

DOCKET FILE COPY ORIGINAL

FCC MAIL ROOM

FCC 96- 183

APR 30 11 21 AM '96
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

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

FIRST REPORT AND ORDER

Adopted: April 22, 1996

Released: April 23, 1996

By the Commission:

Table of Contents

	<u>Paragraph</u>
I. INTRODUCTION	1
II. EXECUTIVE SUMMARY	2
III. BACKGROUND	6
IV. DISCUSSION	
A. Interim Freeze	
1. Overview	8
2. Comments	9
3. Discussion	18
B. Other Issues	
1. Interference Contour	33
2. Exempt Services	36
3. Processing of Pending Applications	39
4. Canadian and Mexican Coordination During the Interim Period ..	43
VI. CONCLUSION	46

VII. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Ordering Clauses	47
B. Regulatory Flexibility Act	49
C. Further Information	50

APPENDIX A

APPENDIX B

APPENDIX C

I. INTRODUCTION

1. In this First Report and Order (*Order*) we adopt interim measures governing licensing of paging systems for the pendency of this rulemaking proceeding.¹ In our *Notice of Proposed Rulemaking* in this docket,² we suspended acceptance of new paging applications in conjunction with our proposal to convert from site-by-site licensing of paging channels to licensing on a geographic area basis. We also proposed to allow incumbent paging licensees to expand beyond their existing service areas by means of secondary site licensing. Because of the critical nature of this issue to the paging industry, we requested expedited comments on these interim measures and proposals. After review of the comments and reply comments, we have decided to maintain the freeze in part, but to give incumbent licensees with operating paging systems the opportunity to file primary site applications for sites that incrementally expand their service areas. We also clarify our interim rules with respect to addition of internal sites by paging operators, and make certain other modifications to our interim licensing proposals as discussed below.

II. EXECUTIVE SUMMARY

2. In the *Notice*, we proposed a system of uniform rules for all common carrier and private carrier paging channels, and imposed an across-the-board freeze on new applications for all paging channels other than channels that have been licensed on a nationwide exclusive basis. The application freeze is uniformly opposed by paging industry commenters. Numerous commenters also suggest that if a freeze is maintained, it should be modified in part to permit expansion by incumbent licensees.

3. We decline to lift the freeze as proposed by commenters. In making the transition from our current paging rules to geographic area licensing and auction rules, the freeze is important to deter speculative applications and ensure that the goals of the rulemaking are not compromised. Our decision to suspend acceptance of paging applications is consistent with application freezes imposed in other services where we have proposed similar rule changes. We also conclude, however, that limited relief from the freeze is appropriate to enable existing paging operators to meet customer needs and improve service to the public while the rulemaking is pending. Because the paging industry is well-established, highly competitive, and experiencing rapid growth in consumer demand, we believe that such relief can be granted without compromising the objectives of the rulemaking.

¹ Issues raised in the interim comments pertaining to final paging rules will not be discussed in this Order, but will be deferred to the final Report and Order in this docket.

² Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, WT Docket No. 96-18, FCC 96-52, *Notice of Proposed Rulemaking*, __ FCC Rcd __ (released Feb. 9, 1996) (*Notice*) (summarized in 61 Fed. Reg. 36199 (Feb. 16, 1996)).

4 In this Order, we adopt a proposal recommended by several commenters: incumbent paging licensees may file initial applications to add new sites to their systems, provided that each new site is located within 65 kilometers (40 miles) of an existing site operated by the licensee on the same channel. In the case of licensees on common carrier paging (CCP) or exclusive private carrier paging (PCP) channels, such applications will be placed on public notice and subject to filing of competing applications. If a competing application is filed, the applications will be treated as mutually exclusive and held in abeyance until the conclusion of this proceeding. If no competing application is filed, the incumbent's application will be processed. With respect to non-exclusive PCP channels, incumbents with authorized and operating systems will be allowed to expand their systems under the same 65-kilometer (40-mile) limitation, but applications on shared channels will continue to be subject to coordination and granted on a shared basis. *i.e.*, with no possibility of mutual exclusivity. These interim procedures will remain in effect until we implement our final licensing and auction rules.

5. Additionally, we clarify our decision in the *Notice* to allow incumbent licensees to add or modify internal sites in their systems provided that such additions or modifications do not expand the interference contour of the system. Our explanation of this decision was interpreted by some commenters as reducing the size of their current interference contour without notice. We clarify that during the interim period, incumbents may add or modify sites within their interference contours as defined by our current rules.

III. BACKGROUND

6. In the *CMRS Third Report and Order*, we concluded that CCP and PCP³ are substantially similar services and should be subject to comparable regulation.⁴ In the *Competitive Bidding Second Report and Order*, we concluded that mutually exclusive initial applications for Part 22 paging services generally would be subject to competitive bidding, and we also indicated our intention to use competitive bidding to select from competing applications if two or more PCP applicants file mutually exclusive initial applications.⁵ In the

³ Under Section 6002(c)(2)(B) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (1993 Budget Act), Title VI § 6002(b)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*), reclassified PCP licensees retain their PMRS status on a grandfathered basis until three years after the date of enactment of the legislation which occurred on August 10, 1993. The PMRS paging services, as well as the CMRS paging services, are subject to the interim and final rules in this proceeding.

⁴ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8026, ¶ 67 (1994) (*CMRS Third Report and Order*).

⁵ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2359, ¶¶ 61, 63 (1994) (*Competitive Bidding Second Report and Order*).

Notice, we proposed a transition to geographic market area licensing for all paging services, and adoption of competitive bidding rules for mutually exclusive paging applications. Our goal is to ensure that our rules for paging services are consistent with our rules for new competing services, such as narrowband Personal Communications Services (PCS),⁶ so that competitive success is dictated by the marketplace, rather than by regulation.⁷ Due to the fundamental changes we proposed, we suspended acceptance of new applications for paging channels as of the adoption date of the *Notice*, other than channels that have been assigned on a nationwide exclusive basis.⁸ We observed that after the public is placed on notice of the proposed rule changes, continuing to accept new applications would impair the objectives of this rulemaking proceeding.⁹

7. The *Notice* provided for certain exceptions and qualifications to the freeze. We stated that we would allow incumbents to make modifications to existing systems, including addition of new sites, provided that the modifications did not increase their composite interference contour. We also proposed to allow incumbents to add sites that would expand their interference contours, but that such sites would be licensed on a secondary basis only. We also allowed all licensees with nationwide exclusivity to continue to add sites without restrictions. We reasoned that because the geographic licensing proposal would not affect nationwide channels, and no other applicant may apply for those channels, the addition of sites by a nationwide licensee would not affect the available spectrum and would not be inconsistent with the goals of this rulemaking.¹⁰ Interested parties were invited to file comments on an expedited basis regarding our interim proposals.

