5
	C. Incumbents Who Satisfy the Five-Year Coverage Requirement Should Be Exempt From Competitive Bidding	6
III.	THE COMMISSION DIVISION OF GEOGRAPHIC AREAS SHOULD BE FLEXIBLE	8
	A. Allowing Liberal Partition, Alienation and Return of Territory By Geographic Licensees Will Further the Commission's Stated Objectives	9
	B. The "Substantial Service" Alternative Should be Rejected	11
	C. Protection of Adjacent Geographic Licensees	12
IV.	TREATMENT OF INCUMBENT LICENSEES	13
	A. 929/931 MHz Interference Contours Should Not Be Changed	14
	B. Incumbent Expansion Rights	17
VI.	CONCLUSION	20

RECEIVED
APR - 10

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

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

To: The Commission

REPLY COMMENTS OF PRONET INC.
ON GEOGRAPHIC LICENSING AND COMPETITIVE BIDDING

ProNet Inc. ("ProNet"), through its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Reply Comments with respect to the Notice of Proposed Rulemaking in the above-captioned proceeding ("NPRM").

I. INTRODUCTION AND SUMMARY

The comments filed in response to the NPRM demonstrate that, while substantial benefits can be achieved through the proposed conversion to geographic licensing, redefining service areas will be disruptive, and could seriously infringe on the ability of incumbent carriers to serve millions of individuals who depend on paging service. Although the commenters differ regarding specific remedies, it is plain that the proposals in the NPRM must be revised to streamline geographic licensing procedures, eliminate unnecessary regulatory requirements created by artificial service

area boundaries, and remove undue restraints on incumbent paging systems. To achieve these ends, ProNet recommends that the Commission make the following modifications to its geographic licensing proposal:

1. Exemptions-- The shared PCP channels, and especially paging channels in the Special Emergency Radio Service ("SERS"), should be exempt from geographic licensing. While exclusive channels should be subject to geographic licensing, geographic licenses should be summarily granted to incumbent licensees who already serve fifty (50) per cent or more of a Major Trading Area's ("MTA's") population, based either on the outer perimeter of the combined service and interference contours (as presently determined) of all co-channel sites licensed and operated by that incumbent,[1] or on the separation criteria provided for 929 MHz exclusive systems.

2. Geographic Service Area Boundaries-- Because geographic area boundaries are inherently arbitrary, the Commission should ensure that service area definitions and border interference policies remain flexible. Therefore:

- Geographic licensees should be permitted to partition, alienate and return licenses to the Commission in whole or in part, allowing the market to determine system coverage; and
- Because the issue of protecting adjacent geographic licensees is extremely complex, it should be considered in a separate rulemaking or notice of inquiry proceeding.

---

[1] As explained in more detail below, an incumbent license transformed into a geographic license under this criterion will have two years to satisfy the two-thirds coverage requirement the NPRM seeks to impose on other geographic licensees.

3. Incumbent Licensees-- Incumbent systems should be afforded greater protection, by:

- Retaining existing separation requirements for co-channel stations set forth in Section 90.495(b) (for exclusive 929 MHz systems) and fixed-radii service and interference contours in Section 22.537(f) (for 931 MHz stations), rather than adopting the substitute formulations proposed by the NPRM; and

- Allowing limited expansion rights without a geographic licensee's consent, where: (1) an incumbent seeks to locate a new transmitting site within forty miles of an existing site; (2) an incumbent seeks to expand coverage to a population center (e.g., a BTA) in which it already provides two-thirds coverage; (3) a geographic licensee's desire to cover an area is irreconcilable with its duty to protect an incumbent's grandfathered sites; and (4) an incumbent's transmitting site is lost.

Moreover, as mentioned above, ProNet here proposes that incumbents who already cover fifty (50) per cent of an MTA's population should, on that basis alone, automatically receive a geographic license.

II. EXEMPTIONS FROM GEOGRAPHIC LICENSING AND COMPETITIVE BIDDING

In essence, the NPRM asks two broad questions. First, should commercial paging channels be subject to geographic licensing? Second, should these channels be subject to competitive bidding? ProNet would answer both of these questions in the affirmative, with two exceptions. First, as stated in its Comments, ProNet supports geographic licensing for exclusive 900 MHz and low-band CCP channels, but is unconvinced that this change is suitable for shared PCP spectrum. ProNet also remains concerned that the Commission's geographic licensing proposal could be interpreted to include SERS paging; a clarifying Public Notice is still needed to

remove this uncertainty.

