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

In the Matter of	)	
	)	
	)	
Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees	)	WT Docket No. 96-148
	)	
Implementation of Section 257 of the Communications Act - Elimination of Market Entry Barriers	)	GN Docket No. 96-113

NOTICE OF PROPOSED RULEMAKING

Adopted: June 28, 1996 Released: July 15, 1996

Comment Date: 21 days after date of publication in the Federal Register
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Comments to be filed in WT Docket No. 96-148 only

By the Commission: Commissioner Ness issuing a statement.

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APPENDIX A

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking* we propose to modify our broadband personal communications service (PCS) rules to expand our geographic partitioning provisions to include all PCS licensees and to permit spectrum disaggregation in the near term.[1] We also solicit comment on certain issues relating to these rules. Adoption of our proposals will implement the Congressional mandate under Section 257 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Communications Act"),[2] to eliminate entry barriers into the telecommunications market for small businesses. These proposals also are consistent with the directive of Section 309(j) of the Communications Act to promote economic opportunity for a wide variety of applicants including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.[3] We believe that the proposals made herein will facilitate the efficient use of broadband PCS spectrum by providing licensees with additional flexibility to tailor their business strategies, will increase competition by allowing market entry by new players, and will expedite the provision of broadband PCS service to areas that may not otherwise receive broadband PCS or other wireless services in the near term.

II. EXECUTIVE SUMMARY

2. As we regulate broadband PCS spectrum, we continually seek to improve the efficiency of spectrum use, eliminate entry barriers, reduce unnecessary regulatory burdens on spectrum users, encourage competition, and provide services to the largest feasible number of users.[4] We believe the proposals we make below meet these goals.

3. Accordingly, we propose to modify our broadband PCS rules as follows:

A. Partitioning

- Allow broadband PCS licensees in the A, B, D, and E blocks to partition their license area at any time to entities that meet minimum eligibility requirements.

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[1] Partitioning is the assignment of geographic portions of the PCS license along geopolitical or other boundaries. Disaggregation is the assignment of discrete portions or "blocks" of spectrum licensed to a geographic licensee or qualifying entity.

[2] Pub. L. No. 104-104, § 101, 110 Stat. 56 (1996).

[3] 47 U.S.C. § 309(j)(4).

[4] 47 U.S.C. § 332(a).

- Allow entrepreneur block (C and F) broadband PCS licensees to partition their licensed geographic area at any time to entities that qualify as entrepreneurs and meet minimum eligibility requirements.

- Apply our current five-year restriction against complete license transfers to partitioning by entrepreneur block (C and F) broadband PCS licensees to a non-entrepreneur during the first five years of the license period; after the five-year period apply unjust enrichment provisions on a proportional basis.

- Establish license term provisions that permit partitioned license holders (partitionees) to hold partitioned licenses for the remaining duration of the original licensee's (partitioner) ten-year license term.

- Establish flexible construction and coverage requirements to ensure expedited access to broadband PCS service in partitioned areas.

B. Disaggregation

- Eliminate the January 1, 2000 benchmark and five-year build-out requirement for disaggregation.

- Require that disaggregation be in blocks no smaller than a 1 MHz block of paired frequencies to facilitate the administration of licensing.

- Allow broadband PCS licensees in the A, B, D, and E blocks to disaggregate to entities that meet minimum eligibility requirements.

- Allow entrepreneur block (C and F) broadband PCS licensees to disaggregate to other eligible entrepreneurs without restriction.

- Apply our current five-year restriction against complete license transfers to disaggregation by entrepreneur block (C and F) broadband PCS licensees to a non-entrepreneur during the first five years of the license period; after the five-year period apply unjust enrichment provisions on a proportional basis.

- Establish no new construction requirements for disaggregatees already licensed in geographic markets and flexible construction requirements for disaggregatees that are market entrants, in order to ensure coverage.

- Establish license term provisions that permit licensees receiving disaggregated spectrum to hold their licenses for the duration of the ten-year license term.

- Permit the combination of partitioning and disaggregation.

C. Related Matters

- Establish an electronic database to make publicly available information about licensed spectrum, and encourage the development of private clearinghouses and other market solutions which would enable entities (particularly small businesses) to access information about opportunities for partitioning and disaggregation of spectrum in particular geographic areas.

III. BACKGROUND

A. Partitioning

4. In the *Broadband PCS Memorandum Opinion and Order*, the Commission declined to allow general geographic partitioning, noting that licensees might use partitioning as a means of circumventing construction requirements.[5] The Commission observed, however, that a limited partitioning scheme might facilitate participation by certain groups, including rural telephone companies (rural telcos) and other designated entities, in the provision of broadband PCS.[6] The Commission stated that it would consider the issue of geographic partitioning in a future proceeding to establish competitive bidding rules for broadband PCS.[7]

5. The Commission established geographic partitioning provisions for rural telcos in the *Competitive Bidding Fifth Report and Order*.[8] In taking this action, we determined that partitioning would satisfy Congress' mandate that the Commission provide an opportunity for

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[5] Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 4990, ¶ 83 (1994) (*Broadband PCS Memorandum Opinion and Order*).

[6] *Id.*; *see also* Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2391 n.186 (1994) (*Competitive Bidding Second Report and Order*).

[7] *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 4990, ¶ 83.

[8] Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5597-99 ¶¶ 150-152 (1994) (*Competitive Bidding Fifth Report and Order*). The Telecommunications Act of 1996 for the first time enacted a statutory definition for rural telephone companies. *See* 47 U.S.C. § 153(37). We adopted this definition for broadband PCS designated entity provisions. *See* 47 C.F.R. 24.720(e); Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, FCC 96-278, *Report and Order*, ¶¶ 62-66 (released June 24, 1996) (*D, E, and F Block Report and Order*).

rural telcos to participate at auction and in the provision of broadband PCS.[9] We also observed that rural telcos could take advantage of their existing infrastructure to provide broadband PCS services, thereby speeding service to rural areas.[10] We therefore decided that rural telcos could acquire a partitioned license (1) by forming an auction bidding consortium comprised entirely of rural telcos, and partitioning the license(s) won among consortium members; or (2) through private negotiation, either before or after an auction.[11] We required that partitioned areas conform to established geopolitical boundaries (such as county lines) and that each area include all portions of the rural telco's wireline service area that lie within the PCS service area. In addition, where a rural telco acquires a partitioned license post-auction, our rules require that the partitioned area be reasonably related to the rural telco's wireline service area.[12] We further required that every licensee in each partitioned area be responsible for meeting the build-out requirements in its area.[13]

6. In the *Competitive Bidding Further Notice of Proposed Rulemaking*, the Commission requested comment on whether to extend post-auction geographic partitioning of broadband PCS licenses to women- and minority-owned businesses.[14] We observed that allowing these entities to acquire partitioned licenses may facilitate their ability to participate in the provision of broadband PCS.[15] Most of the commenters supported our proposal to extend partitioning provisions to women- and minority-owned businesses.[16] NPPCA and SBA also encouraged the

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[9] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5599, ¶ 153; *see Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2391 n.186; *see also* 47 U.S.C. § 309(j)(3) (establishing objectives the Commission must consider in promulgating competitive bidding rules).