⁶ Narrowband PCS is defined as PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands. 47 C.F.R. § 24.5. We previously have indicated our expectation that narrowband PCS would include advanced voice paging, two-way acknowledgement paging, data messaging, and both one-way and two-way messaging and facsimile. Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, GEN Docket No 90-314, *First Report and Order*, 8 FCC Rcd 7162, 7162, ¶ 1 (1993).

⁷ *Notice* at ¶ 2.

⁸ *Id.* at ¶¶ 139-143. The freeze affects approximately 135 paging channels. Three 931 MHz common carrier channels have been allocated to licensees on a nationwide basis. In addition, our records indicate that private carrier licensees have met our requirements for nationwide exclusivity on 19 channels in the 929 MHz band.

⁹ *Id.* at ¶¶ 139-143.

¹⁰ *Id.* at ¶ 142.

IV. DISCUSSION

A. Interim Freeze

1. Overview

8. In the *Notice*, we requested comment on an expedited basis on whether, during the pendency of this proceeding, incumbents should be allowed to file new applications to expand or modify their existing systems in a way that would expand their existing interference contours, with such modifications receiving only secondary site authorization. Under this alternative, applications proposing to expand an incumbent's existing composite interference contour would receive no interference protection in the event that we ultimately adopt geographic licensing. We also requested comment from interested parties on other alternatives for allowing expansion or modification of existing sites during the interim period. Commenters offered numerous suggestions for partially lifting the freeze. For the reasons discussed below, we concur with the commenters that partially lifting the interim freeze is necessary to allow incumbents flexibility in serving their customers and upgrading their equipment, and that these additions or modifications should be given primary, not secondary, status.

2. Comments

9. Paging Industry Comments. We received 76 comments and 36 reply comments on our interim proposals.¹¹ Virtually all commenters oppose the interim freeze on applications and urge that it be lifted, either in its entirety or at least with respect to incumbent licensees.¹² Commenters argue that the freeze is disrupting their expansion plans, affecting their ability to attract capital, and will result in substantial harm to the paging industry.¹³ Commenters also argue that there is no rationale for the freeze because most paging spectrum is encumbered and there is little "white space" left to be auctioned.¹⁴ Licensees of local and regional systems also object to the dissimilar treatment of nationwide licensees, who may continue to add sites

¹¹ Appendix A provides the full and abbreviated names of the parties filing comments in response to the *Notice*. Appendix B provides the full and abbreviated names of the parties filing reply comments. In the case of joint comments, we have used the name of the first party listed on the joint comments.

¹² See, e.g., AACS Comments at 5-9; Ace Communications Comments at 1; Ameritech Comments at 7; AT&T Reply Comments at 1; Coalition Reply Comments at 10; Frontier Comments at 1; Glenayre Comments at 2; Motorola Reply Comments at 3-4; MTel Comments at 7; Pacific Comments at 3; PageTel Comments at 3; PCIA Comments at 22-28; Vanguard Comments at 1-2; Beesley Comments at 1; Brown Comments at 1; Frederickson Comments at 1; Gonsalves Comments at 1; Gordon Comments at 1; Hampel Comments at 1; Hansel Comments at 1; Harris Comments at 1; Looper Comments at 1; Paeth Comments at 1; Simillior Comments at 1; Smith Comments at 1; Schwid Comments at 1; Wolter Comments at 1.

¹³ See, e.g., Glenayre Comments at 3-4; PCIA Comments at 14-17.

¹⁴ See, e.g., Ameritech Reply Comments at 4; Coalition Reply Comments at 4.8.

without restriction while smaller systems that compete with the nationwide systems are precluded from doing so.¹⁵ A number of commenters also raise legal challenges to the freeze, contending that the Commission has acted arbitrarily or that the freeze is invalid because we did not seek prior notice and comment.¹⁶

10. Most commenters also oppose our proposal to allow incumbents 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. Mobilemedia contends that neither consumers nor lenders will accept secondary status as a basis to do business with a paging company.¹⁷ Commenters also argue that secondary licensing could encourage speculation in the forthcoming auction and result in future loss of service to the public.¹⁸ Only a few commenters offer qualified support for our secondary licensing proposal.¹⁹ PCIA states that secondary licensing may have some benefit but standing alone it is inadequate to address the needs of paging licensees.²⁰ PNI supports secondary licensing for new applicants, provided that incumbents can obtain primary site protection.²¹

11. PCIA and several other commenters propose that as an alternative approach, we allow incumbent licensees to add primary sites within 40 miles of an operating site.²² Ameritech recommends that two types of applications be granted on a primary basis: (1) applications for additional sites on an incumbent's licensed channel, so long as each additional site is located within 40 miles of one of the incumbent's previously authorized transmitter sites; and (2) applications for additional transmitter sites on the incumbent's licensed channel,

¹⁵ Ameritech Reply Comments at 3; Ameritel Reply Comments at 9; Coalition Reply Comments at 6-7; ProNet Comments at 17.

¹⁶ See, e.g., AT&T Reply Comments at 1; Ameritech Comments at 2-4.

¹⁷ Mobilemedia Comments at 11. See also PCIA Comments at 40 (some businesses, lenders, shareholders, and financial markets would question the advisability of a licensee constructing facilities that may be forfeited later).

¹⁸ See, e.g., AACS Comments at 18-19; Ameritech Comments at 7-8.

¹⁹ PageNet Comments at 10-11; TNI Reply Comments at 1 (would accept secondary sites for new sites in Guam).

²⁰ PCIA Comments at 40.

²¹ PNI Comments at 10.