Second, based on its review of Comments in this proceeding and on further reflection of its own position, ProNet concludes that competitive bidding is inappropriate in a geographic area and for a frequency where an incumbent already provides coverage to fifty (50) per cent or more of the underlying population. A non-incumbent who bids for a geographic area with this characteristic seeks either to prevent the incumbent from further expanding its existing system, or to obtain a right to acquire licenses from that incumbent (without which the bidder will be unable to satisfy its own coverage requirement). ProNet submits that, under these circumstances, geographic licensing will inevitably breed extortion. Accordingly, geographic licenses should be summarily awarded to incumbents whose composite service/interference contours, or protected area under Part 90 for 929 MHz exclusive systems, provide coverage to fifty (50) per cent or more of an MTA's population.

A. Shared PCP Channels

In its Comments (at 4), ProNet opposed subjecting the shared PCP channels to geographic licensing on several grounds:

- Existing channel congestion, and the multiplicity of systems sharing these frequencies in most geographic areas make this spectrum difficult to reconcile with an exclusive licensing scheme;
- Non-exclusivity and intense usage of these channels will limit their revenue producing value at auction; and
- Existing operating procedures under Section 90.403 of the Commission's Rules adequately govern spectrum sharing.

Several commenters agree with ProNet that geographic licensing of shared PCP channels will be exorbitantly burdensome for existing carriers. For example, PCIA notes that determining which carriers are entitled to exclusivity is likely to be extremely complex and time-consuming.[2] PCIA also notes that these channels are heavily used for private internal paging systems, which raises issues distinct from the Commission's focus on commercial systems.[3]

The Paging Licensees note that shared paging spectrum has spawned elaborate intercarrier relationships; geographic licensing and auctions will disrupt these arrangements, to the detriment of carriers and their customers.[4] A+ Network, Inc. states that most shared frequency licensees operate much smaller systems than their counterparts in 931, exclusive 929 and low-band CCP MHz spectrum, and that the Commission "should leave the shared-frequency paging provider alone, and let him or her determine what is an appropriate geographic service area."[5] ProNet concurs.

B. SERS Channels

As discussed in its Comments (at 5-6), ProNet believes that SERS paging-only channels are exempt from all proposals set forth in the NPRM. In informal discussions, the Commission staff agreed

---

[2] Comments of the Personal Communications Industry Association on Geographic Licensing and Competitive Bidding Proposals ("PCIA"), at 15-16.

[3] PCIA at 16.

[4] Comments of the Paging Licensees on the Commission's Market Area Licensing Proposal ("Paging Licensees") at 3-4.

[5] Comments of A+ Network ("A+ Network"), at 15.

with this position, and Special Temporary Authority ("STA") has been granted in conjunction with SERS applications filed by ProNet after the NPRM's release. Nevertheless, lack of any express reference to SERS paging in the NPRM, on the one hand, and claims regarding the NPRM's exhaustive scope, on the other, have created needless uncertainty on this issue. To minimize potential misunderstanding and out of an abundance of caution, the Commission should issue a Public Notice plainly stating that SERS paging channels are outside the NPRM's scope.

C. Geographic Licenses Should Be Summarily Granted To Incumbents Covering At Least Half An Area's Population

The comments in this proceeding confirm the NPRM's finding (at ¶¶13-14, 17-18) that incumbents already have a significant presence in virtually every MTA on most available channels,[6] particularly in major population centers. Where that presence equates to coverage of at least half the underlying population, competitive bidding will serve only to encourage speculation and extortionate behavior. This outcome is inconsistent with the auction statute,[7] the Telecommunications Act of 1996 and longstanding Commission policy, and should not be countenanced.

In a geographic area with a dominant incumbent, the successful non-incumbent bidder will be compelled by NPRM requirements to construct sufficient transmitting sites to provide coverage to every populated area not presently covered and acquire licenses

---

[6] As discussed below, ProNet supports use of MTAs to define geographic license areas, subject to liberal partitioning.

