

wish to obtain it. The FCC has not met its statutory obligation by merely pointing out the obvious: "that these channels are heavily used by incumbent systems" Second R&O at ¶ 40. The same is true for most Part 90 private radio channels; but, that did not deter the FCC in its "Refarming Docket" from adopting rules and procedures that would allow licensees some form of exclusive use rights. See Second Report & Order in PR Docket No. 92-235, FCC 97-61, ¶ 59. Shared frequency PCP licensees face essentially the same interference and capacity problems as do these other Part 90 licensees; they are entitled to the best possible interference and channel capacity protection that can be crafted given the existing characteristics of these channels. See Garrett v. FCC, 513 F.2d 1056, 1060 (D.C.Cir. 1975); Melody Music, Inc. v. FCC, 345 F.2d 730, 732-33 (D.C.Cir. 1965) (FCC is obligated to treat similar parties similarly).

VIII. The Procedures for Wide-Area Licensing of Incumbents Should be Clarified.

The Second R&O stated that incumbents will be permitted to retain their current licenses, or alternatively, to trade in their site-specific licenses "for a single system-wide license demarcated by the aggregate of the interference contours around each of the incumbent's contiguous sites operating on the same channel." Second R&O at ¶ 58. Metrocall agrees that incumbents should be afforded the flexibility of system-wide licensing; however, it requests clarification on some points of the new rules.

Most fundamentally, the Second R&O does not define "contiguous sites" for the purposes of determining an incumbent's "aggregate interference contours." Metrocall submits that any definition of these terms must be sufficiently broad to avoid creating "gaps" in existing systems. For example, there may be situations where the interference contours of an incumbent's transmitters do not overlap or even meet, but where no other party could place a co-channel

transmitter consistent with the separations criteria of 47 C.F.R. 22.537. Any definition of "contiguous sites" should take such situations into account, so that incumbents can fill in such gaps to provide seamless coverage to their subscribers.

Additionally, the Second R&O does not establish procedures for incumbents to trade in their site-specific licenses, nor does it indicate that those procedures will be announced by a future public notice. Metrocall respectfully requests that the FCC clarify this issue.

**IX. Permitting Power Increases by 929 MHz Licensees
will Serve the Public Interest, but the Procedures for such
Power Increases Should be Clarified.**

The Second R&O eliminates the Part 90 height-power limits on 929 MHz stations, and increases the maximum permitted ERP for 929 MHz stations to 3500 watts. See Second R&O at ¶ 78. Metrocall applauds this decision as an important step toward regulatory parity between 929 MHz licensees and 931 MHz licensees. Nonetheless, Metrocall requests that the procedures for 929 MHz licensees seeking to increase their power be clarified.

The Second R&O is silent as to whether 929 MHz licensees may automatically raise their current ERP to 3500 watts, or whether a modification application will be required. If the FCC intends the latter, it will presumably treat such applications as "permissive modifications" (since the filing of all other 929 MHz applications is frozen); however, the Second R&O gives no indication that that is the case. Nor does the Second R&O indicate when the FCC will accept and process such applications, whether such applications will require frequency coordination, whether power increases will be permitted at the "exterior" sites of a licensee's system, etc. Metrocall respectfully submits that a clear statement on these procedural issues is necessary to apprise applicants of the steps they should take.

X. MEAs are More Appropriate for Paging Licenses than MTAs

Metrocall and other commenters previously opposed the used of Rand McNally's MTAs to define the geographic areas for paging licenses. See Metrocall Comments; Ameritech Comments. Metrocall still disagrees with the use of MTAs, and suggests that "Major Economic Areas," as defined in the FCC's recent order adopting rules for the Wireless Communications Service⁷, would be more appropriate.

Specifically, MEAs have the same advantages that the FCC attributes to MTAs; *i.e.*, they cover fairly wide areas that are related by economic and trade concerns. See WCS Order at ¶¶ 54-57. Nonetheless, the MEAs appear to be slightly less extensive (and unwieldy) than MTAs. Moreover, because MEAs, as derivatives of the Department of Commerce's EAs, are not subject to a privately-held copyright, prospective bidders will not be required to spend funds on copyright licensing that could otherwise be spent toward obtaining, and providing service under, paging authorizations.⁸

XI. The FCC Should Simplify its Stopping Rule.

Metrocall respectfully submits that the "hybrid" stopping rule adopted in the Second R&O, while preferable to a pure simultaneous stopping rule, is still unnecessarily complex. Metrocall therefore renews its comments in favor of a market-by-market stopping approach, under which bidding on a license would close if, after a specified number of additional rounds

⁷ See Report and Order in GN Docket No. 96-228, FCC 97-50 (released February 19, 1997) (the "WCS Order").

⁸ Indeed, mere discussion of the FCC's "MTA" proposal implicates questions concerning fair use exemptions to the copyright laws. The proposed use of this privately-owned licensing scheme has added an unnecessary layer of complexity to an already complicated auction scheme.

(e.g., 5 or 10) no new valid bids for that license, or proactive waivers, are received.

If the FCC wishes to maintain its hybrid approach, Metrocall suggests that it begin the auction in "Phase II", so that the staff need not wait a month (or 100 rounds) to exercise the discretion to stop bidding on a market-by-market basis. Additionally, Metrocall suggests that the FCC should permit the high bidder on a license, after a specified number of rounds in which no new bids for the license are received, to request that bidding on that license be closed (this could be accomplished through e-mail, or telephonically). Upon receipt of such a request, the WTB staff would announce the receipt of the request, and specify that bidding on the license would close after a certain additional period of time (e.g.; 10 rounds, two bidding days, etc.). Allowing bidders to request closure of a market will assist the FCC's staff in monitoring the progress of what promises to be a very complex auction.

CONCLUSION

For all the foregoing reasons, Metrocall respectfully requests that the FCC reconsider and clarify its Second R&O in this rule making proceeding consistent with the foregoing recommendations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Regina Wingfield, a legal secretary in the law firm of Joyce & Jacobs, Attys. at Law, LLP, do hereby certify that on this 11th day of April, 1997, copies of the foregoing Petition for Clarification or Partial Reconsideration, and concurrently filed Motion for Stay, were mailed, postage prepaid, to the following:

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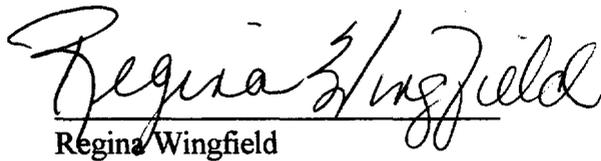
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