²² See, e.g., PCIA Comments at 32 (incumbent exclusive 929 MHz licensees should be allowed to file applications for new stations within 40 miles of existing composite license areas); PageNet Comments at 5; ProNet Comments at 8; AT&T Reply Comments at 3. See also Teletouch Comments at 10 (shared channel licensees should be able to establish additional or relocated transmitters within 40 miles of an authorized transmission site).

where the area to be served by the additional site is surrounded by the incumbent's authorized co-channel transmitters within 70 miles, forming a pocket around the proposed site.²³ AACS suggests permitting incumbents to add sites to existing regional PCP systems within 40 miles of an operating site and to local systems within 25 miles of an operating site.²⁴ Ameritel proposes allowing additional sites within 40 miles of an existing system, or to fill gaps that are surrounded by co-channel facilities.²⁵ PNI concurs with the 40-mile proposal, but states that incumbents should not place a facility within 70 miles of another licensee's co-channel facility.²⁶

12. Some commenters suggest that we allow incumbents to add sites if the service area of the new site overlaps with existing authorized sites by a minimum of 50 percent.²⁷ Ameritel recommends that incumbents should be permitted to establish additional sites on a primary basis, provided that there is an overlap between the existing service area and the service area of the proposed transmitter.²⁸ Brown suggests that incumbents be permitted to increase a service area by no more than 50 percent if the applicant has no more than six transmitters in that market.²⁹ Ace Communications recommends that the Commission allow incumbents to expand their systems as long as the expansions do not interfere with other current adjacent licensees.³⁰ PageMart suggests that incumbent licensees be allowed to expand their service contours so long as the new transmitters are located within the existing service contours and no interference is caused to other existing licensees.³¹ Pacific suggests that lower band CCP incumbents should be permitted to expand to contiguous areas during the freeze.³²

²³ Ameritech Comments at 9.

²⁴ AACS Comments at 14.

²⁵ Ameritel Comments at 14-15.

²⁶ PNI Reply Comments at 5-6.

²⁷ See, e.g., PageTel Comments at 4-5; Word Comments at 16.

²⁸ Ameritel Reply Comments at 5.

²⁹ Brown Comments at 3.

³⁰ Ace Communications Comments at 3.

³¹ PageMart Comments at 4.

³² Pacific Comments at 3.

13. Several commenters recommend that the freeze be lifted on shared channels.³³ Motorola argues that shared paging channels provide low cost spectrum to hospitals, fire departments, manufacturers and other business entities -- these are not ideal candidates for geographic area licensing and should be exempt from the freeze.³⁴ CCMS recommends that incumbents be permitted to expand into adjacent areas that are unserved or not subject to competition, for the same channel used on the existing system, if the applicant certifies it will operate the newly licensed transmitter within six months from the grant of the authorization.³⁵ Priority contends that the Commission should process all pending paging license applications.³⁶

14. We also received comment that the freeze gives undue advantage to nationwide carriers, while decreasing the ability of the remainder of the industry to compete.³⁷ PNI also argues that the paging freeze gives a competitive edge to PCS services.³⁸ Several commenters observe that the paging industry is converting to a flexible wide-area synchronous protocol which requires additional sites.³⁹ This spectrum efficient technology increases data delivery speeds within the existing 25 kHz channel.⁴⁰ Due to the higher baud rate, the receivers require a higher signal level, which can be accomplished by adding base stations in the periphery to maintain the existing service area.⁴¹ Adding additional stations to the periphery, however, may expand the existing composite interference contour in violation of the interim freeze.

15. Coalition Petition. On February 28, 1996, the Coalition for a Competitive Paging Industry (Coalition), a group of paging carriers and paging equipment manufacturers, filed an Emergency Petition for immediate lifting of the freeze. We incorporate the Petition into the

³³ See, e.g., Mobilemedia Comments at 16; Priority Comments at 4-5; PCIA Comments at 22; PNI Comments at 9-10.

³⁴ Motorola Reply Comments at 4-5.

³⁵ CCMS Comments at 4-5.

³⁶ Priority Comments at 4.

³⁷ Ameritech Reply Comments at 3; Ameritel Reply Comments at 9; Coalition Reply Comments at 6-7; ProNet Comments at 17.

³⁸ PNI Reply Comments at 3.

³⁹ See, e.g., Motorola Reply Comments at 4 (Motorola is the manufacturer of FLEX™, a flexible wide-area synchronous protocol); PCIA Reply Comments at 8; ProNet Comments at 7-8; Coalition Reply Comments at 12.

⁴⁰ Motorola Reply Comments at 4.

⁴¹ *Id.*

record of this proceeding. The Coalition also filed reply comments on the interim licensing issue, which make many of the same arguments set forth in the Petition. To the extent that we grant limited relief from the freeze for incumbent licensees, we hereby grant the Petition. In all other respects, the Petition is denied. The Coalition argues that the freeze is unlawful, arbitrary and capricious, and an abuse of discretion on the grounds that: (1) there is insufficient spectrum available on currently allocated paging channels to accommodate additional systems;⁴² (2) paging carriers who are upgrading their technology are prevented by the freeze from filing the modification applications required to implement their networks;⁴³ and (3) the Commission has discriminated against carriers serving local and regional markets by exempting nationwide carriers from the freeze.⁴⁴ On March 21, 1996, the Coalition filed an *ex parte* letter proposing that: (1) the Commission accept applications filed by incumbents to expand or modify existing systems; (2) applications would be subject to Public Notice and competing applications if required under the rules in effect as of February 7, 1996; (3) requests for exclusivity on 929 MHz channels would be granted in appropriate cases under the rules in effect on February 7, 1996; and (4) mutually exclusive applications would not be processed until the conclusion of the rulemaking unless the parties could agree to eliminate mutual exclusivity through agreement.⁴⁵

16. Federal Trade Commission Comments. In comments filed on March 18, 1996, the Federal Trade Commission (FTC) addressed the issue of telecommunications investment fraud associated with paging licenses. As described by the FTC, this investment fraud is of two basic types: (1) "application mills" that sell application preparation services for acquisition of wireless licenses for a fee of several thousand dollars per license; and (2) "build-out" schemes in which investors are sold interests in limited liability companies or partnerships that claim they will acquire licenses and build and operate telecommunications systems.⁴⁶ Both of these schemes are carried out by telemarketers calling unsophisticated consumers and deceiving them about the profitability of the licenses, and the consumers generally lose their entire investment.⁴⁷

⁴² Coalition Petition at 11.

⁴³ *Id.* at 13-14. The Coalition also contends that because the paging industry is growing, it must constantly add transmitters to improve and expand service to their customers, and the freeze prevents companies from adding fill-in sites, or bidding for new customers. *Id.* at 14-15.

⁴⁴ *Id.* at 15-16.

⁴⁵ Letter of March 21, 1996, from Jill Abeshouse Stern to William L. Caton, Secretary. This *ex parte* submission was not styled as an amendment to either the petition or the reply comments filed by the Coalition.

⁴⁶ FTC Comments at 4.

⁴⁷ FTC Comments at 4-5.