[7] 47 U.S.C. §309(j).

from the dominant incumbent (and, perhaps, others) sufficient to surmount the coverage shortfall that, to a mathematical certainty, will exist on the five year coverage deadline.[8/]

In this circumstance, auction of a geographic license will attract bidders who either: (a) are willing to bid for the sole purpose of constraining the dominant incumbent from any expansion during the geographic licensee's five year coverage period; and/or (b) seek what, in effect, is a right to acquire the dominant incumbent's licenses on an exclusive basis (because no other carrier would voluntarily aspire to inherit the incumbent's unenviable situation). If adopted as proposed, the geographic licensing scheme will allow non-incumbent auction winners to paralyze the incumbent's existing system and then initiate negotiations to acquire all or the most attractive portions of that system in a situation devoid of alternative buyers. A geographic license in a market area and with respect to a frequency characterized by a dominant incumbent will thus become a license to extort.

To preclude this result, the Commission should adopt the following proposal. Where an incumbent presently serves fifty (50) per cent or more of the population in an MTA or other geographic area, based on the outer perimeter of the combined service and interference contours (as determined under current rules) of all

---

[8/] The NPRM requires a geographic licensee to cover two-thirds of an MTA's population by the end of five years. This mandate cannot be satisfied if a single incumbent covers fifty percent or more of that population, unless the incumbent assigns licenses to the geographic licensee.

its licensed and operated co-channel sites, or the separation criteria provided for 929 MHz exclusive systems, a geographic license should be summarily awarded to that incumbent.[9] This incumbent/geographic licensee will then be required, like typical geographic licensees, to satisfy the two-thirds population coverage requirement. ProNet proposes allowing a two year period for meeting this requirement, because it corresponds to the period in which the typical geographic licensee must increase its population coverage from one-third to two-thirds (NPRM at ¶41).[10]

III. GEOGRAPHIC AREAS SHOULD BE IMPLEMENTED WITH MAXIMUM FLEXIBILITY

The comments vary significantly regarding the optimal market size for geographic licensing. This confirms ProNet's observation in its Comments that any imposed geographic area standard will be inherently arbitrary. To ensure that incumbent licensees make decisions based on free market forces rather than constraints

---

[9] Auction exemptions for incumbents were proposed by numerous commenters. See Comments of Paging Network, Inc. ("PageNet") at 40; Comments of the Paging Coalition on Market Area Auction Proposal ("Paging Coalition") at 8; Comments of Metrocall, Inc. ("Metrocall") at 8-9; Joint Comments of Arch Communications Group and Westlink Licensee Corporation on the Notice of Proposed Rulemaking ("Arch/Westlink") at 21; Comments of Paging Partners Corporation ("Paging Partners"); PCIA at 28; Comments of Ameritech Mobile Services, Inc. on Market Area Licensing Proposal ("Ameritech") at 13; Comments of MobileMedia Communications, Inc. ("MobileMedia") at 21; Comments of Airtouch Paging on the Notice Of Proposed Rulemaking ("Airtouch") at 40.

[10] Because it will likewise promote rapid build-out, ProNet supports PageNet's proposal (at 47-52) that auction winners be afforded blanket conditional operating authority within the applicable geographic area pending final decision on their applications.

imposed by arbitrary regulation, liberal partitioning of geographic areas must be permitted and encouraged. Similarly, use of fixed geographic areas will cause highly complex coverage and interference problems along the borders; these issues require further study and analysis.

A. Allowing Liberal Partition, Alienation and Return of Territory By Geographic Licensees Will Further the Commission's Stated Objectives

In its Comments, ProNet observed that using MTAs to define geographic service areas is arbitrary and, coupled with the proposed minimum coverage requirements,[11] will limit, rather than promote, system build-out in all but the most densely populated areas, and may result in less coverage than under the present site-by-site licensing scheme. To mitigate these disadvantages of geographic licensing, the Commission must permit and encourage partitioning, alienation and/or partial return of geographic area (for re-licensing) of all geographic licenses.

