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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS	)	GEN Docket No. 90-314 ET Docket No. 92-100
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Narrowband PCS	)	PP Docket No. 93-253

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. By this *Report and Order and Further Notice of Proposed Rulemaking* ("*R&O/Further Notice*"), we establish competitive bidding rules for awarding the remaining authorizations for narrowband Personal Communications Services (PCS). Furthermore, we decline to provide special relief for those affected by the Canadian Interim Sharing Arrangement.[1] The *Further Notice* seeks comment on a number of proposals relating to licensing and auctions issues. Specifically, we propose modifications to our existing spectrum allocation plan for narrowband PCS.[2] We also address eligibility and service area issues for the narrowband response channels, and tentatively conclude that the reserve narrowband PCS spectrum should be channelized and licensed.[3] We also propose changes to our build-out requirements, as well as modifications to certain provisions of our narrowband PCS competitive bidding rules, in light of the Supreme Court holding in *Adarand Constructors, Inc. v. Peña.*[4]

II. EXECUTIVE SUMMARY

2. As the expert agency charged with management of the radio frequency spectrum, we continually seek to improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, encourage competition and provide service to the largest feasible number of users.[5] We believe the modifications and proposals we make below help further these goals. Accordingly, we modify or propose to modify our narrowband PCS rules as follows in this *R&O/Further Notice*.

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[1] *See Public Notice*, "Canadian Interim Sharing Arrangement for Narrowband PCS," DA 94-1183 (rel. Oct. 21, 1994) (*Canadian Interim Sharing Arrangement Public Notice*).

[2] Channels 18-26, in the 901 MHz band and the 930 - 941 MHz bands are the remaining channels currently allocated to be licensed as narrowband PCS. *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Third Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2941, 2945, ¶ 10 (1994) (*Competitive Bidding Third Report and Order*).

[3] *Infra* at ¶¶ 29-32. The eight 12.5 kHz unpaired response channels are currently allocated in the 901-902 MHz bands. Eligibility for these licenses is restricted to incumbent paging licensees authorized under Part 22 or Part 90 of our rules as of June 24, 1993. *See* 47 C.F.R. § 24.129(b).

[4] 115 S. Ct. 2091 (1995) (*Adarand*) (overruling aspects of *Metro Broadcasting v. FCC*, 497 U.S. 547 (1990), and requiring a strict scrutiny standard of review for Congressionally-mandated, race-conscious measures).

[5] 47 U.S.C. § 332(a). *See* 47 U.S.C. § 257 (1996). *See also* Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, *Notice of Inquiry*, GN Docket No. 96-113, 11 FCC Rcd 6280 (1996) (*Market Entry Notice of Inquiry*).

3. In the *Report and Order*, we adopt the following modifications to narrowband PCS service and auction rules:

- We clarify that Section 24.132 of our rules applies to the regional service areas as well as Major Trading Area (MTA)[6] service areas. We amend paragraphs (d) and (e) of Section 24.132 to reflect that these rules apply to regional areas.

- We decline to provide relief to parties affected by the Canadian Interim Sharing Arrangement.[7] We believe that parties were fully aware of the agreement at the time the regional narrowband PCS auction commenced and, therefore, relief is not necessary.

- We modify the definition of members of minority groups to conform with the definition used in other contexts.

- We decline to establish an entrepreneurs' block for narrowband PCS similar to our provisions in broadband PCS.

4. In the *Further Notice*, we propose changes as set forth below:

- We propose to reallocate all of the Basic Trading Area (BTA)[8] channel blocks and some of the MTA channel blocks to create larger service areas. We believe that this reallocation will create additional flexibility for narrowband PCS service providers. In addition, reallocation will serve the public interest and promote competition in the wireless services market.

- We propose to eliminate the restriction on paging response channels that limits eligibility for these channels to incumbent paging licensees. We believe elimination of the eligibility restriction will increase the likelihood of awarding the licenses to those

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[6] Rand McNally is the copyright owner of the MTA/BTA listings, which list the BTAs contained in each MTA and the counties within each BTA, as embodied in Rand McNally's Trading Areas System MTA/BTA Diskette, and geographically represented in the Rand McNally 1992 Commercial Atlas and Marketing Guide (the "MTA map"), 123rd Edition at pp. 38-39. The conditional use of Rand McNally's copyrighted material by interested persons is authorized under a blanket license agreement dated February 10, 1994, which covers certain services, including PCS. Rand McNally organizes the 50 states and the District of Columbia in 47 MTAs and 487 BTAs. For PCS licensing purposes, we adopted service areas that separated Alaska from the Seattle MTA and added five insular areas: Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands and American Samoa. In 1994, the number of BTAs was changed to 493 because Puerto Rico was reconfigured into 2 BTA-like service areas. *See* Amendment of the Commission's Rules to Establish New Narrowband PCS, *Second Memorandum Opinion and Order*, GEN Docket 90-314, 9 FCC Rcd 4519, 4523, ¶ 18 (1994) (*PCS Second MO&O*).

[7] *See Canadian Interim Sharing Arrangement Public Notice, supra*, n.1.

[8] *See supra*, n.6.

who value them most highly.

- We propose to channelize and license the remaining one MHz of narrowband PCS spectrum. We believe that licensing this spectrum will facilitate competition by opening the market to new licensees and allowing incumbents to expand their systems.

- We propose to modify our existing construction and minimum coverage requirements for both previously-licensed and as-yet unlicensed narrowband PCS spectrum by allowing licensees to meet a "substantial service" benchmark. We believe that allowing such an option will increase buildout flexibility for narrowband PCS licensees.

- We propose a partitioning scheme similar to that recently adopted for broadband PCS. This scheme will facilitate the efficient use of narrowband PCS spectrum, increase competition, and expedite the provision of narrowband service to areas that may not otherwise receive narrowband PCS or other wireless services in the near term. We also ask whether disaggregation would be appropriate for narrowband PCS.

- We propose to simplify ownership disclosure requirements for narrowband PCS auction applicants.

Additionally, in light of the strict scrutiny standard of review now required under *Adarand Constructors, Inc. v. Peña*, we propose the following modifications to the narrowband PCS auction rules:

- We propose to limit eligibility for bidding credits and installment payments to small businesses.

- We propose to make bidding credits available on a tiered basis for small businesses. Small businesses with average gross revenues that are not more than $15 million for the preceding three years would receive a 15 percent credit, while small businesses with average gross revenues that are not more than $40 million for the preceding three years would receive a 10 percent credit.