[10] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5597-99, ¶¶ 150-152.

[11] *Id.* at 5598-99, ¶ 151.

[12] *Id.* Recognizing that a rural telco may require some flexibility in fashioning the areas in which it will receive partitioned licenses, we decided not to impose a strict rule concerning the reasonableness of the partitioned area. Under our rules, we presume as reasonable a partitioned area that contains no more than twice the population of that portion of a rural telco's wireline service area that lies within the PCS service area. *Id.*

[13] *Id.*

[14] Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Further Notice of Proposed Rule Making*, 9 FCC Rcd 6775, ¶ 4 (1994) (*Competitive Bidding Further Notice of Proposed Rule Making*).

[15] *Competitive Bidding Further Notice of Proposed Rulemaking*, 9 FCC Rcd at 6775, ¶ 4.

[16] Pacific Telesis Comments (filed Sept. 12, 1994); National Paging & Personal Communications Assoc. (NPPCA) Comments (filed Sept. 12, 1994); U.S. Small Business Administration (SBA) Comments (filed Sept. 12, 1994); Minority Media and Telecommunications Council Comments (filed Sept. 12, 1994). Texas PCS, Inc. was

Commission to allow small businesses to acquire a partitioned license.[17] We presently permit geographic partitioning for MDS,[18] General Wireless Communications Service[19] and 800 MHz SMR service.[20] Additionally, we are seeking comment on proposals for partitioning for paging services,[21] 220 MHz service,[22] 900 MHz SMR service,[23] 800 MHz SMR service,[24] and 38 GHz fixed point-to-point microwave service.[25]

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the only commenter to oppose our partitioning proposal. *See* Comments of Texas PCS, Inc. (filed September 6, 1994).

[17] SBA Comments at 5-6; NPPCA Comments at 3.

[18] Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, *Report and Order*, 10 FCC Rcd 9589, 9614-15, ¶¶ 46, 47 (1995) (*MDS Report and Order*).

[19] Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, *Second Report and Order*, 11 FCC Rcd 624, 646-48, ¶¶ 51-56 (1995).

[20] Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463, 1576, ¶ 253 (1995) (*800 MHz Second FNPRM*) (rural telcos permitted to partition along established geopolitical boundaries).

[21] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Notice of Proposed Rulemaking*, 11 FCC Rcd 3108, 3135-36, ¶¶ 136-138 (1996) (*Paging NPRM*).

[22] Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 188, 274 ¶ 177, (1995) (*220 MHz Third NPRM*).

[23] 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 Report and Order and Second Further Notice of Proposed Rulemaking*, 10 FCC Rcd 6884, 6939-40, ¶¶ 144-45 (1995) (*900 MHz Second FNPRM*).

[24] *800 MHz Second FNPRM*, 11 FCC Rcd at 5180, ¶¶ 264-268 (seeks comment on tentative conclusion that partitioning should be available to eligible SMR licensees in general, not only for rural telcos).

[25] Amendment of the Commission's Rules Regarding the 37.0 - 38.6 GHz and 38.6 - 40.0 GHz Bands, ET Docket No. 95-183, *Notice of Proposed Rulemaking and Order*, 11 FCC Rcd 4930, 4972-73, ¶¶ 89-90 (1995) (*38 GHz NPRM*) (seeking comment on whether partitioning should be available to all applicants, not just rural telcos).

B. Disaggregation

7. Under our current rules, broadband PCS licensees may disaggregate licensed broadband PCS spectrum after January 1, 2000 if they have met the five-year construction requirement.[26] In the *Broadband PCS Memorandum Opinion and Order*, the Commission reasoned that this limit on spectrum disaggregation for broadband PCS would allow the PCS market to take shape and prevent anti-competitive practices with regard to disaggregation.[27] We indicated, however, that we would initiate a proceeding at a later date to specify rules for allowing spectrum disaggregation.[28]

8. Since establishing our policy deferring disaggregation for broadband PCS until the year 2000, several developments have occurred which indicate that a further proceeding to modify the spectrum disaggregation rules for this service is now warranted. For instance, we recently allowed spectrum disaggregation for the in the large low-earth orbiting satellite service.[29] For that service, licensees may resell 1.6 GHz band spectrum rights and 2.065 MHz segments, and reassign any smaller portion of 1.6 GHz band spectrum.[30] Moreover, we note that the Commission has proposed spectrum disaggregation for a variety of services, including commercial 220 MHz,[31] LMDS,[32] 38 GHz,[33] 800 MHz SMR,[34] and paging.[35]

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[26] 47 C.F.R. § 24.229(d). Licensees of 30 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within five years of being licensed. Licensees of 10 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. 47 C.F.R. § 24.203.

[27] *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd 4957, 4985, ¶ 69.

[28] *Id.*

[29] Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, CC Docket No. 92-166, *Report and Order*, 9 FCC Rcd 5936, 5975, ¶ 96 (1994) (*Mobile Satellite Service Report and Order*).

[30] *Mobile Satellite Service Report and Order*, 9 FCC Rcd at 5975, ¶ 96.

[31] *220 MHz Third NPRM*, 11 FCC Rcd at 274, ¶ 177.

[32] *28 GHz Third NPRM*, 11 FCC Rcd at 83-84, ¶ 80.

[33] *38 GHz NPRM*, 11 FCC Rcd at 4942-43, ¶ 24.