As discussed above, incumbents already serve heavily populated areas in each MTA on most paging channels. Due to economic considerations, these incumbents may have deferred extending service to an MTA's periphery and may continue to do so even if they acquire a geographic license (either by winning an auction or through an automatic grant as urged above). Under the NPRM,

---

[11] The specific requirements-- service to one-third of the MTA population within three years, and two-thirds within five years-- are reasonable. See NPRM at ¶40-43. ProNet also supports those commenters advocating a third service requirement, namely, service to ten percent of the MTA population within one year. See PageNet at 32, PCIA at 22; Arch/Westlink at 7-8.

however, no other carrier will be authorized to serve these outlying areas, thus denying service to small and rural population centers. Stated succinctly, geographic licensing may actually discourage licensees from extending service to the margins of their licensed service areas.

To mitigate this consequence of geographic licensing, ProNet advocated in its Comments (at 7-9) that the geographic licensing proposal be modified to allow and encourage: (1) liberal partitioning of MTAs;[12] (2) alienation of MTA partitions by geographic licensees;[13] and (3) return of MTA partitions to the Commission for re-auction. This combination of options for geographic licensees will allow system build-out to be driven by the marketplace, rather than administrative requirements, and ensure that licenses will continue to be obtained by those who value them the most, thereby enhancing the objectives of the Commission's auction proposals. It will also minimize the concerns raised by several parties that use of MTAs to define geographic service areas places an undue burden on small carriers operating local systems,[14] and on carriers operating systems with small

---

[12] Coverage requirements would pertain only to the territory retained by the geographic licensee, with the same population-based requirements imposed on licensees of partitioned territory.

[13] Because geographic licensees are subject to "unjust enrichment" rules under the NPRM (¶134), the risk that geographic licensees will abuse alienation rights is minimal.

[14] See, e.g., Metrocall at 12-13; A+ Network at 15; Paging Coalition at 3-4; Comments of Consolidated Communications Mobile Services, Inc. ("Consolidated") at 6-7. Instead of being compelled to "sell out," as feared by Consolidated, incumbents would be able

(continued...)

extensions into adjacent MTAs.[15]

These concepts are advocated by several other commenters. Metrocall (at 14-15) proffers the same liberal partition and assignment proposals as does ProNet, noting that geographic licensees may lack resources or demand for service in parts of their authorized territory. PCIA (at 18) supports partitioning by geographic licensees as well as by bidding consortia, as a means to promote flexibility and minimize dislocation. American Paging, Inc. and Priority Communications, Inc. also support partitioning to promote flexibility.[16]

B. The "Substantial Service" Alternative Should be Rejected

In conjunction with its liberal partitioning proposals, ProNet advised the Commission to eliminate its proposed "substantial service" alternative to mandatory minimum coverage requirements (NPRM at ¶41). ProNet's concern that this vague alternative will open the door to abusive and speculative applications is echoed by other commenters.[17] Simply put, the "substantial service" alternative is superfluous and dangerous; the concerns it seeks to address are better accommodated by modifying the geographic licensing framework as urged here to automatically grant market-

---

[14] (...continued)
to acquire a geographic license partition from the auction winner or from the Commission.

[15] Ameritech at 8-9.

[16] Comments of American Paging, Inc. ("API") at 3; Comments of Priority Communications, Inc. ("Priority") at 6.

[17] See, e.g., PCIA at 22, footnote 44; Ameritech at 19; Arch/Westlink at 8-9; Airtouch at 18; PageNet at 33.

area licenses to incumbents covering fifty (50) per cent or more of an MTA's population, and by affording these licensees leeway in partitioning and alienating their authorizations.

C. Protection of Adjacent Geographic Licensees

In its Comments (at 9-10), ProNet advocated postponing the highly complex issue of border interference protection for consideration in a separate rulemaking after the Commission has determined the service area to be used for geographic licensing.[18] Specifically, ProNet expressed concern that service quality along borders of highly dense, northeastern MTAs will be degraded, and that future service in border areas may be precluded by rules imposing rigid mileage separations or reduced signal levels.

In its Comments, Comp Comm, Inc. raises several concerns with respect to interference and signal levels along geographic service area borders. Specifically, Comp Comm demonstrates that border areas will likely be subject to undue interference and/or "dead zones" where no service is received. In addition to the Commission's proposal to require directional antennas and reduced signal levels, Comp Comm proposes utilizing service area contours instead of interference contours in border areas.[19] Comp Comm also takes issue with the Commission's proposal to use uniform

---

[18] As an interim step, ProNet supports the Commission's concept of encouraging co-channel, adjacent market geographic licensees to resolve interference issues through negotiation.