5. The Commission makes no representations or warranties about the use of this spectrum. Applicants should be aware that an FCC auction represents an opportunity to become a FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of this service or any particular technologies or products, nor does an FCC licensee constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

III. BACKGROUND

6. In the *PCS First Report and Order*, the Commission provided for the operation of new, narrowband PCS in the 900 MHz band.[9] We broadly defined PCS as mobile and fixed communications offerings that serve individuals and businesses, and can be integrated with a variety of competing networks.[10] In the *PCS First Report and Order*, we therefore declined to adopt a restrictive definition of narrowband PCS, such as limiting this category of PCS to advanced messaging and paging services, to promote other potential narrowband services.[11] We also adopted a spectrum allocation and channelization plan, licensing rules, and technical standards for narrowband PCS.[12] Consistent with Section 309(j) of the Communications Act of 1934, as amended, we have determined that PCS is subject to competitive bidding in the case of mutually exclusive applications.[13]

7. In the *Competitive Bidding Second Report and Order,* we adopted general competitive bidding rules for auctionable services.[14] In the *Competitive Bidding Third Report and Order,* we established competitive bidding rules specifically for narrowband PCS.[15] On reconsideration of that *Order*, we revised certain auction processing rules, expanded special provisions for designated entities in future narrowband auctions, and sought comment on additional designated entity provisions for the upcoming narrowband PCS auction.[16] Of the three MHz of 900 MHz spectrum allocated for narrowband PCS, two one-MHz blocks are currently divided into specific channels for immediate licensing.[17] The remaining one MHz of

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[9] Amendment of the Commission's Rules to Establish New Personal Communications Services, *First Report and Order,* GEN Docket No. 90-314, 8 FCC Rcd 7162, 7162, ¶ 1 (1993) (*PCS First Report and Order*), *on recon., Memorandum Opinion and Order*, GEN Docket No. 90-314, 9 FCC Rcd 1309 (1993) (*PCS MO&O*).

[10] *Id.* at 7164, ¶ 13; *See also* 47 C.F.R. § 24.5.

[11] *Id.* at 7164, ¶ 13.

[12] *Id.* at 7164-71, ¶¶ 15-37, 39-54.

[13] Implementation of Section 309(j) - Competitive Bidding, *Second Report and Order*, PP Docket 93-253, 9 FCC Rcd 2348, 2358, ¶ 54 (1994) (*Competitive Bidding Second Report and Order*).

[14] *Id.* at 2358, ¶¶ 54-58.

[15] *Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2941, ¶¶ 1-3.

[16] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, and Amendment of the Commission's Rules to Establish New Narrowband PCS, GEN Docket 90-314, *Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 10 FCC Rcd 175, 177, ¶ 3 (1994) (*Competitive Bidding Third MO&O/Further Notice*). The term "designated entity" refers to small businesses, rural telephone companies, and businesses owned by minorities and/or women, collectively.

[17] *See* 47 C.F.R. § 24.129; *see also Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2944, ¶ 9.

narrowband PCS spectrum currently is reserved to accommodate future development of narrowband PCS.[18]

8. The Commission thus far has conducted two auctions for narrowband PCS licenses. As a result of these two auctions, ten nationwide narrowband PCS licenses and six regional narrowband PCS licenses in five different regions (totalling 30 regional licenses) have been granted.[19] Auctions have not yet been conducted for the narrowband PCS spectrum currently designated for licensing in 51 Major Trading Areas (MTAs)[20] and 493 Basic Trading Areas (BTAs).[21] In addition, the 204 MTA licenses and 1,968 BTA licenses designated as unpaired response channels have not been auctioned.[22]

9. In the *Competitive Bidding Third MO&O/Further Notice*, the Commission proposed to redesignate channels 25 and 26, which currently are licensed on a BTA basis, as regional licenses with the same service areas described in Section 24.102 of the Commission's rules.[23] The proposed redesignation of channels 25 and 26 was an outgrowth of our concern that designated entities interested in narrowband PCS licenses may desire service areas larger than MTAs and BTAs.[24] In this connection, we recognized that over half of the bidders who participated in the nationwide auction would have qualified for an entrepreneurs' block license if it had been available.[25] Thus, we sought comment on whether we should redesignate some or all of the channels licensed on a BTA basis, including the response channels licensed on a BTA basis, to be licensed on an MTA basis, or take other means to achieve larger license areas.[26] We also permitted MTA and BTA service areas to be aggregated up to and including nationwide coverage.[27] In response to the *Competitive Bidding Third MO&O/Further Notice*,

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[18] *Id.*

[19] *See Visitors Auction Guide*, Broadband Personal Communications Services, December 5, 1994 at Tab VIII ("Regional Narrowband PCS Auction Summary, October 26, 1994") (*Visitors Auction Guide*). The regional narrowband auction began on October 26, 1994 and closed on November 8, 1994 after 105 rounds. The nationwide narrowband auction commenced on July 25, 1994 and closed after 47 rounds of bidding over a five day period.

[20] *See supra*, n.6.

[21] *Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2952, ¶ 28. *See* 47 C.F.R. § 24.102.

[22] *Id.* at 2952, ¶ 29. *See also* 47 C.F.R. § 24.129.

[23] *Competitive Bidding Third MO&O/Further Notice*, 10 FCC Rcd at 209, ¶ 77; *see also* 47 C.F.R. § 24.102.

[24] *Competitive Bidding Third MO&O/Further Notice*, 10 FCC Rcd at 228, ¶ 122.

[25] *Id.*

[26] *Id.*

[27] *Id.*

the Commission received 14 comments and 4 reply comments.[28] In addition, in response to a Public Notice seeking additional comments on the Commission's narrowband PCS entrepreneurs' block proposals,[29] we received eight comments and three reply comments.

IV. REPORT AND ORDER

A. Service Rules

1. Power and Antenna Height Limits

10. Background. In the *PCS MO&O* we created regional service areas for narrowband PCS.[30] Section 24.132 of our rules, which govern power and antenna height limits, currently applies to MTA and BTA service areas and does not mention regional service areas.[31]

11. Discussion. We clarify that Section 24.132 of our rules applies to the regional service areas as well as MTA service areas. We amend paragraphs (d) and (e) of Section 24.132 to reflect that these rules apply to regional areas. Regional base stations, in addition to MTA base stations, must operate at reduced heights and power limits near service area borders in order to protect adjacent licensees from interference. In addition, we clarify that a narrowband PCS licensee holding a license for the same channel in an adjacent region or MTA is not required to reduce height and power to protect itself.