[34] *800 MHz Second FNPRM*, 11 FCC Rcd at 1578-79, ¶¶ 257-263.

[35] *Paging NPRM*, 11 FCC Rcd at 3136, ¶ 138.

C. Limitations on Transfers by Entrepreneur Block Licensees

9. We designated frequency blocks C and F as entrepreneurs' blocks to promote economic opportunities for a wide variety of applicants including small businesses, rural telcos and businesses owned by members of minority groups and women as required by Section 309(j)(4)(C)(ii) of the Communications Act.[36] We recognized, however, that the congressionally mandated objective to provide smaller entities an opportunity to obtain licenses will not be served if winning bidders that benefit from bidding credits and installment payment plans immediately assign or transfer control of the authorization to entities ineligible for these special provisions.[37] Such a practice would unjustly enrich the auction winners and would undermine the congressional goal of giving designated entities the opportunity to provide spectrum-based services.[38] Therefore, we established rules limiting transfers of entrepreneurs' licenses to non-entrepreneurs.

10. Our present rules prohibit the assignment or transfer of control of a license for the C and F blocks unless: (1) the application for assignment or transfer of control is filed after five years from the date of the initial license grant; or (2) the assignee or transferee meets the eligibility criteria set forth in Section 24.709 of the Commission's rules at the time the application for assignment or transfer of control is filed; or (3) the proposed assignee or transferee holds other license(s) for frequency Blocks C and F and, at the time of receipt of such license(s), the proposed assignee or transferee met the eligibility criteria set forth in Section 24.709.[39]

IV. DISCUSSION

A. Policy Goals

11. In this proceeding, we seek to enable a wide variety of broadband PCS applicants, including small businesses, rural telcos, and businesses owned by members of minority groups and women, to overcome entry barriers through the creation of smaller, less capital-intensive licenses that are within the reach of smaller entities. Moreover, we believe that our proposals, if adopted, will provide a means for increased access to capital that can be used to construct and maintain PCS systems. Our proposals here are part of a multi-proceeding effort to implement the Communication Act's mandate to identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications

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[36] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5587-88, ¶ 127.

[37] *Id.* at 5588-89, ¶¶ 128-129.

[38] *Id.*

[39] 47 C.F.R. § 24.839(d). *See D, E, and F Block Report and Order* at ¶¶ 83-85.

services.[40] In this regard, the Commission also has recently issued a Notice of Inquiry seeking evidence of current and past discrimination experienced by small businesses and businesses owned by women and minorities or by individual women and minorities.[41] Changing our partitioning and disaggregation rules will also help to ensure that broadband PCS licensees have the flexibility they need to provide services most valuable to consumers in a competitive market environment.

12. The changes we propose here are consistent with our mandate under Section 309(j) of the Communications Act to utilize auctions to ensure competitive markets with little or no opportunity to engage in anti-competitive spectrum warehousing or speculation. In the words of one recent commenter on our spectrum allocation policy: ". . . if an entity has paid fair value for spectrum at auction there should be few if any restrictions on its ability to sell or lease all or part of that spectrum."[42] Our proposals thus take into account our special provisions in our competitive bidding procedures for entities identified in Section 309(j)(4) of the Communications Act.[43]

13. Since we adopted our present policies permitting only limited partitioning and disaggregation by broadband PCS licensees, we have completed auctions and granted licenses for the A and B 30 MHz blocks. The C block auction is recently completed and we anticipate initiating auctions for the D, E, and F blocks in the near future. The C and F blocks are designated as entrepreneurs' blocks. Many of the A and B block licensees have announced aggressive schedules for system build-out and the initiation of service. Potential concerns about slow construction and speculation in licenses without system build-out, while not to be dismissed, must be viewed in the context of a developing PCS marketplace and the business strategies of these new licensees. We believe that our proposals address these potential concerns both in relation to construction requirements to prevent warehousing and with respect to our special competitive bidding provisions for entrepreneurs and small businesses.

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[40] A "small business" is defined as an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average gross revenues that are not more than $40 million for the preceding three years. 47 C.F.R. § 24.720(b)(1); *see D, E, and F Block Report and Order* at ¶ 60. An "entrepreneur" is defined as an entity that, together with its affiliates and persons holding interest in such entity and their affiliates, has average gross revenues that are less than $125 million in each of the last two calendar years and total assets of less than $500 million. 47 C.F.R. § 24.709(a).

[41] Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, GN Docket No. 96-113, *Notice of Inquiry*, 11 FCC Rcd 6280 (1996).

[42] Statement of Wayne Perry, AT&T Wireless Services, Inc., before the FCC En Banc Hearing on Spectrum Policy, at 3 (Mar. 5, 1996).

[43] *See* 47 U.S.C. § 309(j)(4)(C) and (D); *see also* 47 C.F.R. §§ 24.709-24.712.

14. We expect that there may be significant benefits in broadening our partitioning provisions to permit geographic partitioning by A, B, D, and E block licensees to any eligible party. Moreover, in light of the fact that many broadband PCS licensees may meet their five-year construction obligations early, we believe that it may now be appropriate to revisit our ban on disaggregation before January 1, 2000 as well as the five-year build-out pre-condition. Partitioning and disaggregation could allow broadband PCS licensees to tailor their business strategies and allow them to use the spectrum more efficiently. In addition, we expect that partitioning and disaggregation could enable more entities to participate in the provision of broadband PCS, including small businesses and businesses owned by minorities and women. These entities could speed service to unserved communities and bring competition to other areas. We also note that partitioning and disaggregation may facilitate the development of so-called "niche" services which may reflect more efficient use of spectrum and allow market entry by entities that only have the ability to provide service to a limited population.

15. We believe that our proposals will facilitate market entry by parties who may lack the financial resources for participation in PCS auctions, including small businesses. In this way, our proposals are consistent with the mandate of Section 257 to lower entry barriers into the PCS market for smaller businesses and the directive of Section 309(j) to promote participation in spectrum-based services by a broad range of diverse entities. In addition, we believe that the proposals we make here address a concern we have expressed previously -- lack of access to capital on the part of entities otherwise qualifying for entrepreneurs' block licenses.[44] We believe that these proposals, if implemented, will promote technological advancement, and participation by diverse entities, as well as facilitate the efficient use of broadband PCS spectrum, increase competition, and expedite the provision of broadband PCS to areas that may not otherwise receive broadband PCS or other wireless services in the near term.