[19] Comments of Comp Comm, Inc. on the Commission's Notice of Proposed Rule Making ("Comp Comm") at 7-8.

geographic area boundaries on all frequency bands, which it demonstrates will exacerbate the presence of dead zones.[20]

ProNet agrees with Comp Comm that these interference problems must be addressed. Given the presence of numerous incumbent sites along MTA borders, however, ProNet is not confident that these issues can be resolved until after geographic licenses have been assigned, whereupon border area coverage and interference can be analyzed from a real-world economic perspective.

Other commenters bolster ProNet's contention that interference issues cannot be handled at the hurried pace set by the Commission in this proceeding. PCIA (at 27) acknowledges that interference standards governing adjacent geographic licensees must be made compatible with standards to protect incumbent licensees. A+ Network asserts that resolution of interference issues should take precedence over revision of the Commission's licensing scheme. Accordingly, the Commission should adopt its proposed solution--that adjacent co-channel carriers seek to resolve interference issues through negotiation-- on an interim basis, and should address border coverage and interference issues, including the proposals made by Comp Comm, in a separate proceeding.

IV. TREATMENT OF INCUMBENT LICENSEES

Incumbents should be afforded interference protection based on existing, fixed separation standards rather than a new formula whose effect will be to reduce protected areas from existing

---

[20] Comp Comm at 9-10.

levels. In addition, the Commission should modify its proposal to allow (a) routine expansion by incumbents anywhere within forty (40) miles of their authorized or pending sites as of the NPRM release date; (b) expansion into population centers where the incumbent's system already covers two-thirds of the population; (c) completion of build-out in areas where a geographic licensee will be unable to provide coverage and protect the incumbent's existing operations; and (d) relocation or replacement of existing and authorized, but unconstructed, sites due to circumstances beyond the incumbent's control.

A. Existing Service and Interference Contour Formulations Should Be Retained

The comments unanimously oppose the Commission's proposal (NPRM at ¶¶49-55) to implement new computational formulas for deriving service and interference contours for exclusive 929 and 931 MHz authorizations. Indeed, the comments provide overwhelming evidence against the proposed formulas, which reduce protected coverage for most 900 MHz transmitters.

In its Comments (at 15-16), ProNet demonstrated that the new formulas will: (1) shrink incumbents' protected geographic areas by tens of thousands of square miles, curtailing service availability and quality to current and prospective customers; (2) invalidate design of all exclusive 929 and 931 MHz systems engineered according to the longstanding mileage separation standards (for exclusive 929 MHz systems) and fixed-radii service and interference contours (for 931 MHz stations); (3) deter incumbent licensees from converting to new spectrally-efficient, FLEX-capable transmitting

equipment; and (4) create significant administrative burdens for the Commission staff.[21] These concerns were reiterated by virtually every 900 MHz licensee who filed comments. Most commenters agree that existing mileage separation formulas for exclusive 929 MHz systems, and existing service and interference contours for 931 MHz, which assume a fixed radius depending on a transmitter's height above average terrain and effective radiated power, are easily understood, provide predictable results, have functioned well and need not be replaced.[22]

The commenters also raise several other valid objections to the proposed formulas. Airtouch observes (at 25) that because existing 931 MHz systems have relied on fixed-radii contours, numerous "fill-in" sites, which were constructed without notification under Section 22.165(d) of the Rules, may be invalidated. Several carriers add that the proposed formulas result in contours that are smaller than under existing rules, and

---

[21] In this regard, Airtouch notes (at 22-23) that the information required to calculate contours using the new rule is not included on the requisite application forms for 929 or 931 MHz authorizations; thus, use of the formula would create an enormous burden for incumbent carriers and the Commission staff.