2. Canadian Interim Sharing Arrangement

12. Background. On September 22, 1994, the United States and Canada entered into an interim sharing arrangement with respect to use of narrowband PCS channels in border areas.[32] Under the Canadian Interim Sharing Arrangement ("Sharing Arrangement"), MTA and BTA licensees on certain narrowband PCS channels are not permitted to locate base stations within 75 miles of the U.S./Canadian border. These licensees are further prohibited from operating mobile stations in a manner that causes interference to the primary Canadian

[28] Appendix C provides the full and abbreviated names of the parties filing comments and reply comments.

[29] *See Public Notice*, "Additional Comment Sought on the Commission's Narrowband PCS Entrepreneur's Block Proposals," DA 94-1560 (rel. Dec. 21, 1994) (*Entrepreneur's Block Public Notice*).

[30] *PCS MO&O*, 9 FCC Rcd at 4522, ¶ 14.

[31] *See* 47 C.F.R. § 24.132.

[32] *See Canadian Interim Sharing Arrangement Public Notice*, *supra*, n.1

channels.[33] Because the Sharing Arrangement was not yet finalized before the regional narrowband PCS auction bidder package was released on August 22, 1994, the Sharing Arrangement was not included in the bidder package. However, by Public Notice, the Commission announced the Sharing Arrangement five days prior to the commencement of the regional narrowband PCS auction on October 26, 1994.[34] Additionally, a Public Notice released December 21, 1994 invited comment on the effect of the Sharing Agreement on narrowband PCS licensing.[35]

13. Comments. In response to the December 21 Public Notice, PCSD asserts that the Commission should give relief to affected parties because the Sharing Arrangement adversely affects the value of the affected licenses.[36] No other parties commented on this issue.

14. Discussion. We conclude that special relief for parties affected by the Sharing Arrangement is not necessary. Over the next year the Commission will negotiate vigorously with Canada for full coordination and accommodation of narrowband PCS license winners. Moreover, parties were fully aware of the Sharing Arrangement at the time of the regional auction, given that a Public Notice concerning it was released before the regional narrowband auction commenced.[37] We believe that the operating restrictions resulting from the Sharing Arrangement are matters that should have been considered by potential bidders in their valuation of the licenses for competitive bidding purposes.

B. Auction Rules

1. Establishment of Entrepreneurs' Block

15. Background. In authorizing the Commission to use competitive bidding under Section 309(j) of the Act, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in spectrum-based services."[38] Congress also mandated that we utilize competitive bidding to promote economic opportunity and competition and ensure that the new and innovative technologies are readily accessible to the

[33] *Id.*

[34] *Id.*

[35] *See Entrepreneur's Block Public Notice, supra*, n.29.

[36] PCSD Comments at 7-9.

[37] The regional narrowband auction commenced October 26, 1994, *supra*, n.19. *See also Canadian Interim Sharing Arrangement Public Notice, supra*, n.1.

[38] 47 U.S.C. § 309(j)(4)(D).

American people.[39] When deciding which provisions to adopt to encourage designated entity participation in particular services, we have closely examined the specific characteristics of the service and have adopted a mix of provisions designed to balance the objectives of Congress set forth in Section 309(j). Thus, we have adopted measures designed to enhance the ability of designated entities to acquire licenses and to increase competition in the provision of wireless services generally. In narrowband PCS, for instance, we have provided installment payments for small businesses and bidding credits for minority-owned and women-owned businesses. In broadband PCS, we designated certain spectrum blocks for entrepreneurs' block licenses and provided bidding credits and installment plans for certain designated entities. In the 900 MHz Specialized Mobile Radio (SMR) service, we provided bidding credits, installment payments, and reduced down payments for small businesses. Most recently, we adopted provision for bidding credits and installment payments for the paging services.[40]

16. In the *Competitive Bidding Third MO&O/Further Notice*, the Commission proposed service-specific modifications to our competitive bidding rules for the award of narrowband PCS licenses with MTA and BTA service areas. In an effort to facilitate designated entity participation in providing narrowband PCS, we proposed to reserve both BTA frequency blocks and up to four MTA frequency blocks for bidding exclusively by entities with annual gross revenues of no more than $125 million in the preceding two years and total assets of no more than $500 million ("entrepreneurs' blocks").[41] The entrepreneurs' block proposal would have added channels 21 and 25 to the channels allocated for MTA and BTA licenses for which designated entity provisions applied.[42] The Commission later sought additional comment on proposals for establishing narrowband PCS entrepreneurs' blocks in light of: (1) the results of the regional narrowband PCS auction; and (2) the Commission's reconsideration of its broadband PCS entrepreneurs' block rules in the *Competitive Bidding Fifth Memorandum Opinion and Order*.[43]

17. Comments. AirTouch and PCIA oppose the establishment of an entrepreneurs' block for narrowband PCS. AirTouch argues that the outcome of the nationwide narrowband

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[39] 47 U.S.C. § 309(j)(4)(C).

[40] *See* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems/Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order* and *Further Notice of Proposed Rulemaking*, WT Docket No. 96-18, PP Docket No. 93-253, FCC 97-59 (rel. Feb. 24, 1997), ¶¶ 165-187 (*Paging Second Report and Order*).

[41] *Competitive Bidding Third MO&O/Further Notice*, 10 FCC Rcd at 208, ¶ 74.

[42] *See Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2970-71, ¶ 72. A 25 percent bidding credit was already available to businesses owned by women and minorities bidding on, *inter alia*, all MTA licenses on channels 19, 22, and 24 and all BTA licenses on channel 26. *See* 47 C.F.R. § 24.129.

[43] *See Entrepreneur's Block Public Notice, supra*, n.29.