17. The FTC notes that telemarketers have been particularly active in the paging area. For example, the FTC points out that in our database of pending 931 MHz applications, over 72 percent of the applicants are individuals rather than businesses.⁴⁸ The FTC also notes that 92 percent of license holders on 929 MHz shared channels are individuals.⁴⁹ Although some of these individuals may have a *bona fide* intent to operate paging systems, the large percentage of individual applicants strongly suggests that many of these applicants are victims of application mills. In January 1996, the FTC filed six actions in U.S. District Court as part of "Project Roadblock" against telemarketers who sold application preparation and acquisition services primarily for paging licenses.⁵⁰ The defendants in these actions represent to consumers that paging licenses are highly valuable, and that the consumers who obtain the licenses from the defendants will receive offers by paging companies to purchase or lease the licenses for two or three times the amount the consumer would pay the defendant to acquire the license.⁵¹ To further combat this proliferation of paging application fraud, the FTC supports the Commission's proposed auction rules, because "[these] licensing procedures will help combat the plague of fraud that has been associated with the licensing of paging and other wireless technologies in the past."⁵² The FTC also notes that the freeze against accepting new applications "has a strong deterrent effect on application mill fraud."⁵³

3. Discussion

18. Overview. As an initial matter, we reject the arguments of the Coalition and other commenters that the freeze is unlawful because it was not based on prior notice and comment. The suspension of acceptance of applications is a procedural action that does not

⁴⁸ *Id.* at 7-8. Many of these applicants were probably victims of telemarketing fraud, rather than legitimate businesses intending to actually use the paging licenses. According to the FTC, legitimate prospective paging licensees are generally businesses; the applications are generally not applied for under an individual's name, but a company or partnership name, or an individual "d/b/a" a business name. *Id.*

⁴⁹ *Id.* at 10. The FTC explains that the shared licenses provide an opportunity for the telemarketers to deliver on their promise of a license, with little risk of immediate detection of the fraudulent scheme. The unwitting consumers are left with the license that cannot be leased or sold as promised, and is virtually worthless for investment purposes. *Id.*

⁵⁰ *Id.* at 3-4. As of this date, the FTC has obtained preliminary injunctions in five of the six cases. Copies of the complaints and affidavits were filed in this docket by the FTC on March 25, 1996 as an *ex parte*.

⁵¹ FTC *ex parte*, *FTC v. Bell, et al.*, complaint for injunctive relief, paragraph 14.

⁵² FTC Comments at 1.

⁵³ *Id.* at 9 n.20.

require notice and comment under the Administrative Procedure Act (APA).⁵⁴ We also note that we have imposed similar freezes without prior notice and comment in other rulemaking proceedings when we have proposed to make the transition to geographic area licensing and auction rules.⁵⁵

19. We also reject the arguments of commenters that imposing a freeze was arbitrary or an abuse of the Commission's discretion. Although the paging industry opposes the freeze, we believe that the freeze remains essential to ensure that the goals of the rulemaking are not compromised. We are also convinced that the freeze is necessary to combat telemarketing schemes involving paging application fraud. The FTC estimates that fraudulent investment schemes centered on acquiring FCC licenses for wireless technologies have been the most prevalent telemarketing investment scams of the 1990s, costing consumers hundreds of millions of dollars.⁵⁶ If the freeze were to be lifted, it could inadvertently encourage a resumption of fraudulent activity by application mills seeking to induce unsophisticated investors into filing applications. Moreover, we are concerned that our proposal to use auctions in this service would only stimulate speculative activity by parties seeking to warehouse free spectrum.

20. The primary argument raised by commenters against the freeze is that there is limited "white space" to be auctioned. As an initial matter, we note that this contention is undermined by the commenters' argument that the freeze is causing severe economic harm: if there were in fact little or no white space left to be licensed, maintaining the freeze would have minimal impact. In fact, our analysis indicates that while paging channels are heavily encumbered, there is some available spectrum that is of considerable value to applicants.

21. We recognize, however, that an across-the-board freeze imposes significant costs on legitimate paging licensees with operating systems. As we recognized in the *Notice*, the paging industry is a dynamic and highly competitive industry that is experiencing rapid growth.⁵⁷ More than 150 paging channels are allocated to each market, and over 600 licensed

⁵⁴ 5 U.S.C. § 553(b)(A). *See also*, *Neighborhood TV Co., Inc. v. FCC*, 742 F.2d 629 (D.C. Cir. 1984); *Buckeye Cablevision, Inc. v. U.S.*, 438 F.2d 948 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963).

⁵⁵ *See, e.g.*, Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, PP Docket No. 93-253, FCC 95-500, *Notice of Proposed Rulemaking and Order*, __ FCC Rcd __, ¶¶ 121-24 (rel. Dec. 15, 1995) (summarized in 61 Fed. Reg. 02452 (Jan. 26, 1996)); *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, __, ¶ 23 (1995) (900 MHz *Second Order on Reconsideration*): *CMRS Third Report and Order*, 9 FCC Rcd at 8047-48, ¶ 108.

⁵⁶ FTC Comments at 2.

⁵⁷ *Notice* at ¶¶ 6-7.

operators provide service to customers on a local, regional, or nationwide basis. In the past few years, paging subscribership has increased dramatically, but competition has kept average prices low. To meet customer needs and improve service to the public in this highly competitive environment, paging operators need flexibility not only to make modifications within their existing service areas, but to add sites that extend the coverage of their systems into areas of new growth, such as outlying suburbs and new business centers. Even a short-term freeze has the potential to harm the paging industry and the public by deterring this growth and stifling investment. Moreover, the impact of the freeze is felt most acutely by local and regional paging systems, who are prevented from expanding while more than a dozen nationwide carriers operating in each market have no such limitation on their ability to respond to increased demand in high-growth areas. For these reasons, we believe good cause exists to grant some relief from the freeze to non-nationwide incumbent paging licensees.

22. Our initial proposal in the *Notice* was to allow paging licensees to expand their systems with secondary sites, which would only become protected if the licensee obtained the geographic area license covering the site in question. After review of the record, however, we agree with commenters who argue that secondary licensing is not a realistic option for licensees who need to expand beyond their existing interference contours. Because there is no certainty of obtaining protection for such sites, prospective investors and lenders are apparently unwilling to provide capital for construction. Secondary licensing also puts local and regional licensees at a potential competitive disadvantage in comparison to nationwide licensees, who can continue to obtain primary site protection for new stations that expand their coverage.

23. We also believe that there are distinctions between paging and 900 MHz SMR, in which we employed secondary licensing,⁵⁸ that justify the different approach taken here. As we recognized in the *Notice*, paging is a mature and highly competitive industry, with over 600 licensed operators, extensive coverage of most markets, and rapid customer growth in the past few years.⁵⁹ In 900 MHz SMR, by contrast, there were relatively few service providers prior to auctions, and customer demand was limited. Thus, we believe that greater flexibility in our interim rules is justified here to enable paging licensees to respond to existing significant customer demand.