B. Partitioning

1. License Eligibility

16. For the A, B, D, and E blocks, we propose to relax our broadband PCS geographic partitioning rules, as discussed below, to allow any party to acquire a license for a partitioned geographic service area that meets the eligibility requirements to be a broadband PCS licensee. In proposing to expand our geographic partitioning provisions to such entities, we remind these parties of the continuing applicability of our spectrum aggregation rules.[45] We tentatively conclude that a more liberal partitioning policy would allow spectrum to be used more efficiently,

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[44] *See, e.g., Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5572-73, ¶ 96.

[45] *See D, E, and F Block Report and Order* at ¶¶ 94-107.

speed service to underserved areas, and increase competition. Commenters are invited to discuss the merits of our proposal.

17. Under our current rules, only rural telcos are eligible to receive a partitioned license. As discussed above, we previously determined that our geographic partitioning scheme provides sufficient means to ensure participation by rural telcos in the provision of broadband PCS. The partitioning proposals we make here would apply to rural telcos as well as other parties seeking partitioned licenses. We therefore solicit comment on whether liberalizing the geographic partitioning rules would lessen rural telcos' ability to participate in the provision of broadband PCS. We observe that rural telcos have an advantage in constructing a PCS system within their service areas. We note that rural telcos can build upon their existing infrastructure to rapidly deploy PCS, and thus are more likely to be interested in providing PCS to rural areas. To the extent that other entities may also be interested in bringing service to underserved rural communities, we tentatively conclude that our rules should facilitate competition in these areas. We solicit comment on these tentative conclusions.

2. Available License Area, Timing, and Financial Obligations

18. We propose that any partitioning of broadband licenses be required to be along county lines in the same manner that rural telcos must partition along county lines under our current rules. We tentatively conclude that requiring partitioning of licenses to be along county lines would reduce the administrative burden on the Commission and minimize our interference coordination concerns. For example, the Commission has traditionally established market areas (including MTAs and BTAs) along county lines and has developed its licensing database to accommodate those kinds of market designations. Commenters are invited to address the merits of our proposal, and whether other geopolitical boundaries may be appropriate. Where a service area does not naturally fall along county lines, parties would be free to seek a waiver of our proposed requirement. We solicit comment on the appropriate criteria for such waivers.

a. Non-entrepreneur block licensees

19. As discussed above, we believe that there may be significant advantages in broadening our partitioning rules to permit A, B, D, and E block broadband PCS licensees to partition a portion of their license area to any qualifying entity at any time after receiving a license. We therefore propose that all licensees in the A, B, D, and E blocks be permitted at any time to partition their license area along county lines. We tentatively conclude that our proposal would advance the public interest by affording licensees greater flexibility. Commenters are invited to discuss whether the Commission should impose any limitations on the size of geographic area that these non-entrepreneur block licensees would be allowed to partition.

b. Licensees with competitive bidding benefits

20. Small businesses face certain barriers to entry into the broadband PCS market that changes in our partitioning rules may address. Providing licensees with the flexibility to partition their geographic service areas would create smaller areas that could be licensed to small businesses, including those entities which may not have had the resources to participate successfully in spectrum auctions. We recognize as well that partitioning may provide a funding source that would enable licensees to build-out their systems and provide the latest in technological enhancements to the public. The changes in the partitioning rules we propose here thus implement in part the requirement of Section 257 of the Telecommunications Act of 1996, in that we identify the financial factors discussed above as barriers to market entry and propose to eliminate them through changes in our regulations governing partitioning. We must remain vigilant, however, against unjust enrichment as we provide opportunities to a wide array of entities for the provision of PCS. We believe that we must ensure that licensees that have benefitted from special bidding provisions are not permitted to become unjustly enriched by immediately partitioning a portion of their license area to parties that do not qualify for such benefits.

21. Frequency blocks C and F are designated as entrepreneurs' blocks to promote economic opportunities for a wide variety of applicants including small businesses, rural telcos, and businesses owned by members of minority groups and women as required by Section 309(j)(4)(C)(ii) of the Communications Act.[46] We propose that an entrepreneur block licensee be permitted to partition at any time to other parties that would be eligible for licenses in those blocks, *(i.e.*, to an entity that either holds other entrepreneur block licenses and thus at the time of auction satisfied the entrepreneur block criteria, or that satisfies the criteria at the time of partitioning.) We believe that allowing entrepreneurs and small businesses to partition and/or disaggregate their licenses to other qualified entrepreneurs and small businesses will help attain the Congressional objective of ensuring that entrepreneurs and small businesses have an opportunity to participate in PCS.

22. We seek comment on the treatment of installment plan payments for winning auction bids owed by partitioning licensees. For example, should an entrepreneur block licensee who partitions to another entrepreneur be required to repay, on an accelerated basis, a portion of the outstanding principal balance owed under an installment payment plan? We seek comment on how this should be calculated. If we decide not to require payment of some amount of the outstanding principal balance for an entrepreneur block license as a condition for approval of the partitioning application, what other alternative conditions could we impose to ensure that the partitioning licensee continues to meet its financial obligation to the United States government?

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[46] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5587-88, ¶ 127.

We seek comment on whether the partitionee should be required to guarantee payment of a portion of the partitioner's obligation.

23. We tentatively conclude that we should apply some form of unjust enrichment requirements to a partitioning licensee that has received bidding credits or is paying its winning auction bid through installment plan payments when the partitionee qualifies as an entrepreneur, but would receive less favorable installment plan payments.[47] We seek comment on whether the unjust enrichment requirements in this case should be on a proportional basis, and how such payments should be calculated.

24. We further propose to apply our current five-year restriction against complete license transfers to prohibit partitioning and/or disaggregation by an entrepreneur block licensee to a non-entrepreneur during the first five years of the license period.[48] This holding requirement was established to ensure that entrepreneurs did not take advantage of special entrepreneur block provisions by immediately transferring control of licenses to non-entrepreneurs.[49] We believe that applying this holding period to partitioning and disaggregation will ensure our objective that entrepreneurs and small businesses continue to participate as PCS licensees for substantial periods of time, and through that participation obtain experience and profits that will enable their long term participation in communications industries.