PCS auction does not warrant an entrepreneurs' block in future MTA/BTA auctions and that the Commission's proposal (which would set aside 65% of the total narrowband spectrum) is excessive.[44] PageNet argues that any redesignation of paging response channels to entrepreneurs' blocks would be unfair to existing paging licensees.[45] AirTouch believes designated entities can win licenses without an entrepreneurs' block because (1) of their success in regional narrowband auctions; (2) smaller-sized service areas (MTAs/BTAs) will be less expensive and thereby less capital intensive to acquire; and (3) the success of a designated entity (Insta-Check Systems) in the regional auctions shows that such companies can garner licenses with an installment payment option as the only special provision for designated entities.[46] PCIA agrees with the comments of AirTouch.[47]

18. In contrast, SBA, SJPM, Essence, and PRTC all support establishment of entrepreneurs' blocks for narrowband PCS.[48] AIDE asserts that, given the lack of designated entity success in the nationwide PCS auction, the Commission should designate all the existing frequency blocks eligible for bidding credits along with one additional MTA and one additional BTA, as part of the entrepreneurs' block.[49] MMTC endorses an entrepreneurs' block and, in the alternative, recommends adopting a "first option" procedure which would give designated entities an opportunity to bid on certain licenses first and open bidding to others only if a minimum bid is not met.[50] American Paging supports adoption of provisions to increase opportunities for women and minorities.[51] PageMart believes that the Commission should adopt more limited entrepreneurs' blocks so that medium-sized companies will have a chance to enter the market.[52] Pagenet opposes any redesignation of paging response channels to entrepreneurs' blocks on the basis that it would be unfair to existing paging licensees.[53] BMJ&D opposes AIDE's request to reserve even more blocks for entrepreneurs. If adopted, BMJ&D asserts that the entrepreneurs' block should include at most one BTA.

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[44] AirTouch Comments at 6-7.

[45] PageNet Comments at 3-4.

[46] AirTouch Comments at 5-9.

[47] PCIA Comments at 2.

[48] SBA Comments at 2-3; SJPM Comments at 1; Essence Comments, at 5 and 12; PRTC Comments at 2.

[49] AIDE Comments at 3.

[50] MMTC Reply Comments at 3-4.

[51] American Paging Comments at 1.

[52] PageMart Comments at 4.

[53] Pagenet Comments at 3-4.

19. Discussion. Upon review of the record before us, we will not establish an entrepreneurs' block for narrowband PCS similar to our provisions in broadband PCS. We agree with AirTouch's view that the results of the narrowband regional auction demonstrate that bidding credits and installment payments alone can facilitate participation by designated entities in the competitive bidding process, as well as securing licenses for the provision of narrowband PCS. Additionally, we have the experience of other auctions, such as 900 MHz SMR, where we did not have an entrepreneurs' block but, nonetheless, had many successful designated entity applicants.[54]

20. Also, we consider narrowband PCS to be less capital intensive than broadband PCS, thereby making it more likely that small businesses, for example, can acquire the financing to win these licenses, particularly for MTAs. Thus, we conclude there is no need to insulate designated entities from other bidders and that bidding credits coupled with installment payments should satisfy our obligations under Section 309(j) of the Communications Act as they have in so many other auctions. We also point out that our partitioning proposal could provide for designated entities to acquire narrowband PCS licenses post-auction. Moreover, narrowband PCS licensees are free to transfer and assign licenses immediately (unlike broadband PCS), providing further flexibility to acquire licenses post-auction.[55]

2. Definition of Minority Groups

21. Background. As discussed *infra* at ¶¶ 61-64, we propose to modify our designated entity rules to provide race- and gender-neutral provisions and establish eligibility criteria based on size. However, even if these modifications are adopted in the future, we will continue to request bidder information on the FCC Form 175 as to minority- and/or women-owned status, in addition to small business status, in order to monitor whether we have accomplished substantial participation by minorities and women through the broad provisions available to small businesses. Currently, the narrowband PCS rules define "members of minority groups" as "individuals of African-American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction."[56] In response to numerous inquiries, we revised this definition in our broadband PCS rules to conform with the definition used in other contexts.[57] Thus, Section 24.720(i) of our rules for broadband PCS now defines

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[54] *See Press Release*, "Wireless Telecom Bureau Releases Progress Report" (rel. March 5, 1997) (*Wireless Bureau Progress Report*).

[55] *See* 47 C.F.R. § 24.839(d).

[56] 47 C.F.R. § 24.320.

[57] *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253, 10 FCC Rcd 403, 432, ¶ 52 (1994) (*Competitive Bidding Fifth Memorandum Opinion and Order*) (citing *Broadcast Equal Employment Opportunity Rules and FCC Form 395*, 70

members of minority groups to include "Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders."[58]

22. Discussion. In the *Competitive Bidding Fifth Memorandum Opinion and Order*, we noted that we would make the same definitional correction made in the broadband PCS context to the definition of minority groups used in the narrowband PCS auction rules.[59] We also recently amended our general competitive bidding definition of minority, Section 1.2110(b)(2), to adopt this definition of minority.[60] Thus, in an effort to maintain consistency throughout our auction rules for various services, we revise the definition of "members of minority groups" in our narrowband PCS auction rules to include "Blacks, Hispanics, American Indians, Alaskan Native, Asians, and Pacific Islanders."

V. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Service Rules

1. Service Area Reallocation

23. Background. We believe that a flexible framework for narrowband PCS channelization will foster our goals of universality, speed of deployment, diversity of services, and competitive delivery.[61] In the *PCS First Report and Order*, we found that a mix of paired, unpaired, and varying bandwidths would provide the most flexible solution for meeting the stated needs of narrowband PCS providers.[62] We determined that while there appears to be interest in providing narrowband PCS services across a wide range of local, regional, and nationwide licensed service areas, the bulk of demand is for large regional or nationwide licensed service areas.[63]

FCC 2d 1466, 1473 (1979); 47 C.F.R. § 1.1621(b); 47 U.S.C. § 309(i)(3)(c)(ii); Race and Ethnic Standards for Federal Statistics and Administration Reporting, OMB Statistical Policy Directive No. 15 (1977)).

[58] 47 C.F.R. § 24.720(i).

[59] *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 432, ¶ 52, n.123.

[60] *See* Amendment of Part 1 of the Commission's Rules - Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 97-82, FCC 97-60 at ¶ 15 (rel. Feb. 28, 1997) (*Part One NPRM*). In this proceeding, the Commission seeks comment on the establishment of uniform rules for all auctionable services.

[61] *PCS First Report and Order*, 8 FCC Rcd at 7165, ¶ 19.

[62] *Id.*

[63] *Id.* at 7166, ¶ 26.

