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FEDERAL COMMUNICATIONS COMMISSION
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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

To: The Commission

REPLY TO OPPOSITION AND COMMENTS ON PETITIONS FOR RECONSIDERATION

Mid-Rivers Telephone Cooperative, Inc. (MRTC), by its attorneys, and pursuant to Section 1.429(g) of the Commission's Rules, hereby submits its reply to the Opposition and Comments on Petitions for Reconsideration filed by The Personal Communications Industry Association (PCIA) and ProNet, Inc. (ProNet) in the captioned proceeding.

I. BETRS is an Essential Service Which Must be Protected.

PCIA claims that it is not necessary for the Commission to exempt future Basic Exchange Telecommunications Radio Systems (BETRS) from compliance with the geographic area licensing/auction scheme, alleging that (i) there is no distinction between BETRS and commercial messaging services, (ii) the Commission's decision to require BETRS providers to participate in the auction will not reduce the quality of, nor raise the price of BETRS service, (iii) Economic Areas (EAs) closely match BETRS service areas, (iv) BETRS providers can enter into partitioning arrangements with market area paging licensees,

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and (v) future BETRS systems can be licensed on a secondary basis. Opposition of PCIA at 3.

PCIA's rationale for concluding that the paging auctions will not harm the provision of BETRS misses the point. First, there is a critical distinction between BETRS and the commercial mobile messaging services (e.g., cellular, PCS, and paging), as the Commission recognized in its rewrite of Part 22 in CC-Docket 92-115, Report and Order, 9 FCC Rcd. 6513 (1994). In that proceeding, the Commission declined to resolve frequency conflicts between competing BETRS proposals and paging proposals by auction. Instead, because of the unique service provided by BETRS, the Commission concluded that it would be appropriate to hold comparative hearings. See Id. at 6517. Thus, the conclusion that there is now no distinction between BETRS (an essential service for the provision of local exchange telephone service in rural areas) and paging service (which, by comparison, is more of a luxury service) is misplaced. While BETRS and paging share the same spectrum, and both services are "commercial," that is where the similarities end. Clearly, the nature of the services is radically different, so as to make the common regulatory scheme urged by PCIA inappropriate.

The record in this proceeding clearly demonstrates that participation of BETRS providers in the auctions is impracticable, both due to high costs and the sheer size of the market areas. See Petition of Century Telephone Enterprises, Inc. at 7, n. 8; Petition of Nucla-Naturita Telephone Company at 7, n.

8; Petition of Mid-Rivers Telephone Cooperative, Inc. at 7, n. 8; and Petition of Big Bend Telephone Company, Inc. at 7, n. 8. Unlike paging, which requires only a single frequency to provide service to tens of thousands of customers over a very wide area of service, BETRS requires, due to co-channel interference considerations, multiple frequencies to provide service to a relatively small cluster of subscribers over a very limited service area. Id. The Commission may take official notice of the fact that most applications for authorization of a BETRS central office station at a single location typically request assignment of two to four frequency pairs, and in some cases, ultimately 20 frequency pairs have been licensed in order to meet subscriber demand for local exchange telephone service over a relatively small rural area. PCIA's claim that EAs closely match BETRS service areas demonstrates that PCIA does not understand BETRS and how it differs from other commercial radio services. See Second Report and Order 12 FCC Rcd. _____ at para 34, n. 104.

Contrary to PCIA's assertions, costs for BETRS services will increase dramatically if BETRS providers are required to participate in the Commission's auctions for multiple channels in their market areas, in order to be able to add central office stations as necessary. Unlike paging carriers, who will generally be interested in only a single channel at the auction, BETRS licensees would be required to bid on many frequencies in a particular market to acquire sufficient spectrum to meet present and future demands for local exchange telephone service, even

though at least some of these frequencies may not be put to use immediately, if at all. Because participation in the auction would likely require significant investment, the carriers, including subscriber-owned telephone cooperatives and other rural area telephone companies, may be forced to raise their rates to meet the additional costs of acquiring BETRS spectrum.[1] Further, as previously demonstrated, the geographic areas, i.e., economic areas, are likewise impracticable for BETRS service areas since EAs include both urbanized and rural areas, and thus, large areas which would not require construction of BETRS facilities. BETRS facilities are generally low-power, highly directionalized facilities, designed to provide local exchange telephone service in rural areas between a central office station and a particular subscriber or cluster of subscribers.

PCIA also submits that mandatory partitioning is unnecessary since BETRS providers will be able to enter into voluntary partitioning arrangements with the winning geographic area winners. Opposition at 3-4. See also Opposition of ProNet, Inc. at 16. While this is a possibility, the record is clear that mandatory partitioning is necessary to safeguard the ability of

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[1] Further, if BETRS licensees are required to participate in the auction in order to obtain co-primary grants, they may not be able to meet the construction benchmarks, especially if the substantial service alternative is eliminated. And even then, because the auction would be the last opportunity for BETRS licensees to obtain necessary spectrum for the foreseeable future, many providers may not have a requirement for all of the spectrum in the five-year period, even though future local governmental planning may indicate sufficient development within perhaps a ten-year time frame.