[22] See, e.g., PageNet at 28-30; Arch/Westlink at 12-13; Priority at 7. As stated in its Comments (at 15), ProNet does support adoption of a uniform standard for 931 and 929 MHz, with one caveat. ProNet agrees with PageNet (at 9-11) that grandfathered non-exclusive 929 MHz incumbents, and licensees who failed to qualify for channel exclusivity, should continue to be subject to existing Part 90 rules. These licensees should keep their sharing rights, but should not be awarded co-channel interference protection for which they previously failed to qualify.

far smaller than experienced in the real world.[23] Using the formulas will, therefore, grossly understate signal strength, and will lead to inadequate separation between co-channel stations, causing severe interference problems.[24]

If the Commission deems it necessary to replace the longstanding, highly successful mileage separation standards and fixed-radii service and interference contours, it must permit the industry sufficient opportunity to study alternative proposals. As Ameritech notes, the Commission's use of the Okumura curves in the paging context is inappropriate, and demonstrates a dearth of reliable 900 MHz propagation studies.[25] ProNet agrees with Ameritech and the Paging Coalition that substantial field tests will be necessary before applying any contour changes to paging.[26] Given the successful development of paging service using existing fixed-radii contours and mileage separation formulas, there is no reason to change the rules abruptly now.

---

[23] Arch/Westlink at 11-12; Airtouch at 24-25; PageNet at 12-15, Exhibit 1 (Declaration of Raymond Trott); Ameritech at 4.

[24] Airtouch at 24; PageNet at 15, 17-18.

[25] The Okumura curves are based on two-way communications rather than one-way operations like paging. The Commission's flawed reliance on the Okumura curves is further demonstrated by its acceptance of an assumed mobile receive antenna height of 1.5 meters, or 4.92 feet, which would require customers to carry pagers on their heads or shoulders. Ameritech at 4; Paging Coalition at 12.

[26] Comp Comm's proposed alternative formula, which uses median signal strengths of 33 dBμV/M and 7 dBμV/M for service and interference contours, respectively, may more accurately reflect real world propagation. Comp Comm at 5-6. However, this formula also lacks sufficient field testing.

B. Incumbent Expansion Rights

In issuing geographic licenses, the Commission should take steps to ensure the continued viability of incumbent paging systems. ProNet and others showed in their Comments that the Commission's proposal to allow permissive system modifications that leave the incumbent's existing interference contours unchanged (NPRM at ¶37) is commendable but inadequate. To maintain commercial viability of incumbent systems, the Commission should permit expansion beyond existing contours without geographic licensee consent in the following situations:

Routine Expansion-- ProNet agrees with Ameritech (at 17-18), Metrocall (at 11), Priority (at 6-7) and other commenting carriers that expansion rights are necessary for incumbents.[27] The public interest in allowing routine system expansion during this proceeding's pendency is equally applicable to incumbents precluded from implementing routine, incremental expansions by award of a geographic license. In certain cases (see below), existing coverage by incumbents will preclude geographic licensees from introducing service to specific areas; these incumbents are best suited to respond to consumer demand within such areas. Further, limited expansion is required to enable conversion to new

---

[27] In reviewing the comments filed March 1, 1996 regarding the Interim Licensing Proposal, ProNet found that essentially all commenters stressed the need for incumbents to add sites to respond to growing subscriber demand, meet competition, or improve signal strength in outlying areas. See ProNet's Reply Comments on the Interim Licensing Proposal, filed March 11, 1996, at 3.

spectrally efficient technology requiring additional transmitters.[28]

ProNet agrees with Ameritech (at 17-18) and Metrocall (at 11) that incumbent expansion should be limited to sites within 40 miles of authorized or pending sites as of the release date of the NPRM.[29] This proposal was backed by numerous commenters with respect to the NPRM's Interim Licensing Proposal.[30] Allowing incumbents to expand only within 40 miles of existing sites will prevent abuse of expansion rights by incumbents, and will similarly block geographic licensees from installing preemptive low-power sites along the edge of the incumbent system in an attempt to force a buy-out.

Substantially Covered Population Centers-- In its Comments, ProNet proposed allowing incumbents who fail to prevail at auction, but who already serve two-thirds of a population center (i.e., a BTA) to expand within the subject BTA without the geographic licensee's consent. ProNet continues to believe that expansion

---

[28] Specifically, conversion from older POCSAG RF networks to new FLEX technology, which ProNet and other medium to large paging companies are now implementing, may require about twice as many transmitters to serve the same geographic area currently served. See ProNet's Comments on the Interim Licensing Proposal at 7, footnote 8.