25. We tentatively conclude that after the five-year holding period we should apply unjust enrichment payments as a condition for approval of an application for a partitioning transfer of an entrepreneur block license to a non-entrepreneur. These unjust enrichment provisions would include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest, and would be applied on a proportional basis. We seek comment on how such unjust enrichment amounts should be calculated, especially in light of the difficulty of devising a methodology or formula that will differentiate the relative market value of the opportunities to provide service to various partitioned areas within a geographic or market area. We seek comment on whether we should consider the price paid by the partitionee in determining the percentage of the outstanding principle balance to be repaid.

26. We seek comment on what the respective obligations of the participants in a partitioning transfer should be, and whether each party should be required to guarantee all or a portion of the partitionee's original auctions-related obligation in the event of default or

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[47] *See, e.g., Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5591, 5594, ¶¶ 134, 141.

[48] *See* 47 C.F.R. § 24.839(d).

[49] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5588-89, ¶ 128-129; *D, E, and F Block Report and Order* at ¶ 84.

bankruptcy by any of the parties to the partitioning transfer. We seek comment on whether the partitioner (the original licensee) should have a continuing obligation with respect to the entire initial geographic area. Alternatively, should the parties have available a choice of options, ranging, for example, from an accelerated payment based on purchase price to a guarantee for a larger payment by one party in the event another party defaults? Parties are invited to comment on whether the partitioning parties should be able to determine which party has a continuing obligation with respect to the original licensed area.

27. We tentatively conclude that our proposals to permit partitioning in the manner described above would allow broadband PCS spectrum to be used most efficiently, speed service to unserved or underserved areas, and facilitate competition. Our proposal to permit partitioning by entrepreneur block licensees, including small businesses, to similarly qualified parties also would ensure that these entities retain a significant presence in the market, consistent with our objectives in establishing eligibility for these blocks.[50] Moreover, we tentatively conclude that our proposal to relax the partitioning provisions may help small business licensees compete more effectively in the areas they retain and assist in the elimination of entry barriers to the PCS market. We observe, for example, that these entities may apply any revenues gained from partitioning towards the cost of constructing their systems and marketing their service. We solicit comment on this analysis of the intended effects of our proposals.

3. License Term

28. Under our rules, a broadband PCS licensee is authorized to provide service for ten years from the date of initial license grant.[51] A licensee may submit an application to renew its license for an additional license term, and is afforded a renewal expectancy if it can demonstrate that it has provided "substantial" service during its past license term and has substantially complied with applicable Commission rules, policies, and the Communications Act.[52] "Substantial" service has been defined as service which is "sound, favorable, and substantially above a level of mediocre service which might just minimally warrant renewal."[53]

29. We propose that a partitionee be authorized to hold its license for the remainder of the partitioner's original ten-year license term. We tentatively conclude that this approach is appropriate because a licensee, through partitioning, should not be able to confer greater rights

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[50] *Competitive Bidding Fifth Report and Order*, 9 FCC Rcd at 5573-5579, ¶¶ 97-110.

[51] 47 C.F.R. § 24.15.

[52] 47 C.F.R. § 24.16.

[53] *Id.*

than it was awarded under the terms of its license grant. Moreover, we tentatively conclude that this approach would be the simplest to administer. We also observe that this approach is similar to the partitioning provisions we recently adopted for MDS[54] as well as the existing broadband PCS partitioning provisions for rural telcos. In addition, this proposal is consistent with other licensing rules applicable to commercial mobile radio services (CMRS) for the license term of a transferee or assignee of a license for a complete service area for paging, narrowband PCS, and broadband PCS.[55] We solicit comment on this tentative conclusion.

30. We also propose that a partitionee be afforded the same renewal expectancy as an MTA or BTA licensee.[56] Specifically, a partitionee would be granted a preference at a comparative renewal proceeding if it can demonstrate that it has provided "substantial" service during its past license term and has substantially complied with applicable Commission rules, policies and the Communications Act.[57] We observe that this approach is consistent with our proposed construction requirements, discussed below. We invite comment on this proposal.

4. Construction Requirements

31. In the *Broadband PCS Memorandum Opinion and Order*, we found that broadband PCS would likely be a highly competitive service and that licensees would have incentives to construct facilities to meet the service demands in their licensed areas.[58] Nevertheless, we imposed minimum construction requirements to expedite service to the public and promote efficient use of the spectrum.[59] Specifically, the Commission required 30 MHz broadband PCS licensees to construct facilities that provide coverage to one-third of the population of their service area within five years of the initial license grant and two-thirds of the population within ten years.[60] Ten MHz licensees are required to provide coverage to one-fourth of the service

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[54] *MDS Report and Order*, 10 FCC Rcd at 9614, ¶ 46; 47 C.F.R. § 21.931.

[55] We note, however, that in the cellular context, the partitioned license term runs anew from the date the transfer request is granted. Also, historically, in the SMR, PCP (private carrier paging) and business radio services, and services at 220 MHz, an assignee or transferee may hold the license for the remainder of the original license term or the term may begin from the date the transfer or assignment is granted.

[56] *See* 47 C.F.R. § 24.16.

[57] *Id.*

[58] *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 5018, ¶ 154.

[59] *Id.*

[60] *Id.* at 5018, ¶ 155; 47 C.F.R. § 24.203.

area's population within five years or, alternatively, they may submit a showing to the Commission demonstrating that they are providing "substantial" service.[61]

32. As discussed above, when we originally declined to allow general partitioning by broadband PCS licensees, we were concerned that licensees might use partitioning as a means to circumvent our construction requirements.[62] We tentatively conclude that to avoid this result both the partitioner and partitionee should be subject to coverage requirements that ensure that both portions of a partitioned licensing area will receive service. Our proposal would facilitate partitioning by offering a choice between two different build-out options, which could be negotiated between the partitioner and partitionee. Applicants would then select in their assignment and transfer applications the construction option they would be obligated to meet.

33. Under the first option, a partitionee would be obligated to satisfy the same construction requirements as the original licensee within its partitioned area, regardless of when it acquired the partitioned license. A partitionee of a 30 MHz broadband PCS license, for example, would be obligated to provide service to at least one-third of the population in its partitioned license area within five years of the underlying license term and two-thirds of the population in its partitioned license area by the end of the ten-year license term. A partitionee of a 10 MHz broadband PCS license would have to provide service to at least one-quarter of the population in its partitioned licensed area or make a showing of substantial service at the five-year benchmark. We observe that this approach is consistent with our present construction requirements for rural telcos.[63] Commenters are invited to discuss the merits of this option.