24. Thus, in the *PCS First Report and Order*, we set aside the majority of narrowband PCS spectrum for nationwide and MTA-based licensing.[64] In addition, we recognized that a variety of narrowband PCS services could be offered on a local level.[65] As a result, our initial channelization plan for narrowband PCS consisted of 26 channels allocated as follows: 11 channels for nationwide use, 13 channels for use on an MTA basis, and two channels for use on a BTA basis.[66] We also set aside eight unpaired channels with BTA service areas for use by existing 900 MHz paging licensees as acknowledgement or response channels.[67]

25. In the *PCS MO&O*, we modified our initial channelization plan in two respects. First, we determined that while regional service areas based on MTAs contain sufficient population and geographic area to support economically viable PCS services, there was a continued need for an additional category of licenses with a service area smaller than a nationwide area, but larger than an individual MTA.[68] Therefore, we designated six paired channels for licensing in five large regions to better reflect the technologies and business plans of the licensees desiring to implement large regional narrowband PCS systems.[69] Second, we determined that licensing some of the eight unpaired channels for use by existing paging licenses on an MTA basis would make it easier for operators of local and regional paging systems to upgrade and coordinate their operations.[70] Thus, four of the paging response channels are currently licensed using MTA service areas and four using BTA service areas.[71]

26. In the *Competitive Bidding Third MO&O/Further Notice*, the Commission proposed to redesignate channels 25 and 26, which currently are licensed on a BTA basis, as regional licenses with the same service areas described in Section 24.102 of the Commission's

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[64] *Id.*

[65] *Id.* at 7167, ¶ 27.

[66] *Id*; *see also PCS MO&O*, 9 FCC Rcd at 1310, ¶ 7. *See* Appendix F for charts depicting narrowband channelization plans.

[67] *PCS First Report and Order*, 8 FCC Rcd at 7167, ¶ 26.

[68] *PCS MO&O*, 9 FCC Rcd at 1311, ¶ 14.

[69] *Id.*

[70] *Id.* at 1312, ¶ 16.

[71] *Id.*

rules.[72] The proposed redesignation of channels 25 and 26 was an outgrowth of our concern that designated entities interested in narrowband PCS licenses may desire service areas larger than MTAs and BTAs.[73] In this connection, we recognized that over half of the bidders who participated in the nationwide auction would have qualified for an entrepreneurs' block license if it had been available.[74] Thus, we sought comment on whether we should redesignate some or all of the channels licensed on a BTA basis, including the response channels licensed on a BTA basis, to be licensed on an MTA basis, or take other means to achieve larger license areas.[75] We also permitted MTA and BTA service areas to be aggregated up to and including nationwide coverage.[76]

27. Comments. Comments were mixed on the issue of reallocating BTA service areas into larger service areas. Many commenters argued that BTA license areas are too small to support the implementation of narrowband PCS. American Paging asserts that implementation of narrowband PCS on a BTA basis is impractical, and suggests MTA service areas instead.[77] The Personal Communications Industry Association ("PCIA") supports American Paging's proposal and argues that BTAs do not afford licensees the optimum combination of coverage and construction costs necessary for new entrants to be competitive in the market.[78] PCIA also contends that BTAs would burden designated entities with the additional complexity and transaction costs of aggregating licenses to achieve the minimum service area needed to establish a viable messaging alternative.[79] AirTouch Paging urges the Commission to license the remaining narrowband PCS spectrum on an MTA-or-greater basis.[80] Essence Communications ("Essence") asserts that the Commission should aggregate BTA licenses to create nationwide licenses within the entrepreneurs' block.[81] PageMart contends that the Commission should aggregate the remaining BTA and MTA licenses or, in the alternative,

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[72] *Competitive Bidding Third MO&O/Further Notice*, 10 FCC Rcd at 209, ¶ 77; *see also* 47 C.F.R. § 24.102.

[73] *Competitive Bidding Third MO&O/Further Notice*, 10 FCC Rcd at 228, ¶ 122.

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] American Paging Comments at 3, n.2.

[78] PCIA Comment at 3.

[79] *Id.*

[80] AirTouch Paging Comments at 13.

[81] Essence Comments at 8-9.

permit combinatorial bidding on those licenses.[82] PageMart argues that medium-sized firms easily could be squeezed out of the regional competition altogether.[83] PageMart also argues that the Commission should redesignate some of the response channels to create larger service areas to assist existing paging licensees in upgrading their networks.[84] PageMart further asserts that service providers cannot achieve the necessary economies of scale to offer advanced paging with local service alone.[85]

28. By contrast, PCS Development Corporation ("PCSD"), a minority-controlled small business that successfully bid for narrowband regional licenses, and Mobile Telecommunications Technologies Corporation ("Mtel") contend that redesignation of BTA blocks to MTA blocks would be fundamentally unfair to the successful bidders such as PCSD and Mtel in the regional narrowband auction.[86] PCSD argues that designated entities interested in areas larger than the BTAs had ample opportunity to bid in the regional auctions. Thus, PCSD contends, giving designated entities yet another opportunity to gain larger service areas would place PCSD and other winners at a disadvantage.[87] Other commenters maintain that the Commission should not reallocate any narrowband PCS spectrum on a regional or nationwide basis because the BTA channel blocks afford smaller companies a meaningful opportunity to participate in the provision of narrowband PCS.[88] Mtel contends that the results of the regional auction demonstrate that there is no need to reallocate channels, and that the nationwide narrowband auction results, which were unique, should not be used as a basis for revising the current allocations.[89] Mtel further contends that the prices bid at the narrowband regional auction demonstrate that licensee interest, as reflected by bid prices, has not been reduced despite the availability of only smaller service/license areas. According to Mtel, this lends further support to the argument that no demonstration of need for larger service areas has been made.[90]

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[82] PageMart Comments at 9-11.

[83] PageMart Comments at 5.

[84] *Id.* at 9.

[85] *Id.*

[86] Mtel Comments at 2-4.

[87] PCSD Comments at 2-3.

[88] *See, e.g.*, PCSD Comments at 2-3; Mtel Comments at 4-5; PCIA Comments at 4; PageMart Comments at 5; USIMTA/USIPCA Comments at 6.

[89] PCIA Comments at 6.

[90] Mtel Comments at 6.