rural telephone companies to provide necessary local exchange telephone service via radio. See Telocator of America, 691 F. 2d 525, 537 (D.C. Cir. 1982) ("We will demand that the Commission consider reasonably obvious alternative . . . rules, and explain its reasons for rejecting alternatives in sufficient detail to permit judicial review.") The record demonstrates that there is no certainty that geographic area licensees would voluntarily enter into partitioning arrangements, and in those cases where they did, that geographic area licensees would be willing to partition their licenses at reasonable costs, without trying to recover the bulk of their auction expenses for the market. See Petition of Century Telephone Enterprises, Inc. at 8-9; Petition of Nucla-Naturita Telephone Company at 8-9; Petition of Mid-Rivers Telephone Cooperative, Inc. at 8-9; and Petition of Big-Bend Telephone Company, Inc. at 8-9. Thus, even if BETRS licensees are able to partition areas from the geographic license winners, there is no certainty that such partitions will be at reasonable cost. Of course, all such partitioning costs raise the cost of service for rural subscribers. Therefore, the only reasonable way to ensure that BETRS can be provided, as necessary, is to require mandatory partitioning without cost to the BETRS licensee.[2]

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[2] In point of fact, the areas that would be subject to partitioning should be of little value to the geographic area licensee since the BETRS licensee would not be seeking partitions of urbanized areas where the majority of the population of a particular EA resides. Rather, BETRS is provided in isolated rural areas where it is impracticable to string wire or lay cable in order to provide local exchange telephone service.

The secondary licensing scheme proffered by PCIA as the solution for BETRS will further exacerbate the potential for loss of service since many rural telephone companies will not be willing or able to make significant investments in infrastructure that may have to be abandoned a short time later due to the whim of the geographic area licensee. Petition of Century Telephone Enterprises, Inc. at 6; Petition of Nucla-Naturita Telephone Company at 6; Petition of Mid-Rivers Telephone Cooperative, Inc. at 6; Petition of Big Bend Telephone Company, Inc. at 6. Because, under a secondary licensing scheme, the geographic area licensee could strand the rural telephone company's BETRS investment at any moment, requests for service will likely go unanswered, resulting in a denial of service. This outcome would be contrary to the universal service mandate of Section 1 of the Communications Act of 1934, as amended (the Act), and the Commission's commitment to universal service announced in its recently adopted Order in CC Docket No. 96-45 (Released May 8, 1997).

Finally, PCIA states that if additional BETRS spectrum is required, BETRS licensees should petition the Commission for an allocation of spectrum. Opposition at 4. As demonstrated in the record of this proceeding, the Commission has had before it for approximately five years, a petition for rulemaking which shows the need for additional spectrum to meet the continued demands for local exchange telephone service that cannot be met by other means. See Petition of The National Telephone Cooperative

Association at 4. That petition, which received wide support from numerous parties, has never been acted upon. This petition showed the need for more spectrum at a time when it was assumed that the Part 22 VHF and UHF channels would continue to be available for future licensing in the same manner as before. Thus, PCIA's comment is clearly without merit.

II. Immediate Termination of Secondary BETRS Operation is Contrary to the Public Interest.

ProNet asserts that the Commission should modify Rule Section 22.723 "to prevent Rural Radiotelephone Service (RRS) licensees, including BETRS licensees, from continuing operations on a secondary basis that cause actual interference to a primary paging licensee for six months after receiving notice of interference." See Opposition of ProNet, Inc. at 15.

ProNet's request for the immediate termination of secondary BETRS operations, upon notification of interference, is tantamount to a demand that the Commission give greater preference and protection to paging, clearly a less essential communication service in isolated portions of rural America compared to the more basic local exchange telephone service. See Id. As previously demonstrated in this proceeding, ProNet's requested revision to Rule Section 22.723 (and the Commission's adoption of secondary status for BETRS): (i) would create an unreasonable burden on people in rural areas who must rely on BETRS as their sole means of telephone service, (ii) would result in the immediate loss of essential communications services to the public

in rural America, and (iii) is contrary to the universal service mandate of Section 1 of the Act.[3]

While MRTC is sensitive to the requirements of incumbent paging licensees, and fully supports the protected status of paging stations licensed pursuant to applications filed as of the adoption date of the Second Report and Order and placed in service prior to the secondary BETRS station, it opposes the immediate disruption of basic exchange telephone service to rural subscribers (and the permanent denial of such service) as a result of the subsequent installation of a new paging transmitter by a geographic area paging licensee.[4]

ProNet's proposal demonstrates the intention to immediately terminate essential communications services, including local exchange telephone service (for which there is no alternative) without regard to the safety and welfare of the public. ProNet's "no notice" plan would leave users of secondary BETRS facilities without telephone service, perhaps indefinitely, while the telephone carrier scrambles to find an alternative means of service (if one can be found). In the meantime, these

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[3] See Petition of Century Telephone Enterprises, Inc. at 5; Petition of Nucla-Naturita Telephone Company at 5; Petition of Mid-Rivers Telephone Cooperative, Inc. at 5; and Petition of Big Bend Telephone Company, Inc. at 5.

[4] ProNet's requested clarification of Rule Section 22.723, if adopted, could lead to the irony that a paging licensee could provide service in an area where there is no telephone service. Imagine a paging licensee going to a rural subscriber and saying: "We are terminating your telephone service immediately so that we can provide you with paging service." A more absurd result could hardly be imagined.

subscribers may have no means of summoning help in the event of an emergency.

III. Conclusion.

The Commission should continue to recognize that BETRS is an essential communications service and protect it accordingly. The auctions which the Commission has fashioned based solely on paging service considerations are inimical to the continued existence of BETRS in satisfying local exchange service requirements in rural areas, unless modified as proposed in the Petition for Reconsideration.

Respectfully submitted,

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