34. As a second option, we propose more modest build-out requirements for a partitioned area where the original licensee has met its five-year build-out requirements and certifies that it will meet the ten-year coverage requirements for its entire license area. Because the original licensee maintains its original coverage commitment with respect to the entire licensing area under this option, we believe the partitionee should be subject to a relaxed build-out requirement. Specifically, we propose that partitionees must only satisfy the substantial service requirement for renewal expectancy for its partitioned area by the end of the original ten-year license term. For example: an A Block licensee who meets its five-year build-out requirements within three years after receiving its license, may, in its partitioning application, certify that it will meet the ten-year coverage requirement for its original license. In this scenario, the partitionee would only be required to meet the substantial service requirement for its partitioned area at the end of the A Block licensee's original ten-year license term.

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[61] *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 5018, ¶ 155.

[62] See *id.* at 4990, ¶ 83.

[63] 47 C.F.R. § 24.714(e).

35. We tentatively conclude that establishing flexible build-out requirements would encourage partitioning to entities that have a sincere interest in providing broadband PCS and would thereby expedite the provision of service to areas that otherwise may not receive it as quickly. We also observe that this option may facilitate partitioning agreements, especially in the latter portion of a license term, by acknowledging licensees' efforts to bring broadband PCS service to their licensed areas. We solicit comment on this build-out proposal. Commenters are also invited to address what build-out requirements should apply where a licensee partitions a portion of its license area after the initial ten-year license term has expired.

B. Disaggregation

1. Timing of Disaggregation

36. Section 24.229(d) permits a broadband PCS licensee who has met the five-year construction requirement to assign portions of its licensed PCS spectrum after January 1, 2000.[64] In the *Broadband PCS Memorandum Opinion and Order*, we stated that allowing immediate disaggregation of spectrum before that time may impede competition in the provision of broadband PCS.[65] We also concluded that we should give the market an opportunity to develop before permitting licensees to disaggregate a portion of their spectrum.[66]

37. We now believe that these decisions may no longer be warranted. To the extent that disaggregation would enable other entities to provide broadband PCS service within geographic market areas, we tentatively conclude that our rules should facilitate rather than impede entry by new competitors. In addition, we tentatively conclude that our current prohibitions on disaggregation may constitute a barrier to market entry for small businesses which may lack the resources to participate successfully in auctions for 30 MHz and 10 MHz broadband PCS spectrum blocks. In furtherance of the mandate prescribed by Section 257 of the Telecommunications Act of 1996, we propose to eliminate such market entry barriers by making changes in our disaggregation rules as discussed below. We seek comment on these tentative conclusions.

38. We propose to allow spectrum disaggregation prior to January 1, 2000, and to eliminate the condition that the licensee must satisfy our five-year build-out requirements before disaggregating. We invite comment on whether to retain our five-year build-out requirement before allowing disaggregation. Commenters should discuss whether our goals of elimination of

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[64] 47 C.F.R. § 24.229(d).

[65] *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 4985, ¶ 69.

[66] *Id.*

market entry barriers, efficient spectrum use, expedited access to broadband PCS service, and competition would be better served by eliminating this restriction. Specifically, we propose to allow non-entrepreneurs to disaggregate to other qualified entities at any time, and to allow entrepreneurs to disaggregate to other qualified entrepreneurs at any time, but entrepreneurs would be restricted from disaggregating spectrum to non-entrepreneurs until after the five-year holding period. Commenters should discuss whether any alternate restrictions on allowing disaggregation may be appropriate.

2. Amount of Spectrum to Disaggregate

39. In our *Broadband PCS Memorandum Opinion and Order*, we established six frequency blocks of spectrum for licensed broadband PCS.[67] Three of the blocks (A, B, and C) each have 30 MHz of spectrum, while the remaining blocks (D, E, and F) have 10 MHz of spectrum each.[68] We determined that our broadband PCS spectrum allocation plan would facilitate the rapid deployment of broadband PCS and enable broadband PCS licensees to compete fully with other commercial mobile radio services.[69] We determined that 30 MHz blocks of spectrum would facilitate competition and the rapid development and implementation of the fullest range of PCS services and ensure that PCS is more fully competitive with other mobile radio services.[70] In addition, we observed that 10 MHz licensees may be able to provide services ranging from specialized, "niche" applications to services comparable to those now provided by cellular systems, through the use of advanced digital techniques, such as Code Division Multiple Access (CDMA) and Time Division Multiple Access (TDMA), and micro-cellular technology.[71] We also concluded that 10 MHz blocks, on their own and in combination with other 10 and 30 MHz blocks, may support a variety of PCS services and could allow cellular licensees, who have limited eligibility for PCS participation within their cellular service areas, to obtain a PCS license and have the ability to possibly augment their cellular service in this manner.[72]

40. Personal communications requirements are changing rapidly as our society becomes more mobile and the demand for near instantaneous communications and universal access

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[67] *Id.* at 4970, ¶ 26. An additional 20 MHz of spectrum is allocated for unlicensed PCS services. *Id.*

[68] *Id.*

[69] *Id.* at 4981, ¶ 58.

[70] *Id.*

[71] *Id.* at 4981, ¶ 60.

[72] *Id.*

increases.[73] We believe that PCS will provide competition to existing mobile services, including cellular, paging and SMR. As originally envisioned, PCS services and devices would include advanced forms of cellular telephone service, advanced digital cordless telephone service, portable facsimile services, wireless PBX services, and wireless local area network (LAN) services, among others.[74]

41. Because our current rules simply defer any disaggregation to the year 2000 at the earliest, they do not address the issue of the amount of spectrum which a licensee may disaggregate.[75] We seek comment on and proposals for the amount of spectrum that a licensee should be required to retain if we allow disaggregation on a more expedited basis.[76] We seek comment generally concerning whether some restriction or limit should be placed on the amount of spectrum a licensee may disaggregate or the timing of such disaggregation.

