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Federal Communications Commission
Office of Secretary

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

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

THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION OPPOSITION TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA"), by its attorneys, respectfully addresses the petitions for reconsideration of the Second Report and Order in the above-captioned docket.[1]

I. INTRODUCTION AND SUMMARY

PCIA has sought reconsideration of significant aspects of the *Second Report and Order* on the basis that the market area licensing plan and competitive bidding structure adopted by the Commission in this docket will be highly disruptive to the messaging services relied upon by the American public.[2] In this filing, PCIA addresses a limited number of the issues raised in the

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[1] *Revision of Part 22 and Part 90 of the Commission's Rules To Facilitate Future Development of Paging Systems*, FCC 97-59 (Feb. 24, 1997) (Second Report and Order and Further Notice of Proposed Rulemaking) ("*Second Report and Order*"); *Errata*, DA 97-703 (Apr. 9, 1997). The petitions for reconsideration were listed in the Federal Register on April 24, 1997, 62 Fed. Reg. 20011. PCIA filed its own petition for reconsideration of the *Second Report and Order* on April 11, 1997.

[2] PCIA Petition for Reconsideration, WT Dkt. 96-18 (filed Apr. 11, 1997).

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petitions for reconsideration. First, the Commission should refuse to grant Basic Exchange Telecommunications Radio Service ("BETRS") providers the special regulatory status that they seek. Second, the Commission should adopt Economic Area-like service areas for the U.S. territories. Finally, the Commission should take whatever steps it can to maximize the flow of information in the auction process, including disclosure of information concerning existing incumbent coverage of the service areas.

II. BETRS PROVIDERS SHOULD NOT BE GRANTED THE PREFERENTIAL REGULATORY STATUS THEY SEEK

Certain BETRS licensees seek reconsideration of the portions of the *Second Report and Order* that include BETRS within the "geographic area licensing framework" that the Commission adopted for paging.[3] In particular, BETRS providers generally demand that the FCC should: (1) exempt the two-way VHF and UHF frequencies from the geographic market area license auctions; (2) continue to license BETRS stations in the rural areas on the two-way VHF and UHF bands on a co-primary basis with paging; or (3) require mandatory partitioning of rural areas to prospective BETRS licensees, at no cost to such entities, from licensed market areas.[4]

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[3] *Second Report and Order*, ¶ 34.

[4] Century Telephone Enterprises Petition for Reconsideration at 1-2, 4; Big Bend Telephone Company, Inc. Petition for Reconsideration at 1-2, 4; Mid-Rivers Telephone Cooperative, Inc. Petition for Reconsideration at 1-2, 4; Lincoln County Telephone System, Inc. Petition for Reconsideration at 1-2, 4; Nucla-Naturita Telephone Co. Petition for Reconsideration at 1-2, 4. *See also* National Telephone Cooperative Association Petition for Reconsideration at 2-7 (arguing that the Commission's BETRS policy is arbitrary and capricious and against the public interest).

PCIA believes that these petitioners have failed to provide a sufficient rationale for the changes they propose to the Commission's conclusion that it is not necessary to "exempt BETRS from geographic area licensing."[5] Specifically, in the *Second Report and Order*, the Commission offered the following legal and policy reasons why BETRS operators are not entitled to a special regulatory status:[6]

- First, under the auction authority granted to the Commission by Section 309(j), there is no principled distinction between using spectrum for BETRS and using spectrum for messaging services, as both are "commercial communications services."

- Second, the decision to require BETRS providers to purchase any new spectrum at auction will neither raise the price of BETRS nor reduce the quality of service to existing customers, as "[a]ll existing BETRS systems will remain in place and will be fully protected from interference by geographic area licensees."

- Third, BETRS has only expanded into a limited number of new areas in the past few years.

- Fourth, when and if BETRS providers choose to purchase new spectrum, the channels they require will be licensed using Economic Areas ("EAs") — which are smaller than Major Trading Areas ("MTAs") — and therefore more closely tailored to geographic areas that BETRS providers serve.

- Fifth, BETRS providers requiring additional spectrum can enter into partitioning arrangements with market area paging licensees.

- Finally, BETRS providers will be permitted to operate on a secondary basis to paging licensees, if necessary to serve BETRS customers.