24. We also perceive differences between paging and services such as 800 MHz SMR and the 38 GHz service, in which we have not allowed incumbents to expand existing service areas during the transition to market area licensing and auction rules. First, neither of these other services has achieved the same level of competitiveness or maturity as paging. In addition, in the case of 800 MHz, our pre-auction rules did not provide an opportunity for selection among competing applications, but provided for selection of applicants on a first-come, first-served basis. We also allowed SMR licensees to obtain protection for large

⁵⁸ See *900 MHz Second Order on Reconsideration*, 11 FCC Rcd at ____, ¶ 43.

⁵⁹ *Notice* at ¶¶ 6-8.

service areas under our extended implementation rules. Similarly, in 58 GHz, the old rules allowed applicants to designate large geographic service areas rather than being required to license and build their systems incrementally. Thus, allowing expansion by incumbents in these services on an interim basis would preclude opportunities for new entrants and potentially compromise the pro-competitive benefits of geographic licensing and competitive bidding. In paging, by contrast, our existing rules have promoted vigorous competition, and our interim procedures ensure that spectrum will not be licensed without consideration of competing applications. In addition, paging is unique in that it has nationwide as well as regional and local licensees. Thus, we must ensure that our interim rules do not create a competitive imbalance in favor of nationwide systems over smaller systems during the pendency of the rulemaking.

25. Based on these considerations, we conclude that granting incumbents a limited opportunity to expand on a primary basis is preferable to allowing expansion solely on a secondary basis. In particular, we find the proposal made by PCIA and other commenters to allow additional transmission sites within 65 kilometers (40 miles) of an authorized and operating transmission site to be reasonable. Such an approach provides established incumbents with the ability to expand their systems incrementally in response to consumer demand, while precluding filings by speculators who either have no prior authorizations or who have authorizations but have not constructed an operational system. The geographic limitation is also consistent with the near-term expansion needs of most systems, while it prevents attempts to warehouse spectrum in non-adjacent areas.⁶⁰

26. Exclusive Paging Channels. Therefore, as of the date of publication of this *Order* in the Federal Register, we will resume accepting applications for additional transmission sites on a primary basis only if (1) the applicant is an incumbent paging licensee on a non-nationwide CCP channel or an incumbent paging licensee who has earned local or regional exclusivity on a PCP channel; and (2) the applicant certifies that the proposed site is within 65 kilometers (40 miles) of an authorized transmission site that was licensed to the same applicant on the same channel on or before February 8, 1996, and which is operational as of the date the application for the additional transmitter site is filed. We require new sites to be within 40 miles of a site licensed prior to the *Notice* in order to ensure that expansion is limited to the periphery of existing service areas and to discourage additional expansion by "leap-frogging" of new sites. Applications that meet this requirement will be placed on public notice and subject to competing applications within the applicable filing window. While we will accept initial applications as described above only from incumbents, we will not limit

⁶⁰ Our existing 931 MHz rules use the 40-mile standard to determine when a new site is considered part of an existing system for purposes of allowing an incumbent to request an additional channel. See 47 CFR § 22.539(b). Typically, 931 MHz stations within 40 miles of one another have overlapping service areas. As an alternative, some commenters suggest that we allow incumbents to add sites to existing paging systems so long as the service area of the new site overlaps with that of an existing authorized and operating site by at least 50 percent. We believe that a simple mileage-based standard is simpler to administer, however. Further details on the filing procedure will be set forth in a Public Notice.

eligibility to file competing applications once the incumbent's initial application is filed. This will prevent any possible prejudice to parties with a potential interest in the channel other than the initial applicant. If no competing application is filed, the incumbent's initial application can be processed because it is unlikely that the spectrum at issue has significant value to any other applicant. If a competing application is accepted for filing, we will treat both applications as mutually exclusive and will hold them in abeyance until the conclusion of this proceeding, and will be resolved in a manner consistent with the new rules. These interim procedures will remain in effect until we implement our final licensing and auction rules.

27. We find our decision to differentiate between incumbents and others in our interim licensing rules to be consistent with the holdings of *Ashbacker Radio Corp. v. FCC*⁶¹ and *U.S. v. Storer Broadcasting*.⁶² In *Ashbacker*, the Supreme Court held that if two *bona fide* applications are mutually exclusive, they are entitled to a comparative hearing.⁶³ *Ashbacker* applies only to parties whose license applications have been declared mutually exclusive; it does not apply to prospective applicants.⁶⁴ Later, in *U.S. v. Storer Broadcasting*, the Supreme Court stated that the Commission may screen applicants for eligibility based on threshold standards, provided the standards are adequately supported by the record in a rulemaking proceeding.⁶⁵ In this case, the comments and *ex parte* submissions of the FTC demonstrate the likelihood that lifting the freeze without restrictions on eligibility would lead to a flood of speculative applications and increased opportunities for application mills to promote fraudulent investment schemes based on acquiring paging licenses for unwitting consumers. On the other hand, the record shows that allowing incumbents with operating systems to expand those systems is in the public interest and will not cause an increase in telecommunications investment fraud. Therefore, we conclude that it is reasonable to limit eligibility for initial applications to incumbents.

28. We are aware that by maintaining the freeze on initial applications by non-incumbents, we may preclude some legitimate new entrants from obtaining paging licenses during this interim period. The Coalition argues that instead of limiting eligibility in this manner, we should combat speculation by strict enforcement of construction deadlines against licensees.⁶⁶ We agree that strict enforcement of the construction deadlines is important. We decline to adopt the Coalition's proposal, however, because it is unlikely to reduce or deter

⁶¹ *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) (*Ashbacker*).

⁶² *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192 (1956) (*Storer Broadcasting*).

⁶³ *Ashbacker*, 326 U.S. at 333.

⁶⁴ *See Reuters Ltd. v. FCC*, 781 F.2d 946, 951 (D.C.Cir. 1986).

⁶⁵ We also note that under Section 309(a) of the Act, 47 U.S.C. § 309(a), the Commission has the authority to set licensee eligibility standards. *See also* 47 U.S.C. § 309(j)(6)(E).

⁶⁶ Coalition Reply Comments at 9.

telemarketing fraud perpetrated against consumers at the application stage. As the FTC's comments indicate, the typical application mill fraud occurs when the customer pays money to obtain the license. The Coalition's proposal would not deter this activity, but would only enable the Commission to reclaim the license after the fraud had occurred. For these reasons, we find that the risk of increased fraud resulting from totally lifting the freeze outweighs any potential benefit for prospective new applicants during the interim period.