[29] Indeed, a 40 mile limitation is easily enforceable, and consistent with existing Commission geographic area definitions (see Section 22.539(b) of the Rules). As stressed repeatedly throughout this proceeding, licensing these routine expansion sites on a secondary basis provides no relief to incumbents and is opposed by essentially every carrier that has addressed the issue, including ProNet.

[30] See ProNet's Reply Comments on the Interim Licensing Proposal, filed March 11, 1996, at 5, footnote 8.

rights are essential in these situations, but modifies its proposal to limit such expansion to sites within 40 miles of existing authorized sites.

Territory Substantially Covered by Existing Sites-- Incumbents should be permitted to install additional transmitters where existing interference contours form a "pocket" around uncovered territory, thereby precluding coverage by the geographic licensee without encroaching on the incumbent's existing facilities.[31] As ProNet stated in its Comments (at 12), allowing incumbent expansion into these areas will enable more meaningful "fill-in" of dead spots within existing networks, and will facilitate conversion to high-speed FLEX protocols, without any prejudice to geographic licensees. This proposal was also submitted by Ameritech (at 18) and the Paging Coalition (at 5).

Replacing "Lost" Transmitting Sites-- ProNet agrees with the Commission (NPRM ¶39) that relocation or replacement of sites necessitated by circumstances beyond a licensee's control should be permitted without geographic licensee approval. This includes instances where a transmitting site is "lost,"[32] or is rendered

---

[31] Similarly, the NPRM's proposed requirement (at ¶22) that an incumbent licensee who fails to timely construct or renew authorized facilities, or discontinue operations on a permanent basis, must return the relevant service area to the geographic licensee should be inapplicable to sites internal to the incumbent system, because the geographic licensee will be unable to serve this area without causing interference to the incumbent.

[32] Transmitting sites are "lost" by a property or tower owner's arbitrary actions, degradation of the tower or site infrastructure, or acts of nature. Any of these occurrences, which are beyond the licensee's control, necessitate relocation.

useless due to new construction which impedes signal strength.

This exception must apply unequivocally to authorized, but unconstructed sites (to the extent such authorizations exist as of the adoption date of new geographic licensing rules). Thus, the Commission should, in the course of this proceeding, affirm the continuing vitality and applicability to incumbent systems of Rule 22.142(d). In addition, the Commission should establish a maximum distance for relocations pursuant to Section 22.142(d). Based on recent experiences where it was compelled to rely on this rule, ProNet contends than the optimal appropriate distance is ten miles.

VI. CONCLUSION

Accordingly, the Commission should modify its geographic licensing and competitive bidding proposals as set forth above.

Respectfully submitted,

PRONET INC.

By: _____

Jerome K. Blask
Daniel E. Smith

Gurman, Blask & Freedman,
Chartered
1400 Sixteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 328-8200

April 1, 1996

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Reply Comments of ProNet Inc. on Geographic Licensing and Competitive Bidding to be served this 1st day of April, 1996, via regular mail, postage prepaid, on the following:

Frederick M. Joyce
Christine McLaughlin
Joyce & Jacobs, LLP
1019 19th Street, N.W.
14th Floor, PH-2
Washington, D.C. 20036
Counsel to A+ Network, Metrocall, Inc., Pager One, Merryville Investments, Nationwide Paging, Inc. (800) Page-USA, Inc.

Carl W. Northrop
Christine M. Crowe, Esq.
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Ave., N.W.
Suite 700
Washington, D.C. 20006
Counsel to AACS Communications, Inc. et al.

Mark A. Stachiw, Esq.
AirTouch Paging
Three Forest Plaza
12221 Merit Dr., Suite 800
Dallas, TX 75251

William Ciuffo
John Roussos
John Sieber
Comp Comm, Inc.
One Echelon Plaza, Suite 100
227 Laurel Road
Voorhees, NJ 08043-2331

Mary McDermott
Linda Kent
Charles D. Cosson
U.S. Telephone Association
1401 H St., N.W., Suite 600
Washington, D.C. 20005

Larry Shaefer, President
SMR Systems, Inc.
4212 Mt. Vernon
Houston, TX 77006-5416

Dallas Vanderhoof
General Manager
TeleBEEPER of New Mexico, Inc.
P.O. Box 25161
Albuquerque, NM 87125

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace & Gutierrez, Chartered
1111-19th Street, N.W.
Suite 1200
Washington, D.C. 20036
Counsel to Mobile Telecommunications Technologies Corp.