Despite their claims of potential harm, the BETRS providers have not been able to document that they will in fact suffer undue hardship in the absence of the requested preferential status. As the Commission has recognized, there are several mechanisms available to BETRS

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5 *Second Report and Order*, ¶ 34.

6 *Id.*, ¶¶ 34-35.

licensees for ensuring that they remain able to provide service to the public. Existing operations will be fully protected. While recent history suggests only a limited need for future expansion in the use of BETRS frequencies, there are a number of options available for adding new operations to the extent necessary and to the extent that the use of BETRS frequencies is economically efficient and rational.

The BETRS petitioning parties raise in their petitions a proposal also suggested in response to the Further Notice of Proposed Rulemaking in this docket – the mandatory partitioning of market area service areas to BETRS providers at no cost. As PCIA explained in its reply comments concerning the *Further Notice,* this mandatory partitioning proposal is not consistent with the public interest nor is it necessary to protect BETRS operations.[7] Such subsidization of rural telephony by paging providers and their customers cannot be squared with Commission policy or Congressional mandate.[8] If additional BETRS spectrum is indeed warranted, then interested parties should seek a specific allocation.[9]

The record in this proceeding thus does not support the Commission reversing its BETRS rules and instead granting the special spectrum "carve out" sought by BETRS providers.[10]

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[7] Reply Comments of PCIA, WT Dkt. No. 96-18, at 7-8 (filed May 1, 1997).

[8] *See id.* at 7.

[9] *See id.*

[10] ProNet Inc.'s request that the Commission "clarify that Rule 22.723 confers no right on [Rural Radio Service] licensees to continue, for six months after receiving notice from the co-channel primary licensee, operations that cause *actual* interference to that licensee" would promote consistency in treatment of secondary operations vis-à-vis the market area licensee. *See* ProNet Inc. Petition for Reconsideration and Clarification at 20-21 (emphasis added)

III. THE FCC SHOULD ADOPT ECONOMIC AREA-BASED LICENSE AREAS FOR THE U.S. TERRITORIES

In its Petition for Reconsideration, Puerto Rico Telephone Company ("PRTC") noted that the Department of Commerce has not yet defined Economic Areas for the U.S. territories. To cure this omission, PRTC requested that the Commission adopt three Economic Area-like licensing areas for Guam and the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and American Samoa.[11]

PCIA joins in this request. Implementation of the PRTC proposal will avoid unnecessary uncertainties at such time as the Commission proceeds with the auctions for the United States, including the U.S. territories. Therefore, the Commission should follow its recent precedent in several other services, and designate EA-like areas for market area paging licensees in the aforementioned U.S. territories.[12]

IV. CONSISTENT WITH THE GOAL OF MAXIMIZING AUCTION-RELATED INFORMATION, THE COMMISSION SHOULD REVEAL INCUMBENT COVERAGE INFORMATION PRIOR TO THE AUCTIONS

In its petition for reconsideration, PCIA emphasized the importance and public interest value of maximizing information flow during the auctions. Consistent with this perspective, Paging Network, Inc. ("PageNet") has requested that the Commission provide information regarding the population coverage of incumbent providers within each MTA prior to auction. As

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[11] PRTC Petition for Reconsideration and Clarification at 1-2.

[12] *See Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, FCC 97-50, Appendix C (Feb. 19, 1997); *Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Bond by the Private Land Mobile Radio Service,* FCC 97-57, ¶ 81 (Mar. 12, 1997); 47 C.F.R. § 26.102(b) (General Wireless Communications Services).

PageNet demonstrated, such Commission action would allow potential bidders more effectively to evaluate the viability of winning a market area license at auction and successfully building out a competitive system, and deter fraudulent investment schemes by revealing the true value of the spectrum offered for sale.[13] The availability of such information will result in fairer auctions and bidding that more accurately reflects the value of the market area authorization to each individual bidder.

[13] PageNet Petition for Reconsideration and Clarification at 16-17.

V. CONCLUSION

The Commission should act to ensure that its market area paging rules do not unfairly favor BETRS providers, include EA-like service areas for the U.S. territories, and provide information to the public on existing service coverage in the geographic areas to be made available for licensing.

Respectfully submitted,

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May 9, 1997

CERTIFICATE OF SERVICE

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