29. As noted above, we are applying these interim rules to incumbent paging licensees on exclusive PCP channels as well as licensees on CCP channels. In our *CMRS Third Report and Order*, we determined that common carrier and private carrier paging are "substantially similar" services that should be subject to consistent regulation. We previously licensed the paging systems on PCP channels on a first-come, first-served basis; however, we believe that continuing to license applications on this basis would be inconsistent with the goals of this rulemaking and could encourage speculation. We note that under these interim rules an application for an additional transmission site on an exclusive PCP channel will be for a site on the same channel, and the frequency coordinator will not be able to select a different channel to avoid a mutual exclusivity. Therefore, instead of using the first-come, first-served procedure, which may be appropriate when the frequency coordinator is free to select any channel to prevent a mutually exclusive situation, we believe it would be consistent with the goals of this proceeding to process any mutually exclusive PCP applications for additional sites in the same way as we will process any mutually exclusive CCP applications for additional sites. We conclude that during the pendency of this rulemaking proceeding, applications for expansion by incumbents on exclusive PCP channels will be subject to the same public notice procedures as applications for expansion on CCP channels.⁶⁷

30. PCP shared channels. For many of the same reasons discussed above in the context of exclusive channels, we conclude with respect to shared channels that the freeze should be partially lifted for incumbents but maintained for all others. In opposing the freeze, commenters note that most systems on shared channels are local and regional systems, often operated by small businesses. In addition, because these channels are licensed on a shared basis without reference to interference contours, licensees report that our interim rule allowing licensees to add internal sites within their interference contours is of no practical benefit. Commenters also question the feasibility of converting shared channels that are already heavily used into exclusive channels that could be licensed on a geographic basis.

31. While these considerations weigh in favor of lifting the freeze on shared channels, we have a countervailing concern that doing so would lead to a flood of speculative applications. As noted above, the FTC cites evidence of heavy application mill activity on

⁶⁷ *CMRS Third Report and Order*, 9 FCC Rcd at 8026, ¶ 67. See also 47 U.S.C. § 309(b).

shared channels prior to the freeze.⁶⁸ According to the FTC, fraudulent licensing of shared channels is an especially serious problem because their unlimited availability allows telemarketers to easily obtain a license for the unwitting consumer, who often does not realize that the license does not convey exclusive rights to the channel.

32. To provide opportunities for legitimate paging operators to expand while deterring fraud and speculation, we conclude that licensing on shared channels should be limited for the time being to incumbents. We will therefore allow applications to be filed for sites on these channels provided that the applicant certifies that the proposed site is within 65 kilometers (40 miles) of an operating transmission site licensed to the same applicant on the same channel prior to the *Notice* date. We direct the frequency coordinator for these channels to deny coordination to any application that does not meet this requirement. Applications that meet this requirement may be forwarded to the Commission for processing. In adopting these interim procedures, we emphasize that we are continuing to treat these channels as shared channels governed by our existing rules. Thus, licenses awarded during the interim period will be non-exclusive, *i.e.*, licensees will not be entitled to interference protection and will be subject to the obligation to avoid interference to one other as provided under our current rules.⁶⁹ As in the case of our interim licensing procedures for exclusive channels, these interim procedures will remain in effect until we implement our final licensing rules.

B. Other Issues

1. Interference Contour

33. Overview. In the *Notice*, we stated that incumbent licensees on all bands except the nationwide channels could add sites to existing systems or modify existing sites during the pendency of this rulemaking proceeding if the addition or modification did not expand the interference contour of the incumbent's existing system.⁷⁰ In a footnote, we stated that the interference contour "is based on a median field strength of 21 dB μ V/m," and referenced our proposal earlier in the *Notice* to adopt two new mathematical formulas to calculate the service and interfering contours for paging systems.⁷¹

⁶⁸ As discussed above in paragraph 17, the FTC reports that 92% of licenses on the 929 MHz shared channels are held by individuals rather than businesses. While not all of these individuals have necessarily obtained licenses through application mills, this remains a likely indicator of application mill activity.

⁶⁹ Because there is no possibility of mutual exclusivity on shared channels, initial applications on these channels will not be subject to a filing window or competing applications.

⁷⁰ Under the current Part 22 rules, such additions or modifications are allowed by common carrier paging licensees without prior Commission approval if the added site does not expand either the existing composite service contour or the existing composite interference contour. 47 C.F.R. §§ 22.163, 22.165.

⁷¹ *Notice* at ¶ 140 n.271.

34. Comments. Our reference to the proposed formula caused some confusion among commenters. Commenters object to using the proposed formula to calculate the interference contour during the interim period for defining their facilities because the proposed formula would shrink their current interference contour; they also contend that this proposal is unlawful because it is retroactive and was not subject to the required notice and comment procedures.⁷²

35. Discussion. We clarify that for purposes of interim licensing, incumbents may use the interference contour as defined under our current rules to determine whether internal sites may be added or modified.⁷³ In particular, this will allow 931 MHz licensees to make internal system changes so long as they do not expand the composite circular interference contour of their existing stations as defined in Section 22.537(f) of our rules. We also clarify that the tables in Section 22.537(f) may be used on an interim basis by licensees on 929 MHz exclusive channels to determine where stations may be added.

2. Exempt Services

36. Overview. In the *Notice*, we stated that all paging channels, other than the nationwide channels, were subject to the interim freeze.⁷⁴ Some commenters question whether non-paging services on these channels are also covered by the freeze.

37. Comments. Commenters request that the Commission clarify that the freeze does not apply to Basic Exchange Telecommunications Radio Systems (BETRS).⁷⁵ Pacific and NTCA contend that a freeze on BETRS applications conflicts with the Communications Act's fundamental mandate that service be available to all citizens.⁷⁶ Pacific also argues that

⁷² See, e.g., PCIA Comments at 27-28; Priority Comments at 6-7; ProNet Comments at 4; Ameritech Comments at 12; Ameritel Comments at 15-23; PageNet Comments at 12-14; Mercury Comments at 2; Coalition Petition at 25-27

⁷³ This issue is also addressed by the Wireless Telecommunications Bureau in a Public Notice, DA 96-538 (April 5, 1996).

⁷⁴ We note that the interim freeze does not apply to assignment or transfer of control applications, which will continue to be processed under existing procedures. *Notice* at ¶ 139.