42. We propose that licensees disaggregate frequencies in accordance with the pairings specified in our rules.[77] We also tentatively conclude that some grouping of frequency pairs is preferable for administrative purposes, otherwise the database necessary to track authorizations could become too cumbersome and complex and processing could be delayed or prone to error. We tentatively conclude that for these purposes, we will not permit disaggregation for broadband PCS in blocks smaller than a 1 MHz block of paired frequencies, thus requiring the disaggregating licensee to retain a minimum of 1 MHz.[78] We seek comment on this tentative conclusion. We request that commenters suggesting alternative approaches provide technical justifications and other relevant support in responding to this issue.

43. We seek comment on whether we should require broadband PCS licensees to be licensed for more than a minimum of 1 MHz to provide broadband PCS services as originally envisioned in the *Broadband PCS Second Report and Order*. We note that the description of potential broadband PCS services differentiates broadband from narrowband services and served

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[73] Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Notice of Proposed Rulemaking and Tentative Decision*, 7 FCC Rcd 5676, 5687, ¶ 25 (1992).

[74] *Broadband PCS Second Report and Order*, 8 FCC Rcd at 7712, ¶ 22.

[75] *See* 47 C.F.R. § 24.229.

[76] We note that the licensee receiving the disaggregated spectrum would still have to comply with our spectrum aggregation rules.

[77] 47 C.F.R. § 24.229(a), (b).

[78] An application for assignment or transfer would be needed to dispose of the last 1 MHz of spectrum.

in part as a justification for the spectrum size of the broadband PCS license blocks.[79] We seek comment on whether and how we should clarify or modify our description of broadband PCS for purposes of defining a minimum amount of spectrum to provide such services. We also request comment on what amount is the minimum amount of spectrum which a disaggregatee could utilize for the provision of broadband type services. We seek comment generally on the relevance of the distinction between broadband and narrowband for purposes of our disaggregation rules.

44. We believe that our rules relating to spectrum caps may have some impact on our decision making on disaggregation. Our present spectrum cap rules limit PCS licensees to 45 MHz of aggregated spectrum in PCS, cellular, or SMR.[80] The 45 MHz cap was meant as a minimally intrusive means of ensuring that the mobile communications marketplace remains competitive and retains incentives for efficiency and innovation.[81]

45. We tentatively conclude that elimination of our current prohibitions on broadband PCS disaggregation would be consistent with our recent elimination of the cellular/PCS cross-ownership rule and the 40 MHz PCS spectrum cap and retention of 45 MHz cap, because such actions would facilitate market transfers of spectrum among cellular and PCS licensees while maintaining a provision to ensure a diversity of service providers. We request comment on this tentative conclusion and generally on the impact of the present 45 MHz spectrum cap upon our proposals.

3. Matters Relating to Entrepreneur Block Licensees

46. In light of our discussion above about the benefits that licensee flexibility to disaggregate can provide, we now propose to allow all entrepreneur block licensees to disaggregate to similarly qualifying parties at any time without restriction, and to parties not eligible for entrepreneur block licenses after a five-year holding period. We tentatively conclude that if we permit an entrepreneur block licensee to disaggregate to a non-entrepreneur entity after the five-year holding period, the disaggregating entrepreneur block licensee will be required to repay the unjust enrichment provisions on a proportional basis. These unjust enrichment provisions would include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest, and would be applied on a proportional basis. We seek comment on how such

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[79] *See Broadband PCS Second Report and Order*, 8 FCC Rcd at 7726, ¶ 58 (10 MHz is sufficient for viable operation of many forms of PCS services).

[80] *D, E, and F Block Report and Order* at ¶¶ 94 (maintaining the 45 MHz CMRS spectrum cap and eliminating the 35 MHz cellular/PCS spectrum cap and the 40 MHz PCS spectrum cap).

[81] *CMRS Third Report and Order*, 9 FCC Rcd at 8100, ¶ 238.

unjust enrichment amounts should be calculated. We seek comment on whether we should consider the price paid by the disaggregating party in determining the percentage of the outstanding principle balance to be repaid.

47. We seek comment on what the respective obligations of the participants in a disaggregation transfer should be, and whether each party should be required to guarantee all or a portion of the disaggregatee's original auctions-related obligation in the event of default or bankruptcy by any of the parties to the disaggregation transfer. We seek comment on whether the disaggregator (the original licensee) should have a continuing obligation with respect to the entire initial license. Alternatively, should the parties have available a choice of options, ranging, for example, from an accelerated payment based on purchase price to a guarantee for a larger payment by one party in the event another party defaults? Parties are invited to comment on whether the disaggregating parties should be able to determine which party has a continuing obligation with respect to the original licensed area.

48. We tentatively conclude that if we permit an entrepreneur block licensee to disaggregate to an entrepreneur that would not qualify for the same level of benefits as the disaggregating licensee, the disaggregating entrepreneur block licensee will be required to repay a portion of the unjust enrichment provisions as they apply to a full assignment of a license. We seek comment on whether this should be a proportional amount of its bidding credits, unpaid principal, and accrued unpaid interest to the U.S. Treasury, and how the amounts should be calculated. Finally, we seek comment on what provisions, if any, we should adopt to address the situation of an entrepreneur block licensee's disaggregation followed by default in payment of a winning bid at auction.

49. We seek comment on whether we should have different requirements for entrepreneur block licensees and for non-entrepreneur block licensees regarding the amounts of spectrum which a licensee must retain or may disaggregate, and on what those requirements should be.

4. Construction Requirements

50. As discussed above, we require broadband PCS licensees to satisfy certain construction requirements. Specifically, our rules require 30 MHz broadband PCS licensees to construct facilities that provide coverage to one-third of the population of their service area within five years of the initial license grant and two-thirds of the population within ten years.[82] Ten MHz licensees are required to construct facilities that provide coverage to one-fourth of the

[82] 47 C.F.R. § 24.203(a); *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 5018-19, ¶ 155.

service area's population within five years or, alternatively, they may submit a showing to the Commission demonstrating that they are providing "substantial" service.[83]

51. To address the concerns raised in the *Broadband PCS Memorandum Opinion and Order* about anti-competitive incentives to disaggregate and engage in spectrum warehousing, we propose two construction build-out options to apply to entities receiving disaggregated spectrum that do not already possess a broadband PCS license in the same geographic service area. Such applicants seeking to receive disaggregated spectrum would select the construction option for which they would be obligated to meet in their assignment and transfer applications. As discussed below, we tentatively conclude that our proposal would prevent licensees from warehousing spectrum and would enable new entrants to provide service.