29. Discussion. We believe the record provides support for reconfiguring the service area size of the remaining narrowband PCS channels. First, we share the concern of commenters that the BTA service areas in particular are too small to provide a viable narrowband service. Our experience with similar services suggests that larger licensing areas may be more suitable to the actual configuration of narrowband systems. For example, we recently adopted MTA-based licensing for the 929 MHz and 931 MHz paging bands, which are likely to be directly competitive with narrowband PCS.[91] We also believe that narrowband PCS could be licensed using larger areas without compromising the goal of ensuring entry for small businesses. An illustrative comparison is provided by the 900 MHz SMR auction, which was MTA-based, in which 60 out of 80 high bidders are small businesses.[92]

30. There may also be additional demand to provide narrowband PCS on a regional or nationwide basis. In the *PCS First Report and Order*, we agreed with commenting parties that regional and nationwide service areas in narrowband PCS would provide economies of scale and should alleviate some of the problems licensees have experienced when they have tried to aggregate smaller license areas.[93] In the previous narrowband PCS auctions, a number of bidders for the regional licenses aggregated their licenses into nationwide service, and several nationwide licenses were aggregated by a single licensee. Moreover, the large number of regional and nationwide paging systems in the 929 and 931 MHz paging bands suggests that the market to provide this level of coverage is dynamic and competitive.[94]

31. Based on these factors, we believe that our prior proposal for reconfiguring the service areas of the remaining narrowband PCS channels should be expanded by eliminating all BTA licensing and instead using a combination of MTAs, regional licensing areas, and nationwide licensing. Specifically, we propose to (1) redesignate the two remaining 50 kHz paired channels as nationwide channels; (2) establish one nationwide, three regional, and one MTA-based channel pairs from the five 50/12.5 kHz channel pairs; and (3) convert the four BTA-based 12.5 kHz unpaired response channels to regional channels. By designating these service areas, we seek to give companies, including designated entities, the opportunity to establish a viable narrowband service and to provide regional and nationwide service if circumstances warrant. We request comment on this proposal and on any possible alternative service area combinations. In particular, commenters should comment on the effect of

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[91] *Paging Second Report and Order*, FCC 97-59 at ¶¶ 23-25, 32-36, 40-43.

[92] *See Wireless Bureau Progress Report, supra*, n.54.

[93] *PCS First Report and Order*, 8 FCC Rcd at 7167-68, ¶ 26.

[94] Of the 75 channels available in the 931 and 929 MHz bands for exclusive licensing, 26 are licensed on a nationwide basis. *Paging Second Report and Order*, FCC 97-59 at ¶¶ 50-54. In addition, our licensing records show that regional systems are operating on 41 channels. In the 929 MHz band, approximately 70 percent of the total authorizations are to nationwide or regional licensees.

licensing in larger areas on opportunities for entry and competition by small businesses. We also seek comment on whether local participation in narrowband PCS by smaller businesses could occur through partitioning or disaggregation arrangements with MTA-based, regional, and nationwide PCS licensees, thus affording more opportunities to serve smaller areas.[95] We also note that the Commission recently used Major Economic Areas (MEAs) to license spectrum in the Wireless Communications Service (WCS).[96] MEAs consist of aggregations of Economic Areas (EAs) as defined by the Department of Commerce, with 46 MEAs in the continental United States, and an additional six areas covering Alaska, Hawaii, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, American Samoa, and the Gulf of Mexico.[97] We note, however, that previously-licensed regional narrowband PCS licenses were configured by aggregating MTAs into larger regional areas. Using MEAs would cause some license inconsistencies between regional narrowband PCS boundaries and MEA-based boundaries. We therefore request comment on whether using MEAs would be preferable to using MTAs to license narrowband PCS in the future.

32. We also seek comment on what effect increasing the service area size of as-yet unlicensed channels will have on existing narrowband PCS licenses. Although PCSD and MTel argue that using larger areas would devalue their licenses, we note that they were licensed over two years ago, which would appear to reduce the impact of subsequent licensing. In addition, as noted above, numerous paging licensees have established nationwide and regional systems that already provide competition for narrowband PCS. Finally, we note that the goal of our spectrum policy is not to preserve the value of the licenses that auction winners acquire, but to promote competition and service in the public interest. We therefore seek comment on whether our proposals are equitable to existing licensees, and whether they would assist new entrants in offering services to the public in a more efficient manner.[98]

2. Reserve Spectrum Reallocation

33. Background. In the *PCS First Report and Order*, the Commission allocated three MHz for narrowband PCS.[99] Specifically, the narrowband PCS spectrum was allocated into three one-MHz bands, with two MHz of this spectrum divided into specific channels and

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[95] *Id.* at 7167, ¶ 27, n.20. *See* discussion of partitioning and disaggregation in the *Further Notice* at ¶¶ 88-99, *infra*.

[96] *See* Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service, *Report and Order*, GN Docket No. 96-228, FCC 97-50 (rel. Mar. 3, 1997) at ¶ 54 (summarized in 62 Fed. Reg. 09,636) (*WCS Report and Order*).

[97] *Id.*

[98] *See, e.g., Direct Broadcast Satellites*, 740 F.2d 1190, 1198 (D.C. Cir. 1984); *National Association of Independent Television Producers and Distributors v. FCC*, 502 F.2d 249, 257 (2d Cir. 1974).

[99] *PCS First Report and Order*, 8 FCC Rcd at 7165, ¶ 19.

available for immediate licensing.[100] At that time, we determined that the service proposals for narrowband PCS did not require use of the entire narrowband PCS spectrum allocation.[101] We retained the flexibility to channelize and license the remaining one MHz of spectrum for expanded narrowband PCS licensing opportunities as the service developed.[102] Subsequently, several commenters to the *Competitive Bidding Third Memorandum Opinion and Order/Further Notice* raised the issue of the reserve narrowband PCS spectrum and requested that the Commission immediately channelize and license it.[103]

34. Discussion. We believe that channelizing and licensing the reserve narrowband PCS spectrum will serve the public interest by facilitating competition, opening the market to new entrants, and allowing existing narrowband PCS licensees to expand their systems through access to additional spectrum. Therefore, we tentatively conclude that the one MHz of spectrum that we reserved in the *PCS First Report and Order* should now be channelized and licensed. We seek comment on this tentative conclusion. We also seek comment on whether the reserve narrowband PCS spectrum should be channelized for narrowband PCS paired-channel use or narrowband PCS unpaired channels. We also seek comment on a channelization plan. For example, we could authorize three licenses: two 300-kHz licenses and one 400-kHz license. Would another allocation be preferable? Commenters should also address the appropriate service area size for licenses in this band.

35. Additionally, we request comment on the narrowband PCS aggregation limit and whether it should be modified in light of this proposal. Narrowband PCS is not subject to the 45 MHz commercial mobile radio service (CMRS) spectrum cap.[104] However, a single licensee is only permitted to hold licenses for up to three 50 kHz channels, either paired or unpaired.[105] This limit is based on the total narrowband PCS spectrum held by a licensee through nationwide, regional, and local licenses at any geographic point.[106] In light of our proposal to open and license the narrowband PCS reserve spectrum, we seek comment on whether these aggregation limits on narrowband PCS spectrum are appropriate, or if we need

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[100] *Competitive Bidding Third Report and Order*, 9 FCC Rcd at 2944, ¶ 9; *see also* 47 C.F.R. § 24.129.