Laura H. Phillips
Christina H. Burrow
Dow, Lohnes & Albertson
1200 New Hampshire Ave., N.W.
Suite 800
Washington, D.C. 20036-6802

Gene P. Belardi, V.P.
Mobilemedia Communications, Inc.
2101 Wilson Blvd., Suite 935
Arlington, VA 22201

David L. Nace
Pamela L. Gist
Pamela Gaary
Lukas, McGowan, Nace
& Gutierrez, Chartered
1111-19th Street, N.W.
Suite 1200
Washington, D.C. 20036
Counsel to Liberty Cellular, Inc.

Joe D. Edge
Tina M. Pidgeon
Drinker, Biddle & Reath
901-15th Street, N.W.
Washington, D.C. 20005
Counsel to Puerto Rico Telephone Company

Jack Richards
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Counsel to Mobilemedia Communications, Inc.

Judith S. Ledger-Roty
Paul G. Madison
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
Counsel to Paging Network, Inc.

Katherine M. Holden
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Counsel to Personal Communications Industry Association

Mark J. Golden, V.P. of Industry Affairs
Personal Communications Industry Association
1019-19th Street, N.W.
Suite 1100
Washington, D.C. 20036

Alan R. Shark, President
American Mobile Telecommunications Association
1150-18th Street, N.W.
Suite 250
Washington, D.C. 20036

George Y. Wheeler
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel to American Paging, Inc.

Dennis L. Myers, V.P. and General Counsel
Ameritech Mobile Services, Inc.
2000 W. Ameritech Center Drive
Location 3H78
Hoffman Estates, IL 60195-5000

Timothy E. Welch
Hill & Welch
1330 New Hampshire Ave., N.W.
Washington, D.C. 20036
Counsel to Chequamegon Telephone Co-Op, Inc.
ATS Mobile Telephone, Inc.
Paging Associates, Inc.
Wilkinson County Telephone Company, Inc.
SuperCom, Inc.
Benkelman Telephone Company
Wauneta Telephone Company
Porter Communications, Inc.
Baldwin Telecom, Inc. and
Amery Telephone Company

Dennis C. Brown
Robert H. Schwaniger
Brown & Schwaniger
1835 K Street, N.W.
Suite 650
Washington, D.C. 20006
Counsel for Small Business in Telecommunications

Veronica H. Ahern
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, N.W.
Washington, D.C. 20005
Counsel to Consolidated Communications Mobile Services, Inc.

Mark F. Dever
Drinker, Biddle & Reath
901 15th Street, N.W.
Suite 900
Washington, D.C. 20005
Counsel to Cook Inlet Region, Inc.

John L. Crump
d/b/a ACE Communications
11403 Waples Mill Road
P.O. Box 3070
Oakton, VA 22124

William L. Fishman
Sullivan & Worcester, L.P.
1025 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
Counsel to Diamond Page Partnerships

Richard L. Dunn,
Senior Manager
Federal Express Corporation, Inc.
Wireless Systems Development
P.O. Box 18812
Memphis, TN 38181-0812

Michael J. Shortley, III
Senior Attorney
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646-0700

Alan S. Tilles
Meyer, Faller, Weisman & Rosenberg
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
Counsel to Glenayre Technologies, Inc.

Lawrence R. Sidman
Verner, Liipfert, Bernhard, McPherson & Hand, Chartered
901-15th Street, N.W.
Suite 700
Washington, D.C. 20005
Counsel to GO Communications Corporation

Jeanne M. Walsh
Kurtis & Associates
2000 M Street, N.W.
Suite 600
Washington, D.C. 20036
Counsel to Metamora Telephone Company, Inc.

Robert S. Foosaner, Senior V.P.-Government Affairs
Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006

Gina Harrison, Director
James L. Wurtz
Margaret E. Gruber
Pacific Bell
Federal Regulatory Relations
1270 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

James L. Wurtz
Margaret E. Garber
Pacific Telesis
1275 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20004