Rand McNally.[31] Given that there is a reasonable alternative available that would not impose costs on paging operators, and based on PCIA's understanding from Commission staff that converting from MTAs to MEAs would not, at least at present, disrupt or delay preparations for the auctions, then the Commission should revise its decision to rely upon MTAs and replace them with MEAs for the purpose of issuing geographic service area licenses in the exclusive 929 MHz and 931 MHz frequencies.

X. THE COMMISSION SHOULD NOT HAVE ADOPTED BIDDING CREDITS OR INSTALLMENT PAYMENT PLANS FOR DESIGNATED ENTITIES IN THE PAGING SERVICES

The *Second Report & Order* grants bidding credits to small businesses participating in the geographic area auctions[32] and prescribes installment payment plans for small businesses winning authorizations in the paging auctions.[33] The Commission's decision ignores the record before it and is contrary to the public interest. Once again, the *Second Report & Order* acknowledges the comments raising arguments contrary to the action taken by the Commission, but does not address the positions reflected in such comments. Rather than explain the rationale for rejecting contrary viewpoints, the *Second Report & Order* simply states the policy adopted by the Commission.

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31 To date, PCIA has conducted preliminary discussions with Rand McNally concerning the applicable royalty payments. Rand McNally has requested a one time payment from PCIA of $100,000.00 as the royalty fee to use MTAs as the basis for license service areas. This royalty fee will ultimately be collected from the providers of paging/messaging services in the 929/931 MHz frequencies, at least those that are members of PCIA.

32 *Second Report & Order*, ¶¶ 178-179.

33 *Id.*, ¶ 184.

In the paging services, bidding credits and installment payments are not needed to the same extent as may be appropriate for other services auctioned to date by the Commission. The reasons bidding credits and installment payments are not needed in paging include the following considerations:

- As the Commission has recognized, many licenses should be of interest only to the incumbents, which include small businesses already providing service to the public.
- In addition, the bidding credits and installment payment provisions adopted by the Commission are not necessary to promote involvement by small businesses in the paging auctions. Since the Commission will auction lower band channels on the basis of EA-defined service areas, small businesses will have a meaningful opportunity to participate in the auctions without any special assistance from the Commission.
- Also, the construction of paging systems is a less capital-intensive endeavor than is the case with many of the broadband wireless services recently auctioned by the Commission where bidding credits were employed.
- Finally, the inclusion of partitioning opportunities also will provide small businesses with the ability to participate in the geographic area licensing of paging spectrum.

At the same time, the use of bidding credits as well as installment payment plans has a number of detrimental effects for the auctions as well as the public interest. The provision of bidding credits to some competitors can distort the auction, with the potential for anticompetitive effects if the beneficiary of the bidding credits also competes against a bidder in the same auction. Also, experience to date suggests that bidding credits may artificially increase the amounts of the bids.

On balance, then, whatever limited value there is in providing bidding credits and installment payment plans to small businesses is outweighed by the resulting harm both to the auction process and to the recipients of existing paging services. Accordingly, the Commission should delete the provisions authorizing the grant of bidding credits and the use

of installment payment plans by selected categories of bidders in the paging geographic license auctions.

XI. THE FCC SHOULD ESTABLISH A SAFE HARBOR FROM THE ANTI-COLLUSION RULES FOR CARRIERS ENGAGED IN ACQUISITION NEGOTIATIONS OR INTER-CARRIER AGREEMENTS

The Commission declined in this docket "to amend the anti-collusion rules to create a safe harbor for discussions of business mergers or acquisitions, or intercarrier agreements, during periods in which the anti-collusion rules are in effect."[34] Despite the comments filed by PCIA and others in support of such relief, the Commission concluded that it lacked an adequate record to take action.[35] PCIA disagrees, and urges the Commission to revise its rules prior to the conduct of the paging auctions so that the necessary day-to-day discussions between paging carriers may continue to occur.

As PCIA stated in this docket and in comments filed in WT Docket No. 97-82, licensees in existing industries like paging may be simultaneously engaged in an auction and in conducting merger or other consolidation discussion that are not directly related to the ongoing auctions but that have indirect implications for the merger activity.[36] The auction rules should not hamper the marketplace at work in this fashion. Similarly, existing licensees often must undertake discussions to prevent unacceptable interference levels between adjacent systems or to implement coordinated market area service arrangements for the benefit of their customers. These discussions have clear value for customers, and should not be cut off by the fact that an

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[34] *Second Report & Order*, ¶ 156.

[35] *Id.*

[36] PCIA Reply Comments at 24-25; PCIA Part 1 Comments at 5-6.

auction is underway. PCIA thus urges the Commission to define a "safe harbor" for such discussions that would include certifications by the persons involved in such permissible discussions that they are not also discussing impermissible issues related to the ongoing auctions.

XII. THE FCC SHOULD CLARIFY THAT ALL FACILITIES CONSTRUCTED PURSUANT TO THE GRANT OF A GEOGRAPHIC AREA LICENSE MUST BE TERMINATED IF THE LICENSEE FAILS TO MEET APPLICABLE COVERAGE REQUIREMENTS

The Commission's statements concerning the effects of a geographic licensee's failure to meet the coverage requirements associated with its license result in some confusion as to the policy adopted by the Commission. Specifically, in the Executive Summary of the *Second Report & Order*, the Commission states that a licensee that fails to meet the applicable coverage requirements "may retain any sites that were authorized, constructed, and operating at the time the geographic area license was granted."[37] Elsewhere, the Commission states that it "will reinstate any licenses that were authorized, constructed, and operating at the time of termination of the geographic area license."[38] PCIA urges the Commission to make clear that authorizations for all facilities constructed pursuant to the grant of the geographic area license will terminate upon the geographic area licensee's failure to satisfy its coverage obligations.

Adopting this approach and clearly articulating it will help to discourage cherry-picking in geographic service areas. If the Commission were to allow a market area licensee to retain the facilities it did construct even though it did not comply with the requirements associated

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[37] *Second Report & Order*, ¶ 2.

[38] *Id.*, ¶ 64.

with a grant of the geographic license, speculators would be more encouraged to participate in the market, knowing that they could only partially comply with applicable obligations without placing their investment at risk. Imposing a "death penalty" that terminates facilities that only partially comply with the coverage obligation of a license will help to ensure that only legitimate entrants participate in the auctions.

XIII. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to reconsider significant aspects of the *Second Report & Order* and take the action consistent with the proposals contained in this petition for reconsideration.

Respectfully submitted,

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