[101] *PCS First Report and Order*, 8 FCC Rcd at 7165, ¶ 19.

[102] *Id.*

[103] *See* American Paging Comments at 2; BMJ&D Reply Comments at 10. *But see* PCSD Reply Comments at 3 (arguing that the Commission should postpone its final decision on the use of reserve spectrum until after completion of the auction for the 26 frequencies in the original narrowband PCS allocation).

[104] Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, 9 FCC Rcd 7988, 8111, ¶ 267 (1994) (*CMRS Third Report and Order*).

[105] *PCS First Report and Order*, 8 FCC Rcd at 7168, ¶ 34, n.21.

[106] *Id.*

to modify, increase or eliminate such aggregation limits.

3. Eligibility for Response Channels

36. Background. In the *PCS MO&O* we determined that eligibility for the paging response licenses would be restricted to incumbent paging licensees authorized under Part 22 and Part 90 of our rules as of June 24, 1993, the adoption date of the *PCS First Report and Order.*[107] In addition, we determined that, to be eligible, the existing paging licensee must operate at least one base station in the MTA or BTA for which it is applying for a paging response channel.[108] In the *PCS Second MO&O*, we amended the eligibility criteria to permit any paging licensee to apply for response channels in a license area as long as the licensee's paging system services some portion of that license area on the date the PCS application is filed.[109] However, response channels currently only can be used in paired communications with existing paging channels to provide mobile-to-base station communications.[110]

37. Comments. Several parties have filed Petitions for Reconsideration of the *PCS Second MO&O*, asking that we reconsider our eligibility limitations for the response channels.[111] We incorporate into this proceeding Petitions for Reconsideration of the *PCS Second MO&O* filed by AirTouch, PCIA, and PRTC, and the pleadings filed in response to those petitions. In its Petition, AirTouch contends that it needs additional response spectrum in order to be able to compete effectively with other narrowband PCS licensees that won multiple channels at the nationwide auction, and that all eligibility restrictions on the response channels should be eliminated.[112] PRTC disagrees with AirTouch, stating that the Commission knew auctions were imminent when it instituted eligibility restrictions, and that

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[107] *PCS MO&O*, 9 FCC Rcd at 1313, ¶ 26. Existing paging licensees are defined as licensees of conventional one-way paging base stations licensed pursuant to Part 22 or Part 90 of our rules as of the application filing deadline for paging response channels. *Id.* at ¶ 26.

[108] *Id.* We also limited each licensee to two paging response channels per geographic area. In the *PCS Second MO&O*, we amended this requirement to provide that the two response channels per market limit will expire two years after the date of initial license grant. *PCS Second MO&O,* 9 FCC Rcd at 4521, ¶12.

[109] *PCS Second MO&O*, 9 FCC Rcd at 4520, ¶ 10.

[110] 47 C.F.R. § 24.130(a).

[111] Petitions for Reconsideration of the *PCS Second MO&O*, 9 FCC Rcd 4519 (1994), filed Oct. 7, 1994. In addition, we incorporate the record in response to the Petitions for Reconsideration: Oppositions to Petitions for Reconsideration, filed Nov. 3, 1994, by PageMart, Inc. ("PageMart"), Pegasus Communications, Inc. (Pegasus"), and PRTC; Replies to Oppositions to Petitions for Reconsideration, filed Nov. 14, 1994, by AirTouch, PageMart, PRTC and Radiofone Nation-wide Paging Services, Inc. ("Radiofone").

[112] AirTouch Petition at 4-5.

the type of licensing procedure was not relevant to the imposition of such restrictions.[113] PRTC states that the sole reason for the restrictions was to allow existing paging licensees to upgrade their systems.[114] PRTC opposes AirTouch's and PCIA's petitions, and argues that only incumbent paging licensees should be eligible for response channels because these entities can immediately put the response channels to use.[115]

38. AirTouch also argues that we should allow response channels to be paired with any channel licensed under Part 22, Part 90, or Part 24 of our rules, and let market forces determine the optimal use for this spectrum.[116] PageMart, a nationwide private carrier paging licensee and a nationwide 50 kHz unpaired narrowband PCS licensee, agrees with AirTouch.[117] PageMart states that requiring that response channels be paired only with paging channels will unnecessarily and unfairly inhibit the development of a competitive, two-way service.[118] PCIA requests that geographic area licensees be permitted to file for a response channel in any BTA or MTA in which there is an overlap with the licensee's paging area.[119]

39. In its reply comments, AirTouch argues that expanded eligibility and more flexible use is consistent with the current regulatory philosophy that Part 22, Part 90, and Part 24 licensees be treated in a similar manner.[120] In its reply comments, Radiofone supports AirTouch's proposal to eliminate eligibility restrictions.[121] Radiofone further states that PageMart's and PRTC's assertions against lifting the eligibility restrictions amount to nothing more than complaints about the use of auctions to award licenses.[122] PageMart argues that a combination of the geographic area license eligibility threshold and a free pairing of response channels with narrowband PCS and traditional paging frequencies would both protect incumbent interests and assure the most efficient utilization of spectrum.[123] PageMart believes

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[113] PRTC Opposition to Petitions for Reconsideration at 4.

[114] *Id.*

[115] PRTC Opposition to Petitions for Reconsideration at 6-7.

[116] AirTouch Petition at 7-8.

[117] PageMart Inc.'s Partial Opposition to Petitions for Reconsideration at 2.

[118] *Id.*

[119] PCIA Petition at 3-4.

[120] AirTouch Reply to Opposition to Petition for Reconsideration at 7.

[121] Radiofone Reply to Oppositions to Petitions for Reconsideration at 3.

[122] *Id.* at 4.