⁷⁵ See, e.g., Emery Comments at 2-10; NTCA Reply Comments at 2-4; Pacific Reply Comments at 1. BETRS are radio loops that can take the place of expensive wire or cable to remote areas, and are a part of intrastate basic exchange service. Basic Exchange Telecommunications Service, CC Docket No. 86-495, *Report and Order*, 3 FCC Rcd 214, 217 ¶ 27 (1987). Only local exchange carriers that have been state certified to provide basic exchange telephone service (or others having state approval to provide such service) in the pertinent area are eligible to hold authorizations for BETRS. 47 C.F.R. § 22.702.

⁷⁶ Pacific Reply Comments at 2; NTCA Reply Comments at 3-4.

BETRS should continue to be available to LECs to fulfill their universal service obligations.⁷⁷ ProNet argues that Special Emergency Radio Service (SERS)⁷⁸ should also be exempt from the interim freeze.⁷⁹ Rule contends that there is substantial demand for two-way mobile telephone service on the two-way channels listed in Section 22.561, and that they should be exempt from the freeze.⁸⁰ Additionally, Rule argues that rural telephone channels should be exempt from the freeze.⁸¹

38. Discussion. This proceeding was initiated to examine our paging regulations in light of the statutory objective of regulatory symmetry for all CMRS established in the Omnibus Budget Reconciliation Act of 1993.⁸² BETRS are licensed under the Rural Radiotelephone Service, which is a fixed service, not a mobile service, and by definition is not CMRS.⁸³ We clarify, therefore, that BETRS applications are not subject to the interim freeze. Similarly, conventional Rural Radiotelephone Service provided on the channels listed in Sections 22.561 and 22.563 is not a mobile service, and is not subject to the interim freeze in this proceeding. With respect to Rule's contention that the two-way mobile telephone service on the two-way channels listed in Section 22.561 should be exempt from the freeze, we decline to exempt those lower band CCP channels but note that we are partially lifting the freeze by allowing incumbents to add transmission sites within 65 kilometers (40 miles) of an authorized and operating transmission site. We will also exempt SERS from the freeze as requested by ProNet. SERS is a limited-eligibility service restricted to emergency medical service providers, which is eligible to use certain shared private paging channels, as well as other Part 90 channels. We see no risk that allowing SERS applications will compromise the goals of this rulemaking or lead to speculation.

⁷⁷ Pacific Reply Comments at 2.

⁷⁸ See 47 C.F.R. § 90.33 *et seq.*

⁷⁹ ProNet Comments at 21-22.

⁸⁰ 47 C.F.R. § 22.561

⁸¹ Rule Comments at 6.

⁸² Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66 (1993 Budget Act), Title VI § 6002(b)(2)(A), (B), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*).

⁸³ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1455, ¶ 102 (1994) (*CMRS Second Report and Order*).

3. Processing of Pending Applications

39. Overview. In the *Notice*, we stated that with respect to pending CCP paging applications that were filed prior to the adoption of the *Notice*, we will process such applications provided that (1) they are not mutually exclusive with other applications as of the adoption date of the *Notice*, and (2) the relevant period for filing competing applications has expired as of the adoption date of the *Notice*.⁸⁴ We also stated that the processing of mutually exclusive pending applications and applications for which the relevant period for filing competing applications had not expired would be held in abeyance until the conclusion of this proceeding.⁸⁵ With respect to the pending 929 MHz PCP exclusive channel applications, we stated that we would process non-mutually exclusive PCP applications that were filed before the adoption date of the *Notice*, pending the outcome of this proceeding, but that all mutually exclusive 929 MHz applications, to the extent that any exist, would be held in abeyance until the conclusion of the rulemaking.⁸⁶

40. Comments. Commenters contend that the Commission should process all non-mutually exclusive applications that were filed on or before the adoption date of the *Notice*, regardless of whether the relevant period for filing competing applications had expired as of February 8, 1996.⁸⁷

41. Discussion. Because we are partially lifting the interim freeze on new applications, we will establish consistent procedures for processing applications filed with the Commission on or before February 8, 1996. Pursuant to our rules, applications for 150 MHz and 450 MHz channels are placed on Public Notice for 30 days, and applications for 931 MHz channels are on Public Notice for 60 days to allow other applicants to file competing applications.⁸⁸ All applications filed with the Commission on or before February 8, 1996 have been on Public Notice; however, the February 8, 1996 freeze interrupted the 30 or 60 day filing window in some cases. After the publication of this *Order* in the *Federal Register*, the Wireless Telecommunications Bureau will release a Public Notice with attached copies of the prior Public Notices containing the pending paging applications. Once this Public Notice is released, all pending applications filed by incumbents that were not on Public Notice for the required 30 or 60 days will be deemed to be on Public Notice for the remaining amount of

⁸⁴ *Notice* at ¶¶ 144-146.

⁸⁵ *Id.*

⁸⁶ *Id.* at ¶ 147.

⁸⁷ *See, e.g.,* Ameritech Comments at 5-7; PCIA Comments at 28-29 (the Commission should release additional Public Notices listing pending applications that have not yet appeared on Public Notice).

⁸⁸ 47 C.F.R. §§ 22.120(d), 22.127.

time until the required 30 or 60 day period for filing competing applications expires.⁸⁹ We will not issue any further Public Notices for these pending CCP applications. Upon expiration of the remaining filing period for these pending CCP applications filed by incumbents, the applications that are not mutually exclusive will be processed.

42. All 929 MHz PCP exclusive applications filed by incumbents which were processed through the frequency coordinator, and filed with the Commission on or before February 8, 1996, and are not mutually exclusive, will be processed. Applications for PCP channels submitted by incumbents to the frequency coordinator but not filed with the Commission prior to February 8, 1996, may be resubmitted to the frequency coordinator, and then may be filed with the Commission, provided that the applicant certifies that the applicant is an incumbent licensee with an operating system.⁹⁰

4. Canadian and Mexican Coordination During the Interim Period

43. Overview. Currently, UHF and VHF channels are coordinated on a site-by-site basis with Canada.⁹¹ We also have a Letter of Understanding with Mexico related to the temporary use of 929-932 MHz channels for paging services within 120 kilometers (75 miles) of the common border.⁹²

44. Comments. Ameritech contends that the Commission should clarify how incumbent licensees are to get Canadian clearance for VHF and UHF bands for such modifications during the pendency of the rulemaking.⁹³ These bands require site-by-site coordination; currently the Commission obtains clearance from Industry Canada. Ameritech notes that nationwide licensees, and licensees making minor modifications within their interference contour, may be adding sites which would require coordination with Canadian

⁸⁹ For example, if an application was on Public Notice for 20 of the required 30 days, before February 8, 1996, it will be deemed to remain on Public Notice for an additional 10 days to allow competing applications to be filed.