52. Similar to our partitioning proposal, under the first option, a disaggregatee entering the geographic market would be obligated to satisfy the same construction requirements as the licensee, regardless of when it acquired the disaggregated spectrum. For example, an entity that acquires spectrum from a 30 MHz broadband PCS licensee (an A, B, or C block licensee) would be obligated to provide service to at least one-third of the population in the MTA or BTA license area within five years of the underlying license term and two-thirds of the population in the license area by the end of the ten-year license term. An entity that acquires spectrum from a 10 MHz broadband PCS licensee (a D, E, or F block licensee) would have to provide adequate service to at least one-quarter of the population in the BTA license area or make a showing of substantial service at the five-year benchmark. We tentatively conclude that this approach would prevent spectrum warehousing and ensure expedited access to broadband PCS services. Commenters are invited to discuss the merits of this option.

53. As a second option, we propose a modified build-out requirement after the disaggregating licensee has met its five-year build-out requirement and certifies that it will meet the ten-year construction requirement by the end of its license term. Specifically, we propose that a disaggregatee must only satisfy our five-year build-out requirements for the license area by the end of the original ten-year license term. We tentatively conclude that this build-out option will facilitate the rapid introduction of broadband PCS service and increase spectrum efficiency. We seek comment on this approach. Commenters are also invited to address whether these build-out requirements should apply where a licensee disaggregates a portion of its spectrum after the initial ten-year license term has expired.

54. We propose to require, as a pre-condition for approving a proposed disaggregation, certifications from both the disaggregator and the disaggregatee that the time remaining before the ten-year construction benchmarks is sufficient for the disaggregator and disaggregatee to meet

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[83] 47 C.F.R. § 24.203; *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 5018-19, ¶ 155.

the pertinent construction benchmark for their respective licenses. This proposal would ensure against delay in the build-out of PCS, and place all parties on notice that the construction requirements must be considered during the negotiations. In addition, disaggregatees must file maps and other supporting documents showing compliance with the construction requirements within the appropriate five-year and ten-year bench marks of the date of their initial licenses.[84]

55. If a licensee fails to meet the construction requirements, we propose that the license of the disaggregator or disaggregatee revert back to the Commission without further action by the Commission. This will ensure timely provision of service. In light of the fact that the disaggregator and disaggregatee are each licensees, their prospective construction requirements are independent from each other and failure to satisfy one construction requirement will not affect the renewal of the other.

56. For disaggregatees already possessing a broadband PCS license in a geographic service area, we propose no new construction requirements, on the premise that these licensees are already subject to coverage requirements under their existing licenses. We seek comment on this proposal. We seek comment on the construction requirements, if any, that should apply to other CMRS licensees receiving disaggregated broadband PCS spectrum, how we should recognize the different licensing schemes and service areas in applying such requirements, and whether some specified amount of disaggregated spectrum should serve as a threshold to trigger coverage requirements.

5. License Term

57. We propose a similar license term for disaggregation as we have for partitioning, *i.e.*, that a disaggregatee would be authorized to hold its license for the disaggregated spectrum for the remainder of the disaggregator's original ten-year license term. As with partitioning, we believe this approach is appropriate because a licensee, through disaggregation, should not be able to bestow greater rights than it was awarded under the terms of its license grant. We seek comment, however, on whether administrative efficiency and convenience for licensees support a limited exception to this general rule. Specifically, we seek comment on whether a licensee acquiring spectrum in the geographic area in which it is an existing broadband PCS licensee should be allowed to apply its original license term to the newly-acquired spectrum. For example, should an F Block licensee obtaining spectrum from the A Block licensee in the same market retain the F Block license term? In addition, we propose that a disaggregatee be afforded the same renewal rights as an MTA or BTA licensee. A disaggregatee would be granted a preference at a comparative renewal proceeding if it can demonstrate that it has provided "substantial" service during its past license term and has substantially complied with applicable

[84] *See* 47 C.F.R. § 24.203(c); *Broadband PCS Memorandum Opinion and Order*, 9 FCC Rcd at 5019, ¶ 156.

Commission rules, policies, and the Communications Act.[85] We invite comment on this proposal, and we solicit comment on how to apply this renewal standard in cases where a disaggregatee has acquired the disaggregated license near the end of the original license term.

V. RELATED MATTERS

A. Combination of Partitioning and Disaggregation

58. Should we adopt the proposals set forth above for partitioning and disaggregation, broadband PCS licensees and other qualifying entities may desire to use in combination our partitioning and disaggregation rules to enter or increase their presence in a market or to expand or enhance service options. Our goal is to provide for a robust PCS service that is fully competitive and spectrum efficient in order to ensure quality service to the public. We believe that the proposals for partitioning and disaggregation we make here are consistent with those goals.

59. We thus tentatively conclude that we should permit combinations of partitioning and disaggregation, subject to the rules we have proposed for each. We seek comment on this proposed approach. Specifically, we invite comment on whether the benefits of allowing licensees to combine disaggregation and partitioning as described above outweigh factors supporting continuation of our current rules. Finally, in those situations where the combination of partitioning and disaggregation is allowed under our proposed rules, we propose to implement the rules proposed for partitioning in the event there is a conflict in the application of our rules. We seek comment on where such conflicts might arise and generally on our overall approach to the combination of partitioning and disaggregation addressed herein.

B. Licensing

60. For ease of administration and to lessen the burden on applicants by adopting new filing requirements, we propose to follow existing partial assignment procedures for broadband PCS licenses in reviewing requests for geographic partitioning, disaggregation, or a combination of both.[86] Thus, the licensee must file an FCC Form 490 that is signed by both the licensee and qualifying entity.[87] The qualifying entity would also file an FCC Form 430 unless a current FCC Form 430 is already on file with the Commission. An FCC Form 600 would be filed by the qualifying entity to receive authorization to operate in the market area which is being partitioned

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[85] 47 C.F.R. § 24.16.

[86] *See* 47 C.F.R. § 24.839.

[87] *See* 47 C.F.R. § 24.839(b)(1).