[123] PageMart Reply to Oppositions to Petitions for Reconsideration at 3-4.

that PCIA's proposed alternative -- geographic area license eligibility -- is a prudent compromise that protects incumbent interests in an administratively efficient manner.[124]

40. Discussion. Our rules currently limit eligibility for acquiring narrowband PCS response channels to existing paging licensees and define existing paging licensees to be licensees of conventional one-way paging base stations licensed under Part 22 or Part 90 of our rules as of the application filing deadline for the paging response channels.[125] We agree that this definition unnecessarily excludes potential users of the response channels who are not paging licensees, *e.g.*, other narrowband PCS licensees. In addition, our rules prevent these channels from being used by non-narrowband service providers, or for purposes other than mobile-to-base response transmissions. We question whether eligibility should be limited to this use alone rather than allowing the marketplace to determine the most efficient use of the channels. Therefore, we propose to lift all eligibility restrictions on applying for paging response channels currently designated as MTA licenses (A, B, C, and D) and the paging response channels we redesignate as regional licenses (E, F, G, and H). We believe that removal of eligibility restrictions will increase competition for these channels and thereby increase the likelihood that licenses for these channels will be awarded to those who value them most highly. Moreover, we tentatively conclude that these channels should not continue to be restricted to mobile-to-base transmissions, provided that licensees comply with the relevant rules regarding maximum transmitter power and interference.[126] We seek comment on our proposal and tentative conclusions. Commenters should address whether we should lift eligibility restrictions on all response channels or only on certain response channels. Commenters should also address the potential impact on eligibility of our recent *Paging Second Report and Order* which adopts geographic area licensing of paging systems.[127]

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[124] *Id.* at 3-4.

[125] Additionally, existing paging licensees are only eligible for response channels in any BTA or MTA that encompasses an authorized base station or which is partly or wholly overlapped by the paging system's service area, which is generally defined as the area within 32.2 kilometers of the licensee's base station. In the case of "F", "G", "H", or "K" class stations under Sections 22.502(c) and 90.495(b)(1) of our rules, service area is defined as the area that is within the service area radius specified in Section 22.504(b)(2).

[126] *See* Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 96-6, 11 FCC Rcd 8965 (1996) (*CMRS Flex Report and Order*), in which the Commission allowed CMRS providers to offer fixed, as well as mobile radio services on a non-ancillary as well as ancillary basis.

[127] *See Paging Second Report and Order*, FCC 97-59.

B. Construction and Coverage Requirements

41. Section 309(j)(3) of the Communications Act states, in part, that when designing competitive bidding systems, "the Commission shall include safeguards to protect the public interest in the use of the spectrum . . . ."[128] In addition, Section 309(j)(4)(B) provides that the Commission shall "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."[129] We have previously found that these objectives could be satisfied through build-out requirements.[130] We note, however, that we have never concluded that such requirements are mandated by Section 309(j).

42. Pursuant to Section 309(j), we have previously adopted performance requirements in the form of minimum coverage requirements for narrowband PCS.[131] Specifically, nationwide narrowband PCS licensees must provide coverage to a composite area of 750,000 square kilometers or serve 37.5 percent of the U.S. population within five years of their license grants, and must provide coverage to a composite area of 1,500,000 square kilometers or serve 75 percent of the U.S. population within ten years of license grant. Regional licensees must cover 150,000 square kilometers or serve 37.5 percent of the population in their licensing areas within five years, and must cover 300,000 square kilometers or serve 75 percent of the regional population within ten years. MTA licensees must cover 75,000 square kilometers or serve 25 percent of the MTA population in five years, and must cover 150,000 square kilometers or serve 75 percent of the MTA population in ten years.[132]

43. Since we adopted these coverage requirements for narrowband PCS in 1994, we have moved towards a more flexible approach to coverage requirements in other services. For

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[128] 47 U.S.C. § 309(j)(3).

[129] 47 U.S.C. § 309(j)(4)(B).

[130] *See, e.g.*, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, FCC 94-178, 9 FCC Rcd 5532, 5570 (1994) (*Competitive Bidding Fifth Report and Order*); 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 and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Report and Order*, PP Docket No. 93-253 and MM Docket No. 94-131, 10 FCC Rcd 9589, 9659-60 (1995); Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, *Second Report and Order*, ET Docket No. 94-32, 11 FCC Rcd 624, 669-670 (1995).

[131] *PCS First Report and Order*, 8 FCC Rcd at 7168, ¶ 37. We modified these coverage requirements slightly in the *PCS MO&O*, 9 FCC Rcd at 1313-14, ¶¶ 31-34; *see also* 47 U.S.C. § 24.103.

[132] 47 U.S.C. § 24.103.

example, in our paging rulemaking, we provided that paging licensees can either meet population coverage benchmarks (one-third of licensing area population within three years of the license grant, and two-thirds of the population within five years) or may meet their performance requirement by demonstrating that they are providing "substantial service" in the licensing area within five years of the license grant.[133] Substantial service is defined as "service that is sound, favorable, and substantially above a level of mediocre service, which would barely warrant renewal."[134] In the Wireless Communications Service (WCS), we concluded that the unique circumstances in that case, including an aggressive deadline for auctions and exceedingly strict technical requirements necessary to prevent interference, necessitated still more flexible performance requirements. WCS licensees are thus required to provide substantial service to their service areas within ten years.[135] The substantial service standard may be met in WCS by providing coverage to 20 percent of the population where mobile service is provided, or four permanent links per one million people in its licensed service area, or by an alternative demonstration of substantial service by the licensee.[136]

44. In light of these developments in other services, we believe we should revisit the narrowband PCS coverage requirements to ensure that they continue to be justified. We believe it is appropriate at a minimum to treat narrowband PCS and paging similarly in this respect: narrowband PCS licensees operate on adjacent bands to the 900 MHz paging licensees, and we have previously observed the close, potentially competitive relationship between the two services.[137] We propose to conform our narrowband PCS rules to our paging rules by allowing narrowband PCS licensees to meet their performance requirements through a demonstration of substantial service as an alternative to meeting the coverage requirements provided under the existing rules. We seek comment on this proposal and whether an alternative coverage standard based on geographic areas remains necessary if we adopt a "substantial service" alternative as proposed above.

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[133] *Paging Second Report and Order*, FCC 97-59 at ¶ 63. These build-out requirements apply to MTA and EA geographic area paging licenses. *Id.*

[134] *Id.* We have also adopted substantial service as an alternative to coverage requirements in 900 MHz SMR and for the 10 MHz blocks in broadband PCS. *See* 47 C.F.R. § 24.203(a); *see also* Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4557, 5018-19, ¶ 155 (1994); *see also* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-553, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2637, 2651-52, ¶ 31 (1995) (*900 MHz Second Order on Reconsideration*).

[135] *See WCS Report and Order*, FCC 97-50 at ¶ 111.

[136] *Id.* at ¶ 113.

[137] *See Paging Second Report and Order*, FCC 97-59 at ¶ 4; *see also PCS First Report and Order*, 8 FCC Rcd at 7163-64, ¶¶ 7-15.