⁹⁰ In the *Notice*, we stated that we would continue to process pending applications for non-exclusive PCP channels. Pending applications are applications that were filed with the Commission by the adoption date of the *Notice*. Applications submitted to the frequency coordinator, but not filed with the Commission by the adoption date of the *Notice*, are not considered pending.

⁹¹ 47 C.F.R. §§ 1.955, 22.169, 90.175(e).

⁹² See December 19, 1995 Letter of Understanding with Mexico related to the temporary use of 929-932 MHz channels for paging services within 120 kilometers (75 miles) of the common border.

⁹³ Ameritech Comments at 16.

authorities⁹⁴ but will no longer be filing applications for Commission approval.⁹⁵ PageNet states that it is not clear whether U.S. licensees who have entered into agreements regarding licensing along border areas may go forward and license facilities in the border areas.⁹⁶ PageNet contends that the Commission should allow consent border area licensing to continue during the freeze for channels in the border areas that have been allocated to either Mexico or Canada if the proper consent has been obtained by the applicant from the appropriate Mexican or Canadian licensee.⁹⁷

45. Discussion. We agree with the positions of the commenters regarding filing requirements. Licensing in all border areas is subject to any applicable treaty or agreement. In cases where coordination must be obtained in border areas, licensees must file applications with the Commission to allow for such coordination under the current licensing procedures.

VI. CONCLUSION

46. The interim rules adopted in this *Order*, and effective upon publication in the Federal Register, will enable paging licensees to continue expansion of their systems and enhance the quality of service to the public while this proceeding is pending. At the same time, the limitations on new applications during the interim period will prevent spectrum warehousing and deter application fraud. We emphasize, however, that these measures are interim measures only, and that it is our intent to decide on our long-term proposals for geographic licensing of paging channels in the near future.

VII. PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Ordering Clauses

47. IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r), 309(c), 309(j), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 309(c), 309(j), and 332, this Order IS ADOPTED and, upon publication of this Order

⁹⁴ Line A is a line within the U.S. approximately paralleling the U.S.-Canadian border, north of which Commission coordination with Canadian authorities in the assignment of channels is generally required. Line C is a line in Alaska approximately paralleling the Canadian border, east of which Commission coordination with Canadian authorities in the assignment of channels is generally required. 47 C.F.R. § 2.1.

⁹⁵ Ameritech Comments at 16-17.

⁹⁶ PageNet Comments at 16.

⁹⁷ *Id.*

in the Federal Register, the interim freeze set forth in the *Notice of Proposed Rulemaking* in this docket IS MODIFIED as set forth herein.⁹⁸

48. IT IS FURTHER ORDERED that the Emergency Petition for Immediate Withdrawal of Freeze filed by the Coalition for a Competitive Paging Industry on February 28, 1996, IS GRANTED to the extent discussed herein, and DENIED in all other respects.

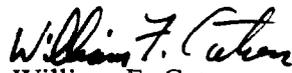
B. Regulatory Flexibility Act

49. The analysis pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 603, is contained in Appendix C.

C. Further Information

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

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

⁹⁸ This partial lifting of the paging application freeze relieves a restriction and is not subject to the 30 days' notice requirement of the APA. *See* 5 U.S.C. § 553(d)(1). Moreover, the Commission finds good cause to make these rules effective on less than 30 days' notice to allow paging operators to incrementally add transmission sites to better provide service to customers, upgrade to spectrum efficient technology, and compete more efficiently against nationwide carriers. *See* 5 U.S.C. § 553(d)(3).

APPENDIX A

Comments

AACS Communications, Inc. (AACS)
AirTouch Paging
Answer, Inc.
Arch Communications Group
Cai-Autofone
Centrapage of Vermont
Centracom, Inc.
Communications Enterprises
Desert Mobilfone
Detroit Newspaper Agency
Electronic Engineering Company
Hello Pager Company, Inc.
Jackson Mobilphone Company
LaVergne's Telephone Answering Service
Midco Communications
Donald G. Pollard d/b/a/ Siskiyou Mobilfone
PowerPage, Inc.
Radio Electronic Products Corp.
RETCOM, Inc.
Westlink Communications

ACE Communications (ACE)
A+ Network, Inc.
A+ Network
American Paging, Inc. (API)
Ameritech Mobile Services, Inc. (Ameritech)
Ameritel Paging, Inc. (Ameritel)
Anserphone of Natchez, Inc.
CommNet Paging, Inc.
Metro/Delta, Inc.
Oregon Telephone Corporation
Paging Systems Management, Inc.
Professional Answering Service, Inc.
Radio Paging Service
Radiofone, Inc.
RCC Paging, Inc.
Sema-Phoon, Inc.
Ventures in Paging L.C.

ATS Mobile Telephone, Inc.
B&B Communications, Inc.
Baker's Electronics and Communications, Inc.

Baldwin Telecom, Inc. (Baldwin)
Amery Telephone, Inc.
Michael Beesley
Benkelman Telephone Company
Wauneta Telephone Company
Brandon Communications (Brandon)
Benny Brown
Dennis C. Brown and Robert H. Schwaninger d/b/a Brown and Schwaninger (Brown)
Chequamegon Telephone Cooperative, Inc.
Coalition for a Competitive Paging Industry (Coalition)
Communications Sales and Service, Inc.
Beeper One, Inc.
Consolidated Communications Mobile Services, Inc. (CCMS)
Emery Telephone (Emery)
Federal Trade Commission (FTC)
Howard N. Frederickson
Frontier Corporation (Frontier)
Glenayre Technologies, Inc. (Glenayre)
John N. Gonsalves
Len P. Gordon
Bernece Hampel
Raymond Hansel
Roy Harris
HEI Communications, Inc. (HEI)
Hill & Welch, attorneys
Frederick W. Hiort, Jr. d/b/a B&B Beepers
Marla K. Looper
Mashell Connect, Inc. (Mashell)
Mercury Paging & Communications, Inc. (Mercury)
Merryville Investments (Merryville)
Metamora Telephone Company, Inc. (Metamora)
Mobilemedia Communications, Inc. (Mobilemedia)
Mobile Telecommunications Technologies Corp. (MTel)
Mobilfone Service, Inc. (Mobilfone)
Morris Communications, Inc.
North State Communications, Inc.
Nationwide Paging, Inc.
(800) Page-USA, Inc.
Pacific Bell (Pacific)
Robert C. Paeth
Page Hawaii
Lubbock Radio Paging Service, Inc.
WT Services, Inc. d/b/a Panhandle Paging
Mobile Phone of Texas, Inc.